

RERA
Real Estate
(Regulation & Development)
Act, 2016

Forth Edition, 2017
(Law as on 2nd Oct., 2017)

K. K. Ramani | N. C. Jain
Advocates

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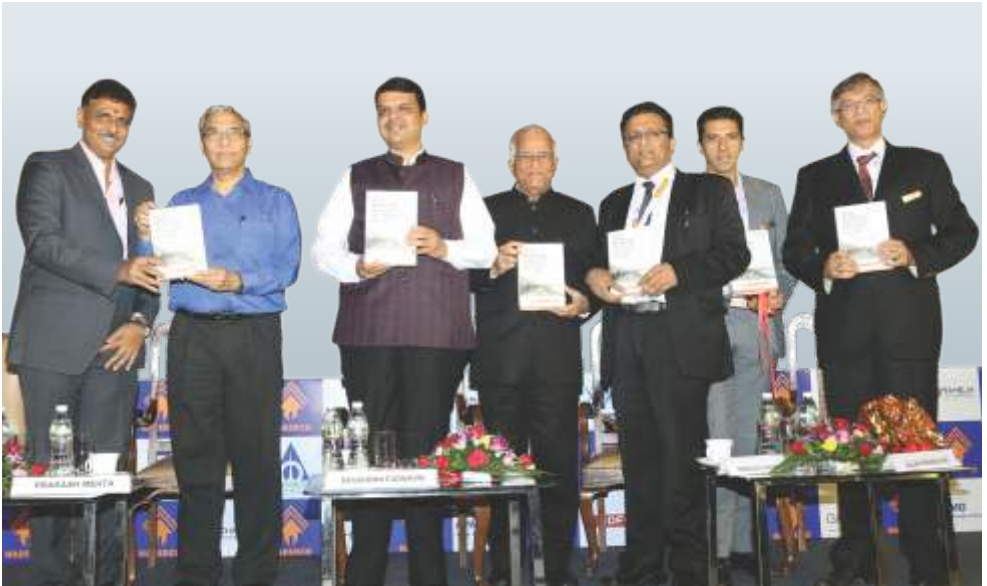
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Release of Second Edition

of this book by

Hon'ble Chief Minister of Maharashtra
in Mumbai



(L to R) Shri. Rajan Bandelkar, Shri. Gautam Chatterjee,
Hon'ble Shri. Devendra Fadnavis,
Shri. K. K. Ramani, Shri. Sunil K. Ramani,
Shri. Neel Raheja, and Shri. Niranjan Hiranandani



Shri Devendra Fadnavis
Chief Minister of Maharashtra

Devendra Fadnavis
Chief Minister
Maharashtra



Mantralaya
Mumbai-400 032
6th May 2017

MESSAGE

Real estate continues to form a key ingredient for the success of India's rising economy.

Our dynamic Prime Minister Narendra Modi ji took a step forward to make the sector more accountable towards buyers and the government. Keeping this in mind the central government of India introduced Real Estate (Regulation and Development) Act, 2016 (RERA) which got passed from both houses of parliament. I am confident that RERA is going to bring a remarkable change in the real estate sector.

On 1st May 2017, Maharashtra has also adopted RERA Act in the State and I am proud that we are among first few states to adopt this law. We have introduced the online process for all the necessary permissions those are needed before and after completion of the project for the sake of seamlessness and convenience of all stakeholders.

On that note, it is praiseworthy that NAREDCO has launched an educational algorithm on RERA as an extended initiative towards aligning the sector as a whole and also tutoring the players within the industry to get rooted to details and understand the logic behind each move that is in the best interest of industry, developer and the customer.

I hope that this book will help all the real estate players to understand the government policies too and align their respective businesses.

I wish this initiative, all success.

