

Chapter V

Registration of the project

5.0.0 The obligation of the Promoter to get any new project, which has been launched, registered is a new initiative of the Government towards ensuring complete and correct information to the person buying the flat in the project and ensuring the genuineness of the project and credibility of information by bringing such information in public domain, thereby avoiding possible abuses and malpractices of the promoters. Casting of such obligation could be effective only due to setting up of an implementing administrative arm i.e., the Real Estate Regulatory Authority for monitoring the activities of construction, sale, transfer and management of flats. The obligation to get the project registered coupled with the obligation to display the project on the website of the Regulatory Authority is likely to avoid the possibility of fly-by-night promoters committing fraud on the innocent buyers by selling flats in a project which they are not equipped to complete and, put in public domain, the relevant information in respect of the project on the basis of which the buyers decision to buy was taken.

5.0.1 Section 4 of the Act obligates every promoter of the project to make an application to the Housing Regulatory Authority for registration of the project and to display the

project on the website of the Authority by creating a web page for this purpose.

Who is required to make the application

5.1.0 The application is required to be made by every promoter –

- (i) who constructs or causes to be constructed an independent building or, a building consisting of apartments or, converts an existing building or part thereof into apartments for the purpose of disposing them of by sale or otherwise.
- (ii) who develops land into a project of carving out plots, whether with or without structures thereon, for the purpose of selling these plots.
- (iii) which is a development authority or any other public body in respect of allottees of building, apartments or plots constructed or carved out on land placed at their disposal by the government.
- (iv) who is an apex State level Co-operative Housing Finance Society or a primary Housing Society which constructs apartments etc. for their members.
- (v) who is other person acting as builder, colonizer, contractor, developer, estate developer or the person holding power of attorney from the land owner on which the project is developed.

In short every person who constructs or gets constructed any building or apartments or divides the land into plots for sale to general public is required to apply for the registration of the project.

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5.1.1 Where the project is proposed to be marketed and sold in phases, every individual phase is to be considered as an independent project and separate application need to be made for each project.

5.1.2 In respect of an ongoing project on the commencement of the Act in respect of which the completion certificate was not issued till that date, the promoter is required to make an application for registration within 3 months of coming into operation of the Act. i.e., coming into operation of section 3 relating to registration of the project. In case a builder had already constructed a building and handed over possession without getting completion certificate a question may arise as to whether registration is needed to be obtained. A reasonable view in such cases appears to be that since no construction is to be carried out and no apartment is available for sale, it is not an ongoing project calling for registration.

5.1.3 The Act provides for registration of ongoing projects within 3 months of the Act coming into force i.e., 3 months from the date of coming into force of provisions of section 3(1) of the Act as per proviso of section 1(3). A question that will need to be answered is regarding the permitted activities during the intervening period of 3 months. Will the promoter be able to continue the sale during this period or his activities will come to a halt after the commencement of the Act till the registration is obtained. In the author's view, the prohibition for sale before registration as contained in Section 3 becomes applicable only after the expiry of 3 months. The promoter will be able to continue the marketing of the products during this period but on the expiry of which any advertising or marketing will be in contravention of the provision.

5.1.4 Only those projects which are being developed within the planning area are to be registered, However, if the Authority

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thinks necessary, in the interest of allottees, projects which are developed beyond the planning area but with the requisite permission of the local Authority, may also be directed to be registered in which case the provisions of the Act become applicable to the project.

Projects which are exempt from the requirement of making application for registration

5.2.0 There is no obligation to make application for registration and display the project on the website if:-

- (i) the area of the land proposed to be developed into a project or phase of such project does not exceed five hundred square metres;
- (ii) the total number of flats proposed to be developed inclusive of all phases is less than eight.
- (iii) if the promoter has already received the completion certificate in respect of an ongoing project from the concerned local authority before the coming into force of this section.
- (iv) If the project is a renovation, repair, or redevelopment project which does not involve fresh or new allotment of flats or marketing for sale of flats.

5.2.1 It may be of relevance to mention that the Act enables the appropriate Government i.e., the Government of respective States or the Union Territories to reduce the threshold limit of five hundred square meters or eight apartments if it so considered necessary. This enabling power may come to facilitate reconciliation with the requirement under the State Act, if existing in any State, laying down a lower threshold limit. It may also work as a check against the possible practice

of fragmenting the project in phases with the object of avoiding the provisions of Law.

Information to be furnished in the application

5.3.0 The promoter is required to furnish the following information in his application to the Housing Regulatory Authority for registration of the Project.

- (a) a brief detail of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), the particulars of its registration, and the names and photographs of the promoter;
- (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application and, where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development work to be executed in the proposed project and the proposed facilities to be

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- provided therein including firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
 - (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
 - (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas if any;
 - (i) the number and areas of garage for sale in the project;
 - (j) the names and addresses of his real estate agents, if any, for the proposed project;
 - (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
 - (l) seal other information and documents as may be prescribed.

Declaration to be furnished along with the application

5.4.0 The declaration to the following effect supported by affidavit by the promoter or any person authorized by him is required to be enclosed to the application for registration.

