

## Chapter II

### A Bird's Eye View of the Act

#### **General**

**2.0.0** The Act seeks to safeguard the interest of the Allottees by ensuring full and correct information to be provided by the Promoter to the allottees, casting obligations on them to act in accordance with such information and ensuring working of the sector in a fair, professional and transparent and speedy manner. The Act also provides for consequences of violating and contravening these provisions. As an effective implementing arm and an authority to ensure compliance, the Act provides for setting up of a regulatory authority and the adjudicating officers and for expeditious settlement of appeals against their orders, for an appellate tribunal dealing with such matters only.

The salient features of the Act can be briefly stated as under:

#### **Salient features**

**Scope of the Act:** The Act takes within its fold not only residential apartments but all apartments, plots and buildings, whether residential or commercial. The Real Estate Project, matters relating to which are sought to be regulated, has been defined to mean –

- Development of buildings;

- Development of a building consisting of apartments;
- Converting existing building into apartments (converting a bungalow or hotel into apartments);
- Development of large piece of land into plots with or without superstructure if such development is carried with the object of selling the buildings, apartments or the plots.

**2.1.1** It will be noticed that this Act is wide enough in scope to cover development of land for buildings, apartments as well as plots. Further it is not restricted to residential flats only but cover residential as well as commercial construction.

**2.1.2** Consequently, the word promoter is also defined in wider terms and includes:

- Person constructing or causing to construct an independent building or building consisting of apartments for the purpose of selling;
- Person developing land for carving out plots - whether with or without structure;
- Person converting existing building into apartments;
- Any development authority or other public body in respect of allottees of building, apartment or plots;
- Apex State Level Co-op. Hsg. Finance Society and a Primary Co-Operative Housing Society which constructs apartments for its members;
- Any person acting as builder, colonizer, contractor, developer, estate developer or the person claiming to be acting as Attorney of the holder of the land.

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**Setting up of a Real Estate Regulatory Authority**

**2.2.0** The Act requires the respective State Governments or Union Territories to constitute an Authority, referred to as Real Estate Regulatory Authority, to act as effective implementing arm for the Act and ensure that obligations imposed on promoters, allottees and agents in terms of the Act and the agreement of sale are complied with and not violated without consequences provided under the Act. The Authority is to be constituted by the State Government within one year of the Act coming into force. An aggrieved person can file a complaint with the Authority for violation or contravention of any provision by the promoter, agent or the allottee. The Authority shall register and regulate real estate projects and also real estate agents, maintain a website for public viewing of relevant details relating to the project and ensure compliance of the obligations cast upon the promoters, agents and allottees. It may take action *suo motu* or on the basis of any complaint. It may impose penalties and/or interest and recover the same as arrears of land revenue. The Authority is also to act as a think tank for promotion of real estate sector and advise the Governments on matters relating to it.

Detailed discussion about the constitution, functions and nature of proceedings before the Authority is made in Chapter IV.

**Registration of the Project**

**2.3.0** The Act has a unique provision, which require the promoter to get the real estate project registered with the Authority. A builder cannot advertise for the sale of building, apartment or plot without registration of the project with the Regulatory Authority. It is important that even the ongoing projects on the date of commencement of the Act for which completion certificate has not been issued, are required to be

registered with the Authority within a period of three months from the date of commencement of the Act.

### **Procedure for and grant of registration**

**2.3.1** In order to get registration, one has to submit an application containing information about promoter's enterprise; brief details of the projects launched by it in past five years with their current status; authenticated copy of approval, commencement certificate and sanctioned plan; plan of development work and proposed facilities; location details with clear demarcation of land; proforma of allotment letter; draft agreement of sale and conveyance deed; number, type and carpet area of apartments and garage; name of real estate agents, contractors, architects etc. The promoter has also to make a declaration supported by affidavit certifying his title to the land, details of encumbrances, if any, and the time period within which the project is to be completed. The Authority has to take a decision within a period of thirty days of the receipt of application failing which the project will be deemed to have been registered. The Authority has to provide a registration number, Login ID and password to the promoter to access the website of the authority and to create a web page for his real estate project. In case registration is denied, it should be only after a reasonable opportunity of hearing is provided to the applicant promoter.

