

Chapter IV

Real Estate Regulatory Authority

4.0.0 The Real Estate (Regulation & Development) Act, 2016 mentions establishing Real Estate Regulatory Authority for regulation and promotion of the real estate sector as one of the objectives of the legislation. In the hitherto unregulated real estate sector, the absence of an authority to regulate and promote the sector and to ensure sale of building, apartment or plot in an efficient and transparent manner was being felt to protect the interest of consumers for whom no effective remedy existed against the rampant abuses, malpractices and irregularities of the promoters. Chapter V of the Act containing sections 20 to 40 deals with matters relating to such regulatory authority referred to as the Real Estate Regulatory Authority.

Establishment of Authority

4.1.0 Although a Central Act, it provides for setting up of such Authority by the Appropriate Government i. e., respective Government of State and Union Territories within a period of one year from the date of coming into force of the Act by notification to this effect. The Government of India *vide* Notification No. SO1544(E) dated 26th April, 2016 has appointed the 1st day of May, 2016 as the date on which the provisions of sections 20 to 39 dealing with establishment of the authority shall come into force. This will mean that the Appropriate Governments will

be setting up the authority by 30th April, 2017. The Act enables two or more States or Union Territories to join and establish one single Authority, if they so decide. It also enables a single State/ Union Territory to establish more than one Authority, if the circumstances so demand.

4.1.1 As a transitory provision, the Appropriate Government, pending constitution of regular authority, have been enabled to designate any regulatory authority or any officer, preferably the Secretary of the department dealing with housing, to function as the regulatory authority under the Act. Once the regular authority is constituted, all proceedings shall stand transferred to it and will be carried out from the stage it is transferred.

4.1.2 The Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property to contract and to sue or, be sued.

Composition of the Authority

4.2.0 The Authority shall consist of a Chairperson and two or more whole time members who will be appointed by the respective State Government / Union Territory from amongst persons having special knowledge and professional experience of at least 20 years in case of chairperson and, 15 years in case of members, in the field of public administration, urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, or social service.

4.2.1 The selection shall be on the recommendation of a selection committee consisting of (i) Chief Justice of the High Court or his nominee (ii) The Secretary of the department dealing with housing and (iii) The Law Secretary

4.2.2 The Chairperson shall have powers of general superintendence and shall also exercise the administrative powers. He will also have the power to preside over the meetings. The Appropriate Government may, in consultation with the authority, appoint such officers and employees as it considers necessary who would discharge their functions under the general superintendence of the chairperson.

4.2.3 The Act debars a serving or retired State Government servant from being appointed chairperson unless he held the post of Additional Secretary to the Central Government or any equivalent post in Central or State Government. It debars a serving or retired State Government Servant from being appointed as member unless he held the post of Secretary to the State Government or any equivalent post in State or Central Government. Before making the selection, it has to be ensured that the person does not have financial or other interest which might affect his functions as member.

Terms of office

4.3.0 The chairperson and the members will hold office for not more than 5 years from the date they enter the office or till the age of 65 years, whichever is earlier. They will not be eligible for reappointment. The chairperson or the members may relinquish their office by giving notice of not less than 3 months to the Government.

Removal from office

4.4.0 The chairperson or the Member of the Authority can be removed from his post by the State Government on following Grounds: -

- (a) being adjudged as insolvent, or

- (b) being convicted of an offence involving moral turpitude, or
- (c) being physically or mentally incapable of acting as chairperson or member, or
- (d) acquiring such financial or other interest which will prejudicially affect their functioning, or
- (e) abusing the position which can render his continuance in office prejudicial to the public interest. The removal on the ground mentioned at (d) and (e) above can only be by the order of the Appropriate Government after an enquiry by a Judge of the High Court in which the affected person is informed of the charges against him and provided a reasonable opportunity of being heard.

4.4.1 After relinquishment or removal from office, they will be debarred from -

- (i) accepting any managerial employment of any person or organization which at any time was associated with any work under the Act. This will not apply to any employment under the Appropriate Government or, a local authority or, any statutory authority or, any Central or State corporation or, a Government Company which is not a promoter.
- (ii) acting on behalf of any person or organization in connection with any proceeding or transaction or negotiation to which the Authority is a party and with respect to which they had acted before cessation.
- (iii) giving advice to any person using information which was obtained in their official capacity and which was unavailable to the public.

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- (iv) entering into a contract of service or accepting an appointment to a board of directors of an entity with which he had direct and significant official dealings.

