

APPENDIX E-4

HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the April 2017

NOTIFICATION

THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016.

No. REA.2016/CR No.79/DVP-2. – In exercise of the powers conferred by sub-section (1) and clauses (v), (w), (x), (y) and (zf) of sub-section (2) of section 84 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016), and of all other powers enabling it in that behalf, the Government of Maharashtra, after considering the objections and suggestions pursuant to the Government Notification, Housing Department, No. REA 2016/CR No.79/DVP-2, dated the 8th of December 2016, published in the *Maharashtra Government Gazette*, Extraordinary, Part IV-A, Extraordinary No. 163, dated the 8th of December 2016, is hereby pleased to make the following rules, as follows, namely:-

CHAPTER I PRELIMINARY

1. *Short title and commencement.* – These rules may be called the Maharashtra Real Estate Appellate Tribunal (Members Officers and Employees) (Appointment and Service Conditions) Rules, 2017.

2. *Definitions.*- (1) In these rules, unless the context otherwise requires, —

(a) “Act” means the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(b) “Appellate Tribunal” means the Maharashtra Real Estate Appellate Tribunal established under the sub-section (1) of section 43;

(c) “Form” means the Forms appended to these rules;

(d) “section” means section of the Act;

(e) “Selection Committee” means the committee specified in sub-section (3) of section 46; (f) “State Government” or “Government” means the Government of Maharashtra.

(2) Words and expressions used but not defined herein shall have the same meaning respectively assigned to them in the Act.

CHAPTER II

MAHARASHTRAREAL ESTATE APPELLATE TRIBUNAL

3. *Maharashtra Real Estate Appellate Tribunal.*— The Government may by notification in the *Official Gazettee* stablish Appellate Tribunal for such area as may be specified in the notification.

4. *Procedure of Selection Committee.*— (1) The State Government shall make a reference to the Selection Committee for appointment of Members of the Appellate Tribunal or when any vacancy arises or is likely to arise in the Appellate Tribunal.

(2) The Selection Committee may, for the purpose of selection of the Members of Appellate Tribunal, follow such procedure as it may deem fit.

(3) The Selection Committee shall make a recommendation to the State Government for consideration in the form of a panel of not more than three persons in order of preference separately to fill the vacancy or vacancies referred to by the State Government.

(4) The Selection Committee shall make its recommendations to the State Government, within a period not exceeding sixty days from the date of reference made under sub-rule (1).

(5) The Selection Committee shall normally hold its meetings at Mumbai or at such places in the State, as may be decided by the Chairperson.

(6) The Notice or Agenda, as the case may be, for the meeting of the Selection Committee shall be issued by the convenor after fixing the date and venue for such meeting in consultation with the Chairperson.

(7) The Secretary- in- charge of the Housing Department shall be the convener of the Selection Committee.

5. *Appointment of Member.*— The State Government shall consider the recommendation of the Selection Committee for the appointment of Member or fill the vacancy in order of preference as recommended by the Selection Committee. If the State Government appoints person not according to the order of preference, the Government shall record the reasons in writing therefor.

CHAPTER III

SALARY AND ALLOWANCES

6. *Salary and allowances payable and other conditions of service of Chairperson and Members of the Appellate Tribunal.*—

(1) The salaries and allowances payable to the Chairperson and Members of the Appellate Tribunal shall be as follows,—

(a) The Chairperson shall be paid a monthly salary equivalent to the Judge of a High Court.

(b) Member shall be paid a monthly salary equivalent to that of the Chief Secretary of the State Government.

(2) *Leave.*— The Chairperson and every Member shall be entitled to thirty days of earned leave for every year of service.

(3) *Leave Sanctioning Authority.*— Leave Sanctioning Authority in case of,—

(a) The Chairperson of the Appellate Tribunal, shall be the Chief Justice of High Court; and (b) The Members of the Appellate Tribunal, shall be the Chairperson.

(3) The other allowances and conditions of service of the

Chairperson and the Member shall be as per the Order issued by the State Government, from time to time:

Provided that, such entitlement shall not be less than what he is otherwise eligible in case of serving Government Servant.

7. *Tenure of office.*— (1) Tenure of Office— The term of office of the Chairperson and Members shall be in accordance with sub-section (1) and sub-section (2) of the Section 47 of the Act.

(2) When the Chairperson is unable to discharge his functions owing to death, resignation, absence, illness or any other cause, the senior-most Judicial Member (in order of appointment) of the Appellate Tribunal holding office for the time being shall discharge the functions of the Chairperson until the day on which the Chairperson resumes the charge of his functions.

8. *Oath of office and secrecy.*— (1) Every person appointed as the Chairperson of the Appellate Tribunal shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Chief Justice of High Court.

(2) Every person appointed as a Member shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Chairperson of the Appellate Tribunal.

9. *Declaration of financial or other Interest.*— Before appointment, the Chairperson and the Member shall give an undertaking in Form III appended to these Rules, that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

CHAPTER IV

PROCEDURE OF INQUIRY AND REMOVAL OF CHAIRPERSON AND MEMBERS

10. *Procedure of inquiry.*— (1) Whenever the State Government is of the opinion that there are reasonable grounds for making an inquiry against the Chairperson or Member on the grounds specified in sub-section (1) of section 49, the Government may, after consulting Chief Justice of the Bombay High Court, appoint a Judge of the High Court

for the purpose of conducting such inquiry.