(Devendra Fadnavis)



Shri Prakash Mehta
The Minister for Housing



**MINISTER
HOUSING**

GOVERNMENT OF MAHARASHTRA
Mantralaya, Mumbai 400 032
www.maharashtra.gov.in

Date :

4 MAY 2017

It's an honour as the Housing Minister of Maharashtra to share my view on upcoming book on RERA. It shows the dedication of NAREDCO Presedent Niranjan Hiranandani Ji and the great efforts put by Adv. K K Ramani Ji. I am sure that Maharashtra will be always leading the initiatives to protect the buyers interest in Housing and will be pledged towards the goal of Housing for All by 2022.

Maharashtra was the first state to notify RERA and set up the Authority and the entire process online. We will ensure that the Authority is extending its fullest support and confidence to the end buyer resulting in a steady and sustained growth in the real estate sector. I am sure that this book will be proved to be a one stop reference for the entire industry and will be useful to both the developers as well as buyers. Wish all the best.

(Prakash Mehta)



Shri Ravindra Waiker
Minister of State for Housing,
Higher and Technical Education
Govt. of Maharashtra



MINISTER OF STATE FOR
**HOUSING, HIGHER AND
TECHNICAL EDUCATION**

GOVERNMENT OF MAHARASHTRA
Maulana Azad, Mumbai 400 082
www.maharashtra.gov.in

Date:

05th May 2017

MESSAGE

I am delighted that State Government has launched MAHA- RERA, which is a master key to every housing problem. Maharashtra Real Estate Regulatory Authority will register housing project to make the process of buying and selling transparent, trusted and accountable. This will help property buyer in protecting their interest.

I am happy that The Real Estate (Regulation and Development) Act, 2016 RERA is among the one of the revolutionary changes that real estate is witnessing under the vision of Housing for all till 2022 by Hon'ble Prime Minister Mr. Narendra Modi.

The Real Estate (Regulation and Development) Act, 2016 RERA has come into effect in this year's Maharashtra Day. I am sure this will help the practice of building homes for a particular group or restricting others from buying homes in a project, which has become routine in the Mumbai Metropolitan Region, will be come to an end. I am happy that the effort has been taken by NAREDCO, the NGO to give the information about the RERA Act, and also to educate who are dealing in this industry. I congratulate the team of NAREDCO

Once again my best wishes for your endeavour!


(Ravindra Waiker)



Dr. Niranjana Hiranandani
President
NAREDCO Maharashtra

Foreword

RERA is one among the revolutionary positive changes that Indian real estate is witnessing under the vision of Housing for All 2022 by Honourable PM Shri Narendra Modi. The Real Estate Regulatory Act (RERA) comes into play to safeguard the interest of the consumer when buying a home from a RERA compliant developer.

Apprehensions of the real estate industry regarding delays which manifest in the approval process have been addressed appropriately by the Maharashtra Government with incorporation of 'Right to Services' Act.

Whilst, popularly being known as Pro-Consumer, RERA will drive a complete restructuring of the way Real Estate businesses function. It means clean governance, faster approvals, well planned and scheduled development creating a powerful engine of improvement for both consumers & developers. The Act will truly enable 'Ease of Doing Business'.

"As Founder-President NAREDCO (West), I would like to commend the initiative and effort of Mr. K. K. Ramani and Mr. N.C. Jain in consolidating a comprehensive RERA Guide, which will help to educate and empower all its members to do right by the industry."

Mumbai
1st May, 2017



Rajan Bandelkar
Vice President
NAREDCO (West)

Quote

RERA is the transparency regulator implemented to streamline the industry into a disciplined sector. We welcome and support this initiative and join hands into making OUR PM's dream of HOUSING FOR ALL, a reality. I congratulate our Honourble Chief Minister Shri. Devendra Fadnavis Ji and the Government of Maharashtra on this balanced initiative. Whenever any Regulator is made to keep a watch on a particular sector, history has been a witness to the tremendous growth of that particular sector.

I am confident that RERA regulator will not only give the right direction to the industry but will become a milestone for its growth. This book on RERA by NAREDCO will surely help the real estate players in understanding the policy very well and helping them with their ongoing projects.