**2.3.2** In short, registration formalises and institutionalizes the furnishing of basic information about the promoter, the project and persons like agents connected with it. This registration will be extremely useful for all the buyers of the flats to help them in knowing the relevant facts for taking decision based on such facts. The registration granted to the project is to be valid up to the time stated in the registration application for completion of

the project. The Act provides for extension as well as revocation of the registration by the Authority. Revocation can be done by the Authority *suo motu* or on the complaint, if the promoter makes any default under the Act or, violates any terms or condition of approval or, is involved in any kind of unfair practice. The Promoter cannot give misleading advertisement relating to the project which will amount to unfair practice.

### **Consequences of Revocation**

**2.3.3** The Authority, on revocation, will specify promoters name as a defaulter, show his photograph on the website and inform the regulatory authorities of all other States about it. The Authority, is also empowered to facilitate the completion of the remaining development work, in the manner by such action as it may consider proper which will include the remaining work to be carried out by the Competent Authority or by the association of allottees or in any manner as may be deemed fit under the circumstances. On the revocation of the registration the Authority may invite the association of allottees to complete the unfinished work. The association in that case will have the first right of refusal. In case the association is not willing to complete the development work then the Authority will ask the competent authority to complete the work. The Authority on the revocation of registration can direct the bank to freeze the account and again direct to defreeze it for completing the remaining development work.

The failure to make an application for registration in accordance with section 4 of the Act or failure to give required documents along with the application or providing false information will carry penalty up to 5% of the estimated project cost.

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**Projects Exempted from Registration**

**2.4.0** The requirement of getting the project registered does not apply to following projects:

- a) Where the area of the land does not exceed 500 sq. mtrs., or the development of the number of apartments does not exceed eight included in all phases. State Governments, have, however, been empowered to reduce these limits.
- b) Where the promoter has received completion certificate prior to the commencement of the Act;
- c) Where the project is for renovation or repair or redevelopment which does not involve selling or new allotment of buildings, apartment or plot.
- d) Where the Apartments or Building are given / allotted on tenancy basis.

**No advertisement without registration**

**2.5.0** Registration of the project is necessary before a promoter can advertise, market, book, sell, offer for sale or invite anyone to purchase the building, apartment or plot. Doing so without registration will entail penalty upto 10% of the project cost. Even after the penalty order for violation of Section 3, if the promoter continues his activities then the promoter can be imprisoned upto three years or he can be fined upto 10% of the cost or can be punished by both.

**Display on website of the Regulatory Authority**

**2.6.0** The State Government shall establish Regulatory Authority and within a period of one year from its establishment the said Authority shall create web-based online system for receiving applications from promoters for registration of their

project. After the project is registered, the promoter will be given registration number, login ID and a password to enable him access to the site. The promoter will be bound to create a webpage for his project and display the project details on the webpage so created, putting the information in public domain so that every interested buyer can obtain the required information and act on it making it difficult for the promoter to go back on his promises. On the expiry of the term of registration, the webpage of the promoter will be deleted and on the revocation thereof, the promoter shall be debarred from accessing the website.

**Obligation of promoter regarding accuracy of advertisement**

**2.7.0** Where any person makes an advance or deposit on the faith of any information contained in any advertisement or on the basis of any model apartment, plot or building and sustains loss or damage by reason of any false statement therein, the promoter will be liable to compensate that person. The affected person will also have the right to withdraw from the project in which case he will be entitled to refund of entire amount paid by him along with interest at the prescribed rate and also the compensation as may be decided by the adjudicating officer appointed by the authority.

**Prohibition to accept more than 10% of cost without execution of agreement**

**2.8.0** Promoter is debarred from accepting more than 10% of the cost of the building, apartment or plot as advance payment or application fees without first entering into a written agreement of sale and registering the same under the Indian Registration Act. The agreement of sale is to be in the form as may be prescribed and shall contain all important particulars including internal and external development works, schedule

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of payment, date of giving possession as well as the rate of interest payable by allottee and the promoter in case of their respective defaults. The rate of interest is to be prescribed in the rules to be framed by the State Government. As per the Explanation to Section 2(za), the rate of interest payable by the allottees and that payable by the promoter shall be the same.