(2) The Government shall inform the charges against the Chairperson or such Member, as the case may be to the Judge so appointed.

(3) The State Government shall forward to the Judge so appointed, copies of, —

(a) The statement of charges against the Chairperson or Member, as the case may be; (b) Material documents and other evidences relevant to the inquiry.

11. *Powers of the Judge.*— (1) The Judge so appointed, shall deliver or cause to be delivered to the Chairperson or Member, as the case may be, a copy of the statement of charges and a list of documents, if any, and shall require him to submit within such time as may be allowed, a written reply or statement of his defence.

(2) The Judge shall be guided by the principles of natural justice and shall have power to regulate his own procedure including the fixing of places and time of the enquiry.

(3) The Judge shall have, for the purposes of discharging his functions under these rules, the same powers as vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :—

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of document;

(c) receiving evidence on affidavits; and

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office.

(4) Where it is alleged that the Chairperson or Member of the Appellate Tribunal is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Judge may take necessary action as deemed fit for the medical examination of the Chairperson or Member of the Appellate Tribunal.

(5) After the conclusion of the inquiry, the Judge shall submit his report to the State Government stating therein his findings and the reasons thereof on each charges separately with such observations as he thinks fit. The report of inquiry shall be submitted to the State Government along with the finding of the inquiry wherein clearly indicating the allegations are proved or otherwise.

(6) On the basis of the report of the inquiry along with the recommendations so received, the State Government shall in consultation with the Chief Justice of the Judicature of Bombay by Order decide either to remove or otherwise the Chairperson or Member, as the case may be.

12. *Filling of vacancy.*— The State Government shall initiate necessary action under rule 4, to fill the vacancy of Chairperson or Member of the Appellate Tribunal, as the case may be, caused by such removal.

CHAPTER V

CONDITION OF SERVICE OF OFFICERS AND OTHER EMPLOYEES OF THE APPELLATE TRIBUNAL

13. *Categories of Officers and employees of the Tribunal.*— The nature and categories of officers and employees of the Tribunal shall be recommended by the Tribunal for the consideration of the State Government which may be approved with or without modifications, as the case may be, by the State Government. Their appointments shall be in accordance with regulations as approved by the State Government.

14. *Conditions of service.*— The conditions of service of the officers and employees of the Appellate Tribunal in the matter of pay, allowances, leave, joining time, joining time pay, age of superannuation and other conditions of the service shall be in accordance with regulations approved by the State Government.

CHAPTER VI

MISCELLANEOUS

15. *Interpretation.*— If any question arises relating to the interpretation of these rules or when express provision has not been

made in these Rules about a particular matter, the same shall be referred to the State Government for its decision. The State Government shall take decision after recording reasons within the framework of the Act. The decision of the State Government shall be binding on the Appellate Tribunal.

16. *Residuary provisions.*— Matters relating to the terms and conditions of service of the Chairperson or Member with respect to which no express provision has been made in these rules, shall be referred by the Appellate Tribunal to the State Government for its decision, and the decision of the State Government thereon shall be binding on the Chairperson or Member, as the case may be.

FORM - I

(See rule 9)

Form of Oath of Office for the Chairperson/Members of the Maharashtra Real Estate Appellate Tribunal

I....., having been appointed as the Chairperson/Member (*cross out portion not applicable*) do solemnly affirm and (or) do swear in the name of God, that I will faithfully and conscientiously discharge my duties as the Chairperson/Member (*cross out portion not applicable*), of the Maharashtra Real Estate Appellate Tribunal, to the best of my ability, knowledge and judgement, without fear of favour, affection or ill-will.

(Name of the Chairperson/Member)

Dated : Maharashtra Real Estate Appellate Tribunal.

FORM - II

(See rule 9)

Form of Oath of Secrecy for the Chairperson/Members of the Maharashtra Real Estate Appellate Tribunal

I....., having been appointed as the Chairperson/ Member (*cross out portion not applicable*) do solemnly affirm and (or) swear in the name of God, that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall

become known to me as the Chairperson/ Member (*cross out portion not applicable*), of the Maharashtra Real Estate Appellate Tribunal except as may be required for the due discharge of my duties as the Chairperson/ a Member (*cross out portion not applicable*).

(Name of the Chairperson/Member)

Dated : Maharashtra Real Estate Appellate Tribunal.

FORM - III

(See rule 10)

Declaration against acquisition of any adverse financial
or other interest

I,, having been appointed as the Chairperson/Member (*cross out portion not applicable*) of the Maharashtra Real Estate Appellate Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is likely to affect prejudicially my functioning as the Chairperson /Member (*cross out portion not applicable*), of the Maharashtra Real Estate Appellate Tribunal.

(Name of the Chairperson/Member)

Dated : Maharashtra Real Estate Appellate Tribunal.

By order and in the name of the Governor of Maharashtra,

R. K. DHANAWADE,
Deputy Secretary to Government.

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