As the Vice President of NAREDCO, I would like to first thank my team members in Maharashtra for coming up with such a great thought. The idea behind launching this book on RERA is that since RERA is a new policy for real estate sector, there are lots of questions in the mind of the developers as well as buyers and this book will help them in understanding the policy well.

Team NAREDCO has planned to launch the book on RERA with complete information about it. I am sure the book will prove to be an important ready reference and one stop guide to the community.

Preface to Forth Edition

The third edition of the book attempted to incorporate developments in the interpretation and implementation of RERA as brought out by the rules, orders and circulars issued till it was brought out. It is a matter of great satisfaction that the earlier editions were received well in Maharashtra and other States.

With more rules since notified and other base material now available, this edition is being brought out as an updated edition taking into account further developments by way of notified rules and other clarifications. As it was not possible to incorporate the rules of all the States, an attempt has been made to make a comparative study of the rules notified so far which will give an idea of different patterns in certain areas. The GST law has also made headway and accordingly, the chapter has been revised and updated in respect of incidence on real estate sector. The institution of chartered accountants has, under the Act, a very important role to play in the working of RERA and therefore, a chapter has been added specifying their role for effective regulation under the Act.

We are confident that this updated and enlarged edition will be appreciated and received as more useful and informative. We will welcome any suggestion from the readers enabling us to make it further useful.

K. K. Ramani
N. C. Jain

Mumbai
2.10.2017

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Preface to Third Edition

The earlier edition was brought out when the Rules of most of the States were still under preparation or at the draft stage circulated for public comments. The same was particularly focused on the position in Maharashtra since the state had notified the final rules and also set up the Regulatory Authority which had framed regulations for its working. Many more states have since notified their final Rules. Some of them have set up the Regulatory Authorities also. With more basic material now available and with the pressing demand from other states which have notified the rules this edition is being brought about as an updated edition keeping in mind the information needs of the stakeholders all over the country. To make the exposition clear, reference at appropriate places has been made of the relevant rules of certain States attracting attention because of being somewhat different from the general rules and to some extent apparently away from the general understanding of the provisions of the Act.

As mentioned in the preface to the second edition a view prevails that in exercise of the rule making power, there is an attempt by certain States to dilute the rigour of RERA for the benefit of mighty builders. In that process, they have even gone against some of the provisions of the Act. A glaring example is the treatment given to ongoing projects by certain States including the State of Uttar Pradesh, Karnataka and others, by excluding those projects from the ambit of the Act, the administration and control of which has been passed on to the association of allottees. The promoter in such cases will be able to bypass the regulatory provisions in regard to ongoing projects by forming the association of allottees and passing on the administration

and control to them and thus continue to act as in the absence of RERA. These governments have gone a step further by excluding from the ambit of the Act even those projects in which 60% of the flats are sold. The exceptions made do not appear to conform to the objective of the Act which is to protect the buyers and ensure that sale to them is in accordance with the provisions of the Act and the agreement for sale. Passing on the management and control of the project to the association of allottees is the event after the sale is made and the exclusions of such project does not appear to have nexus to the object sought to be achieved. The State of Tamil Nadu has substituted the requirement of issue of completion certificate by the making of application to the Competent Authority and that too when the project has reached only specified level of construction which may not be in accordance with the norms set out for issue of completion certificate.

The Act prescribes a period of three months for ongoing projects to be registered with the Authority and prohibits any advertisement, marketing, booking, selling or inviting people to purchase till the project is registered. Maharashtra State has, however allowed a free period of three months within which advertisement sale etc. can be carried out even without registration of the ongoing projects. The prohibition under the Rules becomes operative at the end of ninety days from the date of notification i.e., 1st May, 2017.

RERA makes unique provision obligating the promoters to keep 70% of the realization from the allottees in a separate bank account, money from which can be withdrawn only to cover the cost of construction and the land cost of that project. The withdrawal permitted from such amount is of the amount in proportion to the completion of the project. Rules have been framed by certain States in a way which enable the promoter to withdraw the entire amount of land cost and the cost of construction and not the amount proportionate to the completion of the project. Certain States have defined the land cost as the market value of the land on the date of registration, some have provided for taking the Guidance Value as per their Stamp Act which will enable the promoters to withdraw more than actual cost. The Authorities of certain States have introduced the concept of indexed cost on the lines of the Income Tax Act substituting the actual cost by the notional cost.

