

Chapter IX

Real Estate Appellate Tribunal

9.0.0 The Act recognises the need for an effective implementing arm for various statutory provisions relating to construction, sale, management and transfer of apartments, plots and building as also a forum for providing speedy resolution of disputes in matters decided by the RERA in the course of monitoring and regulation of these activities. Accordingly the Act, in section 43, provides for establishment of mechanism for speedy dispute redressal and to establish an Appellate Tribunal known as the “Real Estate Appellate Tribunal (REAT)”, to be set up by the State Government by notification in the Official Gazette, to adjudicate any dispute and hear and dispose of appeal against any direction, decision or order of the Real Estate Regulatory Authority or the Adjudicating Authority. Part VII of the Act constituted of sections 43 to 58 deals with matters relating to such Tribunal. Section 43 requires the Appropriate Government to establish an Appellate Tribunal to be known as the “(name of the State/ union territory) Real Estate Appellate Tribunal”. The Tribunal in Maharashtra will, for instance, be known as Maharashtra Real Estate Appellate Tribunal. The Tribunal is to be established within a period of one year from the date of coming into force of the Act. The Government of India *vide* Notification No. SO1544(E) dated 26th April, 2016 appointed 1st day of May,

2016 as the date on which the provisions of sections 43 to 58 dealing with the setting up of the Tribunal will come into force. Accordingly, the Appropriate Governments will be setting up the tribunal by 30th April, 2017. Depending upon the work to be handled, the Appropriate Government have been permitted to constitute one or more benches of the Tribunal in their State/ Union Territory. Also, two or more Appropriate Governments can join to form a single Tribunal.

Constitution

9.1.0 The Real Estate Appellate Tribunal will function in benches and each bench will consist of a Chairperson and at least two whole time members, one of whom will be Judicial Member and another Administrative or technical member, to be appointed by the State Government. The selection of the Chairperson shall be made by the Government in consultation with the Chief Justice of the High Court or his nominee. The judicial and technical or administrative member shall be appointed on the recommendation of a select committee consisting of the Chief Justice of the High Court or his nominee, Secretary of the department handling housing and the Law Secretary.

9.1.1 The Chairperson will be a retired or surviving Judge of a High Court. For Judicial Member, the qualification provided is that he should have held a judicial office in the territory of India for at least 15 years or, should have been a member of Indian Legal Service having held the post of Additional Secretary of that service or equivalent post or should be an Advocate for at least 20 years with experience in dealing with real estate matters.

9.1.2 For Technical/Administrative member it is necessary that he is a person well-versed in the field of urban development,

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housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration possessing experience of at least 20 years in the field or, should have held the post in the Central or State Government equivalent to the post of the Additional Secretary to the Government of India or an equivalent post in the Central or State Government.

9.1.3 Pending the constitution of the regular Tribunal, the law provides for any Appellate Tribunal functioning under any law to be designated by the Appropriate Government to function as a Tribunal under this Act. Once a regular Tribunal is established, all the proceedings before such designated Tribunal shall stand transferred to the regular REAT.

Term of Office

9.2.0 The Members of REAT will hold office for maximum five years from the date they enter upon the office or until they attain the age of sixty-five years, whichever expires earlier. The chairperson, if appointed after being a High Court Judge, can hold office for a term of five years or till he attains the age of sixty-seven years.

9.2.1 They can relinquish office by giving a notice in writing of not less than three months to the State Government. They can also be removed from office on any of the following grounds: –

- (a) been adjudged an insolvent, or
- (b) been convicted of an offence involving moral turpitude;
or
- (c) become physically or mentally incapable of acting as the chairperson or a member; or

- (d) acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or
- (e) so abused his position as to render his continuance in the office prejudicial to the public interest.

In case the Chairperson / member is sought to be removed, it will be necessary to institute an enquiry by a Judge of the High Court. The enquiry judge will inform the affected chairperson/members the charges against them and provide them a reasonable opportunity of being heard. Pending such enquiry and recommendation by the Enquiry Officer, the State Government can suspend the Chairperson/member from the office until the final order is passed by the Appropriate Government.

Application for Settlement of Disputes and Appeals to REAT

9.3.0 Appeal lies to the REAT against the decisions of the Real Estate Regularity Authority or the Adjudicating officer in discharge of their functions. Any person aggrieved, including the Appropriate Government or the Competent Authority, may prefer appeal to the REAT against their decisions or directions.