Functions of Real Estate Regulatory Authority

4.5.0 The Act envisages that the Authority shall perform regulatory as well as advisory functions. As a regulator it will ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents and perform incidental functions necessary for discharge of such duties. Any aggrieved person can file a complaint with the Authority for any violation or contravention of the provisions of this Act, rules and regulations against any promoter, allottee or real estate agent.

4.5.1 As an advisory body, it will act as a think tank for the State administration in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector, making recommendations either *suo motu* or on request from the State Government in matters relating to development of real estate sector

A Regulatory Functions

4.5.2 These are functions to provide an effective arm for implementation of the Act and ensure smooth construction, sale, transfer and management of building/apartment or plots under the Act. In particular Section 34 of the Act prescribes the regulatory functions which are –

- (a) to register and regulate real estate projects and real estate agents registered under this Act;
- (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed,

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including information provided in the application on the basis of which registration has been granted;

- (c) to maintain a database on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;
- (d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;
- (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

4.5.3 Under section 35 of the Act where the Authority considers it expedient to do so, on a complaint or *suo motu*, relating to this Act or the rules of regulations made thereunder,

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it may, by order in writing and recording reasons therefor, call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, if the Authority deems it necessary.

4.5.4 The Authority shall prepare and submit to the State Government a report once in every year containing a description of its activities in the previous year and the annual accounts of the previous year.

B. Advisory functions

4.5.5 In its advisory function, the Authority shall make recommendations to the Appropriate Government or the competent authority on following matters:

- (a) protection of interest of the allottees, promoter and real estate agent;
- (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;

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- (c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
- (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;
- (f) measures to encourage grading of projects on various parameters of development including grading of promoters;
- (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
- (i) to render advice to the appropriate Government in matters relating to the development of real estate sector;
- (j) any other issue that the Authority may think necessary for the promotion of the real estate sector.

4.5.6 Further, the Appropriate Government while formulating a policy on real estate sector or any other matter, can make a reference to the Authority for its opinion on possible effect of such policy or law on the sector. On receipt of such reference,

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the Authority is required to give its opinion within a period of 60 days of making such reference.

Powers of the Authority

- 4.6.0** (i) where during an enquiry the Authority is satisfied that an Act of contravention has been committed or is about to be committed the authority may by an order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of the enquiry.
- (ii) The Authority may for proper discharge of its function issue such directions from time-to-time to the promoters, allottees or real estate agents as it may consider necessary and such direction shall be binding on them.
- (iii) The Authority will have the power to impose penalty or interest in regard to any contravention on the allottees and the real estate agents. In this they will be guided by the principles of natural justice.
- (iv) Where an issue arises relating to agreement, action, omission, practice or procedure which is likely to prevent, restrict or distort competition or has the effect of creating monopoly situation affecting the interest of allottees, the Authority may, *suo motu*, make reference to the Competition Commission of India.
- (v) The Authority shall have powers as vested in a civil court under the Civil Procedure Court while trying a suit in respect of :

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- (a) summoning and enforcing attendance and examination on oath.
- (b) requiring discovery and production of documents
- (c) receiving evidence on affidavits
- (d) any other matter as may be prescribed

Rectification of orders

4.7.0 The Authority is empowered to amend any order passed by it with a view to rectifying the mistake apparent from record within a period of 2 years from the date of the order. In case, however, an appeal has been preferred against its order it will not be able to amend the order. While rectifying any mistake apparent from record, the authority will not be competent to amend any substantive part of its order.

Recovery of Dues

4.8.0 If a promoter or an allottee or a real estate agent fails to pay any interest, penalty or compensation under this Act, the amount will be recoverable from such persons in the same manner as prescribed for recovery of arrears of land revenue.

Enforcement of orders

4.9.0 Any order of the Authority or the Adjudicating officer or the Real Estate Appellate Tribunal directing any person to do or refrain from doing any act can be enforced in such manner as may be prescribed by the Appropriate Government under the rules.

Supersession of the Authority

4.10.0 The Appropriate Government may, by notification supersede the Authority for a period not exceeding 6 months on the following grounds:

- (a) on account of circumstances beyond its control, the Authority is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (b) the Authority has persistently defaulted in complying with any direction given by the Appropriate Government under this Act or, in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and, as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
- (c) circumstances exist which render it necessary in the public interest so to do,

When the Authority is superseded, the Government will appoint a person or persons as the President or the Governor who will exercise powers and discharge the functions of the Authority. Before doing so, the Appropriate Government is required to give a reasonable opportunity to the Authority of being heard.