As mentioned above, we have attempted to elucidate the provisions of RERA with reference to the rules of certain States presently available. It is neither possible nor necessary to make mention of the rules of all the States. We have also the constraint of non-availability of rules of all the States. It is, however, taken that the references made provides different models which, with some variations, might have been or will be adopted by other States.

The Act and the Rules framed to give effect to it leave certain issues unanswered and some susceptible to varying interpretations. Responsibility is, therefore cast on the Regulatory Authorities to clarify such ambiguous areas. It will be an ideal situation if different Authorities coordinate and decide on uniform interpretations and ways of dealing with the matter in order to ensure uniformity in the application of law all over the country. We, on our part, have attempted to consider such ambiguous areas and suggest a workable interpretation. Much will however, depend on the view taken by the Authorities appointed under the Act whose rich experience of handling matters is likely to provide strength to this revolutionary step in achieving the purpose, it is designed for.

Even though the book is meant for stakeholders in the real estate sector all over the country, we have, in the appendices, given various notifications and clarifications by way of circulars and answers issued by the Maharashtra Regulatory Authority which, although not binding in other jurisdictions, might serve the purpose of guidance and give a possible view.

Our attempt has been to make this work informative to the extent possible and we present this edition with the hope that it will be found useful by the readers. We welcome suggestions from the readers which will help us to make it more useful. We would also welcome queries which may be mailed to us at www.ramanilegal.com.

K. K. Ramani
N. C. Jain

Mumbai
18.07.2017

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Preface to Second Edition

The initial edition of the book on RERA was brought out on the basis of the Act as passed by the Parliament and assented to by the President, certain provisions of which were notified with effect from 1st May 2016 enabling the Governments of States and Union Territories to establish the two institutions viz Real Estate Regulatory Authority and the Real Estate Appellate Tribunal. The appropriate governments were to frame rules to give effect to the provisions of the Act within a period of 6 months from the notification of the enabling provision i.e. 1st May 2016 and set up the two authorities within a period of one year i.e. by 30th April, 2017. A comprehensive view of the impact of the legislation would be possible only after the rules are framed. However, the first edition was brought out in view of the curiosity this revolutionary legislation evoked and its wide spread ramifications of vital interest to all stakeholders, to inform the basic features affecting the developers and also the flat buyers who saw in it a great promise to safeguard their interests against the prevailing malpractices of the builders.

Although, the legislation was enacted and received with enthusiasm by all stakeholders, the initiative of the Central Government was not matched by the governments of States which failed to act in the matter of framing rules within the specified time. None of them came forward with rules by the specified dates. Even when more than six months have passed, we have rules notified by only some of the states. Certain states have notified only draft rules for public comments. Notifications of final Rules by most of the States are awaited.

The Union Government has now notified commencement of the Act with regard to remaining provisions of the Act with effect from 1st of May, 2017 enabling the Regulatory Authority constituted or to be constituted by 30th April, 2017 to discharge their regulatory functions. The starting point of regulatory provisions i.e. the registration of projects can now start. A comprehensive view of the legislation with reference to the rules of the appropriate governments so far notified is the need of the hour and this edition is an attempt in that direction.

From the Rules so far notified, an impression is gained that there is an attempt by certain States to dilute the rigour of RERA for the benefit of mighty builders. In that process, they have even gone against some of the provisions of the Act. A glaring example is the treatment given to on-going projects by the State of Uttar Pradesh and Tamil Nadu by excluding those projects from the ambit of the Act, the administration and control of which has been passed on to the association of allottees. The promoter in such cases will be able to bypass the regulatory provision in regard to ongoing projects by forming the association of allottees and passing on the administration and control to them and thus continue to act as in the absence of RERA. The government of Uttar Pradesh has gone a step further by excluding from the ambit of the Act even those projects in which 60% of the flats are sold. The exceptions made do not conform to the objective of the Act which is to protect the buyers and ensure that sale to them is in accordance with the provisions of the Act and the agreement for sale. Passing on the management and control of the project to the association of allottees is the event after the sale is made and the exclusions of such project has no nexus to the object sought to be achieved.