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- (a) that he has a legal title to the land on which the development is proposed, along with legally valid documents with authentication of such title, if such land is owned by another person;
- (b) that the land is free from all encumbrances, or as the case may be, details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- (c) the time period within which he undertakes to complete the project or phase thereof, as the case may be;
- (d) that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose. The promoter can withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. The amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project: The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant. It shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

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- (e) that he shall take all the pending approvals on time, from the competent authorities;
- (f) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act.

Grant/ Refusal of registration

5.5.0 The Housing Regulatory Authority is required to take decision as to the grant or rejection of the registration request within 30 days of the receipt of the application. In case registration is granted, the Authority shall grant a registration number and a login ID & password to the promoter for accessing the website and to create his web page for displaying the details of the project. In case the Authority fails to take a decision to accord registration or refuse registration within 30 days, the project shall be deemed to have been registered and the Authority shall, within 7 days of the expiry of these 30 days, provide a registration No., login ID and password as stated above.

5.5.1 In case the Authority is of the opinion that registration cannot be granted, it shall provide an opportunity of hearing to the promoter and will take a decision thereafter.

Validity of Registration

5.6.0 The registration granted under the Act shall be valid for the period declared by the promoter in his declaration filed with the registration application within which he undertakes to complete the project or the phase thereof. This period can be extended by the Authority on an application made by the promoter for reason of *force majeure*. *Force majeure* shall mean a case of war, flood, drought, fire, cyclone, earthquake or

any other calamities caused by nature affecting the regular development of the real estate project.

5.6.1 Apart from *force majeure*, the Authority may in reasonable circumstances and for reasons to be recorded in writing extend the registration for such time as it considers necessary but such extension or aggregate of extensions shall not exceed a period of one year.

Revocation of Registration

5.7.0 The Act provides for revocation of registration by the Authority *suo motu* or on receipt of complaint, if it is satisfied that –

- a) the promoter has made default in doing anything required by the Act or the rules and regulations made thereunder;
- b) the promoter has violated any term or condition of the approval given by the Competent Authority;
- c) the promoter is involved in any kind of unfair practice or irregularity. A practice which, for the purpose of promoting the sale or development, adopts any unfair method or unfair or deceptive practice will be considered as unfair practice. This will include (a) false representation that the services are of particular standard (b) representation that the promoter has approval or affiliation which he does not have and (c) a false or misleading representation concerning the services. Unfair practice shall also include permitting the publication of any advertisement or prospectus of services not intended to be offered and also promoter indulging in any fraudulent practice.

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5.7.1 The registration cannot be revoked unless the promoter has been given an opportunity of hearing by giving him a notice of not less than 30 days stating the grounds on which the revocation is proposed.

Consequences of Revocation

5.8.0 In the event of revocation following consequences will follow: -

- a) the Authority shall debar the promoter from accessing its website in relation to that project.
- b) It shall specify his name in the list of defaulters and display his photograph on its website.
- c) It shall also inform the Regulatory Authorities of other states about such revocation.
- d) The Authority is competent to make alternative arrangement for developing the remaining uncompleted work. For this purpose, it may consult the Appropriate Government to take such action as it may deem fit. Such action may include the carrying out of the remaining development work by Competent Authority or by the association of the allottees or in any other manner as may be determined by it. In case the Authority proposes the work to be done other than the association of allottees, the association shall have the first right of refusal for carrying out the remaining work. Before making any such arrangements, the Authority shall allow the period of filing the appeal against revocation of registration to expire.
- e) The Authority shall direct the bank holding the projects bank account, to freeze the account and thereafter take

further necessary action including defreezing towards facilitating the carrying out of remaining development work.

- f) The Authority may issue such other direction as it considers necessary to protect the interest of allottees.

5.8.1 What is prescribed as consequence of revocation should equally apply to the expiry of registration when the same is not extended.

Consequences of failure to get registered

5.9.0 Section 3 prohibits a promoter from starting any transaction, including sale or marketing for sale in the new project or phase of the project, without registering the project and displaying such project on the website of the Regulatory Authority. The promoter is debarred from advertising, marketing, booking, selling, offering for sale or inviting persons to purchase, without getting the project registered. Doing so will amount to violation of the provision of the Act which will involve a penalty extending upto 10% of the estimated cost of the project as determined by the Authority. In case the promoter does not comply with the order of the Authority and continuous to violate the provision, he shall be punishable with imprisonment for a term which may extend upto three years or with fine which may extend upto a further 10% of the estimated project cost or, with both.

Display of the project on the website

5.10.0 As mentioned, the RERA is required to provide a login ID and a password to enable the promoter to have access to its website and create his own webpage. On receiving the login ID and password and creating the web page on the website,

the promoter is required to enter all details of the proposed project which he was required to submit in his application for registration mentioned in para 5.3.0.

5.10.1 In addition to the information relating to the project, the database contemplated shall include –

- (a) details of the registration granted by the Authority;
- (b) quarterly update of the list of number and types of apartments or plots, as the case may be, booked;
- (c) quarterly update of the list of number of garages booked;
- (d) quarterly update of the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- (e) quarterly update of status of the project; and
- (f) such other information and documents as may be specified by the regulations made by the Authority.

5.10.2 The promoter is under an obligation to mention prominently the website address of the Authority and the registration number along with other incidental matters in all the advertisements or prospectus issued or published by him.