9.3.1 The appeal filed by the Promoter against any order imposing penalty shall however, not be entertained unless he deposits at least 30% of the Penalty imposed or such higher amount as may be determined by the Tribunal. In case the Promoter has been directed to make any payment to the allottee, the appeal can be entertained only when the total amount payable including interest and compensation has been deposited. Although not specifically mentioned, an appeal will lie to the REAT, *inter alia*, against the following direction or decision or orders of RERA or Adjudicating Officer -

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- (i) denying registration of the project [Sec. 5(1)(b)]
- (ii) denying extension of registration [Sec. 6]
- (iii) revoking registration of the project and debaring the promoter from accessing to website [Sec. 7].
- (iv) passed under section 8 ordering completion of the construction of remaining uncompleted work in cases where the registration is revoked [Sec. 8]
- (v) imposing penalty for contravention of Section 3 [Sec. 59].
- (vi) imposing penalty for failure to make application for registration or providing false information [Sec. 60].
- (vii) imposing penalty for contravention of any other provision including failure to complete the project in time, accepting more than 10% amount before executing the agreement for sale, not depositing 70% of the receipt in separate bank account and other defaults [Sec. 61].
- (viii) imposing penalty on allottees for failure to comply with or contravening the orders of the RERA [Sec. 67]
- (ix) imposing penalty on the promoters for non-compliance with the orders of RERA [Sec. 63].
- (x) imposing penalty on real estate agents for failure to comply with the provisions of the Act [Sec. 62].
- (xi) imposing penalty on real estate agent for contravening the orders or directions of RERA [Sec. 65]
- (xii) Adjudication Authority determining the amount of interest and compensation u/ss. 12, 14, 18 and 19 [Sec. 71]

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Procedure for filing Appeal

9.4.0 Appeal to REAT is required to be preferred within 60 days from the date on which the copy of order appealed against was received by the appellant. The same should be in such form and accompanied by such fees as may be prescribed. The REAT has the discretion to admit the appeal even after 60 days on satisfaction about existence of sufficient cause for the delay.

The order will be passed by the REAT after giving the parties a reasonable opportunity of being heard. After the order is passed, a copy of the order is to be sent to the Authority or the Adjudicating Officer and the Appellant.

9.4.1 The REAT is supposed to decide the appeal as expeditiously as possible and shall endeavour to dispose of the appeal within 60 days from the date of receipt of the appeal. In case it is not disposed of within 60 days, it will be required to record reasons for not disposing it of within this period.

Powers of Real Estate Appellate Tribunal

9.5.0 The REAT, for the purposes of deciding the appeals has the same powers as are vested in a civil court under the Code of Civil Procedure while trying a suit, in the matter of (i) summoning and enforcing attendance, (ii) requiring discovery and production of documents, (iii) receiving evidence on affidavits, (iv) issuing commissions, (v) reviewing its decisions, (vi) dismissing application or deciding them ex parte and (vii) any other matter that may be prescribed. The REAT shall not be bound by the procedure laid down by the Code of Civil Procedure 1908 but shall be guided by the principle of natural justice. It shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

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9.5.1 All proceedings before the REAT shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for purposes of Section 196 of the IPC and the REAT shall be deemed to be a Civil Court for purposes of Sec. 195 and Chapter XXVI of Code of Criminal Procedure, 1973.

Appeal to the High Court

9.6.0 Any person aggrieved by any decision or order of the Real Estate Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Real Estate Appellate Tribunal where the Real Estate Project is situated.

Execution of the orders of the REAT

9.7.0 Every order passed by the Real Estate Appellate Tribunal under this Act shall be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of the civil court. For this purpose the REAT shall have all powers of a Civil Court. The REAT is also competent to transmit any of its order to a Civil Court having local jurisdiction for execution in the same manner as if it was a decree of that Civil Court.

Jurisdiction of civil courts barred

9.8.0 Matters contained under the Act shall be dealt with in appeal only before the Real Estate Appellate Tribunal. Under section 79 of the Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Adjudicating Officer, the Real Estate Regulatory Authority or Real Estate Appellate Tribunal is empowered by or under this Act to determine.

9.8.1 No court shall take cognizance of offence punishable under this Act except on a complaint in writing made by the

Authority or by any officer of the Authority duly authorized by it for this purpose. It is further provided that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class shall try any offence punishable under this Act.