A peculiar feature of RERA is that it will operate simultaneously with the Acts of the State. For example, RERA and Maharashtra Ownership Flats Act as well as Maharashtra Apartments Ownership Act will simultaneously operate in Maharashtra. Most of the States in their rules relating to conveyancing of title have followed the practice of the State Acts even when the rules are framed under RERA. Maharashtra, for example, has provided for the conveyancing of the building as well as common area to the association of allottees which conforms to MOFA and not to the provisions of RERA. Same is the case with the draft rules of Tamil Nadu which provide for conveyancing to the individual allottees whereas RERA provides for conveyancing of common area to the association of allottees. Their

rules are more in accordance with their State Legislation rather than RERA. To what extent the subordinate legislation by way of rules can be inconsistent with the main legislation, may be an issue for judicial challenge.

Attempt has been made to elucidate the provisions of RERA with reference to the rules presently available. We have the constraint of non-availability of rules of a large number of States. It is, however, taken that the rules yet to be notified are likely to follow the trend set in the notified rules.

The Legislation is at nascent stage. Dealing with complicated matters, the Act and the Rules framed to give effect to it leave certain issues unanswered and some susceptible to varying interpretations. Attempt has been made to foresee such ambiguous areas and suggest a workable interpretation. Much will depend on the view taken by the Authorities appointed under the Act whose rich experience of handling matters is likely to provide strength to this revolutionary steps in achieving the purpose, it is designed for.

The constitution of Real Estate Regulatory Authority and the institution of Adjudicating Officer will, to a very large extent, take care of the grievances of the flat buyers against the injustices of the promoters. We have however, other equally effective forum for redressal of consumer's grievances. The multi level consumer redressal forum under the Consumer Protection Act, 1986 have been rendering useful service by way of inexpensive and speedy remedy to the affected persons. Its usefulness in relation to real estate matters has further gone up by the Apex Court permitting flat buyers to jointly approach the National Commission thereby allowing them to leapfrog lower courts and get over Rs. One Crore ceiling for complaint by individual buyers. Recently on 18th April, 2017, in the case of M/s Classique, which had booked a Flat in Royal Palm, the Hon'ble National Commission referred the matter back to the State Commission, wherein the State Commission refused to treat the partnership firm as a consumer and directed it to decide the matter on merits. It means that partnership firm or a company which is not engaged in the trading of immovable property can be treated as a Consumer for the purposes of this Act. A Chapter dealing with the constitution and functions of the consumer forum has been provided in the book which will provide necessary information about such alternative way of redressal.

The Competition Commission has of late rendered remarkable services in preventing the abuse of dominant position and practices likely to cause adverse effect on consumers. It has to its credit momentous decisions which had provided relief to a large number of flat buyers affected by the dominant position of the builders. We thought it proper to provide necessary material in this book in regard to this very useful institution.

The introduction of Goods and Services Tax is a revolutionary measure, migration to which will vitally affect the course of business and industry and create a national market free from tariff and non-tariff barriers. It will also significantly affect the real estate sector by impacting the cost of construction, as a result of input credit mechanism. The real impact is yet to be ascertained. An attempt has however, been made to give a basic idea of the new tax.

Our attempt has been to make this work informative to the extent possible and we present it with the hope that it will be found useful and appreciated by the readers. We welcome any suggestions from the readers which will help us to make this more useful. We would also welcome queries which may be mailed to us at www.ramanilegal.com

We acknowledge with thanks the contribution of Shri. Sunil Ramani (Advocate) and Shri. Sameer Ramani (Electrical Engineer and Economics Graduate from University of Texas) and thank them for going through the manuscript and making valuable suggestions. We are also thankful to Shri. Ashok Mohanani of M/s. Ekta World and Mr. Rajan Bandelkar, Vice President, NAREDCO West for their valuable suggestions.