**The promoter’s obligation to adhere to the sanctioned plan lay out plan and project specifications**

**2.9.0** A very common issue is departure by the promoters from the sanctioned plan and specifications relating to internal and external development, amenities to be provided and material to be used. The Act takes care of such practices by putting an obligation on the promoter to develop and complete the construction in accordance with sanctioned plans, layout and specifications as approved by the Competent Authority. Even when there is a contrary stipulation in any law or contract, the promoter cannot make any addition or alteration from the sanctioned plan and specifications in respect of the building, apartment or plot without the previous consent of the buyer. He can only make such minor additions or alterations as may be required by the allottee or as may be necessary for architectural and structural reasons.

**2.9.1** For any other alteration or addition within the project, the Act requires the previous written consent of atleast two-thirds of the total number of allottees, who have agreed to take the apartment etc.

**Promoter’s obligation to rectify the structural or other defects**

**2.10.0** The Act further provides that in case any structural defect or any defect in workmanship, quality or provision of services is brought to the notice of the promoter within five



years from the date of handing over of possession, the promoter will be bound to rectify such defects free of any charge within 30 days and in the event of his failure to do so, the allottee will be entitled to receive appropriate compensation.

**Promoter's obligation not to use the sale proceed received in any other project**

**2.11.0** It is a general practice that the builders launch a project, collect money and utilise the same for some other project. Sometimes, proceeds are collected even before project is formally launched and the launch is delayed enabling them to use the funds in other projects. The Act takes care of such practices and obliges the promoter to deposit atleast 70% of the amount realised from the allottees of a project in a separate account with a scheduled bank which can be used only to cover the cost of that very project. The promoter can withdraw amount from such separate account in proportion to the percentage of the completion of the project by obtaining certificate from Engineer, Architect and C.A. He is also required to get his accounts audited within six months after the end of every financial year and produce a statement of account.

**Prohibition on transfer of the project to third party**

**2.12.0** The Promoter is debarred from transferring or assigning his majority rights to a third party without obtaining prior written consent from two-third allottees and without the prior written approval of the Regulatory Authority. In case such consent is obtained, the new incoming promoter will be required to independently comply with all the pending obligations towards the allottees. It will also not result in extension of time to the incoming promoter to complete the project who will have to comply with all the obligations of the erstwhile promoter.

**Promoter’s obligation to complete the project in time**

**2.13.0** In case the promoter fails to complete and give possession in accordance with the terms of the agreement by the agreed due date for any reason including discontinuance of business on account of suspension or revocation of registration, the allottee will have the option to withdraw from the project and will get the refund of amount paid with interest at the prescribed rate and also compensation. This will be without prejudice to other remedies available to him. In case he decides not to withdraw, he will be entitled to interest for every month of delay at the rate prescribed which, will be at par with the interest that he would have been liable in case of default in payment by him.

**2.13.1** The promoter shall also be liable to compensate the allottee for any loss suffered by him due to defective title of the land and such claim of the allottee will not get barred by any law of limitation.

**Promoter’s Obligation to obtain completion certificate**

**2.14.0** Promoter has the responsibility, to obtain the completion certificate or the occupancy certificate or both as per local laws and make it available to the allottee or their association. Where the promoter is carrying on development on leasehold land, it will be his responsibility to obtain a certificate that all the dues in respect of leasehold land are paid and to hand over the certificate to the Association of Allottees.

**Promoter’s obligation to enable the formation of Society or association of allottees**

**2.15.0** After majority of allottees have booked their plot / apartment / building, the promoter is to enable the formation of an association or society or co-operative society of the allottees

or a federation, as per the applicable laws. In the absence of any applicable law, such association should be formed within three months of booking by the majority of allottees.

**Obligation to transfer title to allottee and to the association of allottees**

**2.16.0** The Act makes the promoter bound to execute registered conveyance deed of the building, apartment or plot in favour of the allottees and of undivided proportionate title in the common areas to their association and hand over physical possession of the respective areas to the allottees and the association.

