

Chapter VII
**Regulation of Real Estate
Agent's activities**

7.0.0 The agents in real estate transactions play an important role being the link between the promoter and the prospective purchaser. They not only bring the two parties together but also act as a middle man making representations about the project and the promoter to the purchasers and inducing them to buy the building, apartment or plot. They often are instrumental in the decision making by the purchaser. The Act, therefore seeks to regulate not only the activities of the promoter but also of the agent by –

- i. providing for their registration thereby ensuring their eligibility to operate as agent and bringing necessary information about them and their services in public domain.
- ii. laying down their duties and obligations under the Act, default in regard to which entails the consequences provided under the Act.
- iii. providing deterrent consequences by way of penalties and prosecution in case they fail to perform the duties or violate any provision of the Act.

Registration of Agents [Sec. 9]

7.1.0 The Act makes it obligatory on the real estate agents to make an application to the Regulatory Authority for registration as real estate agent. The form of such application, the information to be provided, the manner of making the application and the time within which the application is to be submitted is to be prescribed by the Appropriate Government i.e. the respective State/Union Territory by way of rules to be framed in exercise of power vested under section 84 of the Act.

7.1.1 On receipt of application, the authority is required to take decision thereon. The conditions to be fulfilled for being eligible to get the registration and the time within which the authority has to take the decision to grant or to refuse registration is to be prescribed in the rules to be framed. The application is to be rejected if it does not conform to the provisions of the Act or the rules and regulations made thereunder. No rejection can, however, be made unless the applicant agent has been allowed an opportunity of hearing. In case the application is not decided within the prescribed period or no communication about any deficiency is received within that period, the registration shall be deemed to have been granted.

7.1.2 On registration, every real estate agent shall be provided a registration number. Such number will have to be mandatorily quoted by the real estate agent in every transaction of purchase or sale made through him.

Validity of Registration [Sec. 9(6)]

7.2.0 The Registration will continue to be valid for the period as may be prescribed in the Rules. Provision has been made for renewal thereof. The period for which renewal can be granted, the manner of granting renewal and the fees to be paid along

with the application for renewal are matters to be prescribed in the rules to be framed.

Revocation or suspension of Registration [Sec. 9(7)]

7.3.0 Registration can be revoked or the same may be suspended by the Authority in the following circumstances–

- i. when the agent commits breach of any condition for registration.
- ii. when he commits breach of any other terms and conditions specified in the Act or the rules and regulations made thereunder.
- iii. when the authority is satisfied that the agent secured the registration through misrepresentation or fraud.

The revocation/suspension cannot be made unless the agent has been provided a reasonable opportunity of being heard. It shall be without prejudice to any other action which can be taken against the agent for breach of condition or for misrepresenting facts or committing fraud.

Effects of Registration [Sec. 9(1)]

7.4.0 Registration provides legal eligibility to the agent to facilitate the sale or purchase of the building, apartment or plot in a registered project. He is debarred from facilitating any transaction of purchase or sale or from acting on behalf of any person in any transaction relating to the building, apartment or plot which is part of a registered project in a planning area.

7.4.1 Even though the Act regulates real estate projects in planning area and makes it necessary for such projects to get registered, it also authorises the Authority to order registration

of projects being developed beyond the planning area also, if it considers it proper in public interest. In that case the provisions of the Act, rules and regulations become applicable to such projects also. It follows that sale or purchase facilitated by agents in respect of such projects also will be subject to the restriction mentioned above.

Functions of real estate agent [Sec. 10]

7.5.0 As mentioned, any real estate agent is prohibited from facilitating the sale or purchase of any building, apartment or plot in real estate project being sold by the promoter in any planning area, or beyond planning area in certain cases without getting registered as real estate agent of that project by the regulatory authority.

7.5.1 Further, the Agent is required to maintain and preserve such books of account, records and documents as may be prescribed by the rules.

7.5.2 When the building, apartment or plot is booked, the agent is responsible for facilitating the disclosure of all information and production of all documents to which the purchaser is entitled.

7.5.3 The agent is not to involve himself in any unfair trade practice which will include -

- i. making false representation about the standard of his services.
- ii. representing about his or promoter's affiliations which neither he nor the promoter has. The concept of greenfield development known as development management agreement (DMA) under which the developers - particularly smaller players - are joining

By K.K. Ramani & N.C. Jain

forces with big ticket names to leverage each other's strength is getting more acceptance the truth of such arrangements needs to be ensured.

- iii. making a false or misleading representation concerning his services

7.5.4 The agent is also prohibited from permitting any publication or advertisement through print or any other media in respect of services which he does not intend to perform.

7.5.5 In short, the agent is supposed to perform his agency functions with utmost integrity and honesty and not to make any representation relating to himself, nature of his services, the promoter, his or promoters affiliation with any group or any other matter which is not true and which might influence the purchaser in purchasing the property.

Penal provisions for default [Chapter VIII]

7.6.0 In case a real estate agent fails to comply with or contravenes the provisions of the Act relating to registration or other obligations mentioned in section 10, he can be made liable to pay a penalty of an amount up to ₹ 10000/- per day for every day during which the default continues. The total amount of penalty so computed can be up to the amount equal to 5% of the cost of the building, apartment or plot in respect of which sale or purchase was facilitated by him. The penalty can be imposed by the Authority after providing a reasonable opportunity of hearing to him.

If the real estate agent fails to pay the penalty imposed by the authority or fails to comply with or contravenes any other order or direction of the Authority, he can be made liable for an amount of penalty computed per day of the default and the

amount so computed can go up to 5% of the cost of building, apartment or plot, the transaction in respect of which was facilitated by him.

The penal consequences follow also when the real estate agent fails to comply with or contravene any order decision or direction of the Real Estate Appellate Tribunal. In such a case he can be punishable with imprisonment for a term which may extend to one year or with fine for every day of default which may cumulatively extend up to 10% of the cost of building, apartment or plot. He can be subjected to imprisonment as well as penalty in appropriate cases.

