

Chapter XI

Rules and Regulations

11.0.0 The Real Estate (Regulation & Development) Act, 2016 although a Central legislation, deals with matters relating to real estate project in respect of which each State/Union Territory has its own laws, practices and procedures. In order to make it work smoothly throughout the Union of India, the Act while laying down the law, leaves its implementation to the Appropriate Governments namely the Government of respective States and Union Territories vesting in them the power to frame the rules for giving effect to those provisions. Thus, while the substantive legislation is that of the Union laying down the broad parameters of regulatory provisions, the subordinate legislative power by way of framing the rules is delegated to the respective State/Union Territory. Such delegation is likely to help the States in adjusting the working of the Act to the needs and circumstances of the particular State.

11.0.1 Section 84 of the Act provides for making rules by the Appropriate Government for carrying out the provisions of the Act within a period of six months of its commencement. The Act will commence from the date to be notified. The entire Act may not commence on a single date as it empowers the Government of India to notify different dates for coming into force of different provisions. It also provides that in case different

dates are notified for coming into force of different provisions, commencement of the Act in relation to that particular provision will be the date when that provision has been notified to come into effect. *Vide* notification issued on 26th April, 2016 certain provisions have been made applicable with effect from 1st May, 2016 and accordingly, rules in respect thereof will have to be framed by 31st October, 2016. These will be rules relating to matters mentioned at items (l) to (q), (t) to (za), (zc) to (ze) and (zf) of section 84 which relate to provisions brought into force by the above notification. The rules/notifications to be framed/issued by the State Government or the Union Territory Government shall be laid, as soon as possible before the State Legislature or the Union Territory Legislature where the State/ Union Territory consists of two Houses or where such legislature consists of one House only, before that House. In case of Union Territory without Legislature, rules are to be framed by the Central Government and, in case of Union Territory of Delhi, by the Central Ministry of Urban Development.

11.1.0 In general rules are to be framed in respect of matters left to be prescribed under the Act. Without prejudice to the generality of the power, the rules may provide for all or any of the following matters mentioned in sub-section (2) of Section 84-

- (a) information and documents for application to Authority for registration under clause (m) of sub-section (2) of section 4;
- (b) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;
- (c) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;

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- (d) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;
- (e) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;
- (f) the discharge of other functions by the real estate agent under clause (e) of section 10;
- (g) the rate of interest payable under section 12;
- (h) the form and particulars of agreement for sale under sub-section (2) of section 13;
- (i) the rate of interest payable under clause (b) of sub-section (1) of section 18;
- (j) the rate of interest payable under sub-section (4) of section 19;
- (k) the rate of interest payable under sub-section (7) of section 19;
- (l) the manner of selection of Chairperson and Members of Authority under section 22;
- (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;
- (n) the administrative powers of the Chairpersons under section 25;
- (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other

- employees of the Authority under sub-section (2) of section 28;
- (p) the details to be published on the website as under clause (b) and under clause (d) of section 34;
 - (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 35;
 - (r) the manner of recovery of interest, penalty and compensation under sub-section (1) of section 40;
 - (s) the manner of implementation of the order, direction, or decisions of the adjudicating officer, the Authority or the Appellate Tribunal under sub-section (2) of section 40;
 - (t) recommendations received from the Central Advisory Council under sub-section (2) of section 42;
 - (u) the form and manner and fee for filing of appeal under sub-section (2) of section 44;
 - (v) the manner of selection of Members of the Tribunal under sub-section (3) of section 46;
 - (w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 48;
 - (x) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 49;

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- (y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 51;
- (z) any other powers of the Tribunal under clause (h) of sub-section (4) of section 53;
- (za) the powers of the Chairperson of the Appellate Tribunal under section 54;
- (zb) the terms and conditions and the payment of such sum for compounding of the offences under section 70;
- (zc) the manner of inquiry under sub-section (1) of section 71;
- (zd) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 77;
- (ze) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 78;
- (zf) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Regulations by the Regulatory Authority

11.2.0 The Appropriate Governments are required to set up the Real Estate Regulatory Authority within one year from the commencement of the Act. The Act, in so far as it relates to the setting up and other matters relating to such Authority contained in sections 20 to 39 has been brought into force by the

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notification issued by the Government of India on 26th April, 2016. The Authorities will, therefore, have to be constituted by each State/Union Territory either singly or jointly with other(s) by April 30, 2017. Under the provisions of section 85 of the Act, the Authority shall, within a period of three months of its establishment by notification, make regulations consistent with the Act and the rules.

11.2.1 In particular, the Authority shall make regulations providing for all or any of the following matters mentioned in sub-section (2) of Section 85.

- (a) the form and manner of making application and fee payable herewith under sub-section (1) of section 4;
- (b) the form of application and the fees for extension of registration under section 6;
- (c) such other information and documents required under clause (f) of sub-section (1) of section 11;
- (d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;
- (e) preparation and maintenance of other details under sub-section (6) of section 11;
- (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;
- (g) the form, manner and fees for filing a complaint under sub-section (2) of section 31;

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- (h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;
- (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

Notifications by the Central Government

11.3.0 Any notification issued by the Central Government including notification for the commencement of the Act or any rule framed by it shall be laid, as soon as may be, before each House of Parliament for a total period of 30 days which may comprise of one session or two or more successive sessions. In case both the Houses agree on some modification or, on not making the notification or the rule, the notification or the rule shall have effect only in the modified form or in the latter case will not have effect at all.

11.3.1 Every regulation made by the authority under the Union Territory of Delhi or the Union Territory without Legislature will also go through the same procedure of laying down before both the Houses of Parliament.