**2.16.1** In the absence of any local law to this effect, the conveyance deed is to be executed within three months from the date of issue of occupancy certificate. In case the Promoter delays the occupancy certificate to delay the execution of conveyance deed, the allottees can approach the Regulatory Authority to redress their grievance.

**Promoter's obligation to get the project insured**

**2.17.0** The Promoter is bound to obtain all such insurance policies as may be notified by the appropriate Government and pay the premium and charges in respect of it before transferring the insurance policies to the association of allottees.

**Establishing Real Estate Appellate Tribunal**

**2.18.0** Any relief mentioned in the legislation is meaningless until the same can be enforced within a reasonable time. Legislations like MOFA of Maharashtra provide for obligations on the promoter but the aggrieved allottee had only to approach the civil courts or the consumer forums for redressal of his grievance. The Maharashtra Housing Act (which has been repealed) appreciated this problem and provided for setting

up of a Regulatory Authority and special Tribunal referred to as Housing Appellate Tribunal to decide appeals against the orders and directions of the Regulatory Authority. This Central Act has also provided for setting up of a Real Estate Appellate Tribunal to be established by the respective State Governments or the Union Territories within a period of one year from the date of coming into force of the Act.

Detailed discussion about the Constitution, functions, procedure and nature of proceedings before the Tribunal is made in Chapter IX.

#### **Setting up of Adjudication Authorities**

**2.19.0** The court under the present system takes long time to decide the compensation that may be payable to the allottees. In order to determine the compensation in speedy manner the Act provides for appointment of Adjudicating officers who will determine compensation to be paid in the following situations:

- i) Where person making advance or deposit suffers loss as a result of incorrect information in advertisement
- ii) Where defects or deficiencies brought to the notice of the promoter within a period of five years from the date of possession are not rectified
- iii) Where the promoter fails to complete or is unable to give possession within time specified in the Agreement or on account of revocation of registration under this Act or discontinuance of business of a developer
- iv) Where the allottee suffers any loss on account of the defective title over the land.

**2.19.1** For determining the amount of compensation, the Authority shall appoint in consultation with the Appropriate Government one or more judicial officer who will be working or retired District judge, as the Adjudicating Officer for holding enquiry and adjudicating compensation.

**2.19.2** Although section 71 of the Act provides for appointment of the Adjudicating Officer for the purpose of adjudging compensation under sections 12, 14, 18 and 19, an impression is created by the provision in section 31(1) that the Adjudicating Officer will be entitled also to decide complaints of the aggrieved person in the same manner as the Authority. There is thus some inconsistency between the provisions contained in section 71 and section 31(1). A harmonious view can be that section 31(1) envisages complaint which involves determination of compensation under sections 12, 14, 18 and 19. The issue remains to be clarified. It is hoped that appropriate clarification in this regard will be issued at the earliest to provide certainty in the matter as the issue is of vital importance for the redressal of grievances.

**2.19.3** Appeal lies against the orders of the Adjudicating Officer to the Real Estate Appellate Tribunal.

#### **Rights and duties of allottees**

**2.20.0** The Act prescribes the rights and duties not only of the promoter but also of the allottees.

The rights of the allottees are-

- i) To obtain information relating to sanctioned plan, layout plan along with specifications
- ii) To know stage-wise time schedule of completion of the project.

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- iii) To claim possession of building/apartment or plot. The association of allottees will be entitled to claim possession of common areas including the land
- iv) To claim refund alongwith interest and compensation from the promoter in the event of his failing to hand over possession in accordance with the provisions of the Act and the terms and conditions of the agreement for sale
- v) To receive the necessary documents and plans after receiving of possession from the promoter

**2.20.1** The duties and responsibilities of the allottee are –

- i) To make necessary payment at the proper time and pay all charges and dues
- ii) To pay interest at prescribed rate for delay in payment
- iii) To participate towards the formation of association of allottees or the Federation
- iv) To take physical possession within two months of the issue of the occupancy certificate
- v) To participate towards registration of conveyance deed

**Regulation of real estate agents**

**2.21.0** The Act seeks to regulate not only the conduct of the promoters and the allottees but also that of real estate agents who facilitate the sale or purchase of the apartment etc. in a registered project. For this purpose it prohibits any person to act as agent without obtaining registration from the Authority. For the purpose of registration as an agent he has to make an application in the prescribed form.

**2.21.1** The Authority is to take decision on the application within the prescribed time. In case of not taking decision within time, the registration will be deemed to have been granted. The registration will be valid for the period as may be prescribed and can be renewed. The registration can be revoked if the agent commits breach of any condition of registration or of any terms or, conditions under the Act, or where the Authority is satisfied that registration has been obtained through misrepresentation or fraud.

**2.21.2** The registered agent shall quote the registration number in every sale made through him. He is prohibited from arranging any sale in any planning area which is not registered with the Authority. He is not to involve himself in any unfair practice which include making any statement which falsely represents the services as of a particular standard or grade or, representing false approval or affiliation of himself or the promoter or, permitting publication of false advertisement or, making a false or misleading representation concerning the services. He is also obliged to facilitate possession of all information and documents which the allottee is entitled to.

#### **Penalties and Prosecutions**

**2.22.0** The Act provides for the prosecution and penal consequences for contravention of the legal provisions and defaults by the promoters, the allottees and the real estate agents in complying with the Statutory Obligations imposed on them. These provisions are summarised in tabular form below:

**A Promoter**

i)	Contravention of the provisions of Section 3 i.e., making any invitation for sale without getting the project registered (Sec. 59)	Penalty up to 10% of estimated cost of the project - For the continued default imprisonment up to three years or, fine up to 10% of the cost or, both
ii)	Contravention of Section 4 i.e., failure to make application for registration, submitting false information, failure to keep 70% in separate bank account etc (Sec. 60)	Penalty up to 5% of the estimated project cost
iii)	Contravention of any other provision of the Act/ Rules/Regulations (Sec. 61)	Penalty up to 5% of the estimated project cost
iv)	Failure to comply with the directions/ orders of the Regulatory Authority (Sec. 63)	Penalty for every day of the default which can cumulatively go up to 5% of the estimated project cost
v)	Failure to comply with the orders, decisions of the Appellate Tribunal (Sec. 64)	Imprisonment up to three years or fine for every day of default which can cumulatively go up to 10% of the estimated cost of the project



**B Agent**

i)	Failure to comply with order or direction of the Authority (Sec. 65)	Penalty for every day of the default which can cumulatively go up to 5% of the estimated cost of the building/apartment or plot
ii)	Failure to comply with order or direction of the Tribunal (Sec. 66)	Punishment with imprisonment up to one year or with fine for each day of default which can cumulatively go up to 10% of the cost of the building/apartment or plot

**C Allottees**

i)	Failure to comply with orders of the Authority (Sec. 67)	Penalty per day of the default which can cumulatively go up to 5% of the cost of building/plot or apartment
ii)	Failure to comply with decision or orders of the Tribunal (Sec. 68)	Punishment of imprisonment up to one year or with fine for each day of default cumulatively going up to 10% of the cost of building/apartment or plot

**Rules to give effect to the Act**

**2.23.0** The unique feature of the Act is that while RERD Act is a Central Act enacted by the Parliament, the same is to be implemented by the respective State Governments/Union Territories. The appropriate government has to appoint the

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Regulatory Authority and set up the Appellate Tribunal. It has power to supersede the Authority, to issue directions to the Authority and obtain reports and returns.

The appropriate Governments have also been vested with the rule making power which they are to complete within six months of the commencement of the Act. The Regulatory Authority is required to make regulation, within three months of its establishment.

Since the rule making power is with the State Government, it is expected that each state will take into account the special circumstances of the State within the broad parameters laid down in the Act. It will also provide an opportunity to reconcile the provisions of State and Central Acts, to the extent possible.

#### **Repeal of Maharashtra Housing (Regulation and Development) Act, 2012**

**2.24.0** As mentioned in para 1.9.7, Section 92 repeals the Act passed by the Maharashtra Legislature with the same objectives which was known as Maharashtra Housing (Regulation and Development) Act, 2012. The notification issued on 26th April, 2016 brings this Section in force from 1st May, 2016 which means that the Act stands repealed from that date.

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