We must express our sincere thanks to the Hon'ble Chief Minister of Maharashtra, Shri Devendra Fadnavis, Hon'ble Minister for Housing Shri Praksh Mehta and Hon'ble Minister of State for Housing, Higher & Technical Education Shri Ravindra Waiker for writing Forewords to this book which have been source of inspiration and strength to us.

We are also grateful to Dr. Niranjana Hiranandani – Founder and first President (Maharashtra) National Real Estate Development Council (NAREDCO) for writing the foreword.

K. K. Ramani

N. C. Jain

Mumbai
06.05.2017

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Preface to First Edition

The real estate sector in India has witnessed phenomenal growth over the years in terms of the volume of construction activities propelled by the surge in demand both of the home seekers and the investors. The real estate market, however, lacking regulatory framework, transparency and professionalism has come to be associated with serious malfunctioning due, in a great measure to the greed of the builders facilitated by scarcity of land and consequent emergence of apartment ownership system where the multiple buyers of flats in a single building stand in much weaker position individually in getting a fair deal from the dominant builder. Even when an agreement for sale is a document of agreed terms and conditions, it is generally one-sided being a set format presented to the buyer with no option to him except to sign on dotted lines.

It is a matter of common knowledge that buyers who are attracted by fascinating advertisements full of promises of attractive specifications, amenities and facilities and act on the faith of it, often find themselves disappointed when they get what was contracted for. They are assured of all sanctions and approvals to be in place only to find them not existing; they are promised possession within certain time which eludes them for years. Instances are not wanting when projects are launched and money collected even without land

with valid title to build upon. The builder keeps postponing the possession, not only denying the buyer the pleasure of owning the dream house but also putting him to financial burden of continuing to make payment of EMIs and rent. Even when possession is handed over, it is without occupation certificate and even after the co-operative society or any other association is formed, it remains without conveyance of the title to the society or association of buyers.

With such rampant malpractices, it is not only the buyers who suffer, the investors also lose confidence which, of late, has resulted in huge inventory lying unsold across the country. Even the festive seasons and recent round of interest rate cuts by the Reserve Bank of India have failed to bring cheers to the real estate market. Expectations were high about a new lease of life being infused with the new government coming to power but with no perceptible improvement. With the investors preferring financial assets over physical assets, developers have cut down on new projects. End users are shying away, feeling let down by the builders and stretched deadlines for completion of projects has shooed buyers away from the market.

In such scenario, the Real Estate (Regulation and Development) Act passed by the Parliament has come as a solace with promise of uplifting the mood of buyers and investors and rebuilding their faith in the market. The establishment of a regulatory authority, absence of which has been the prime reason for all the ills in the market, is supposed to infuse confidence among the buyers with an assurance that the terms and conditions set out in the agreement for sale will be complied with and the builder will not be able to disregard them with impunity. The prospect of timely completion of project might bring the investors back to the market releasing the funds blocked in the piled up inventory. Most of the provisions enabling establishment of regulatory and appellate institutions having been brought into force w.e.f. 1st May 2016, the process of reform has started which will see the institutional framework ready by 30th April 2017.

The Act is to operate in addition to and not in derogation of the provisions of any other law in force. It is also provided that the

provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In this context, it is significant to note the existence of similar legislations enacted by certain States, which also remain in force and will operate simultaneously with the Act. Maharashtra, for instance, has its own Act known as Maharashtra Ownership Flats Act, 1963. To avoid possible conflicts in the two legislations operating in the same State simultaneously, the inconsistent provisions in the State legislations will be overridden by this Central Act.

The two most serious maladies which needed to be addressed are (i) not making complete information available to the prospective buyer or providing them wrong or misleading information and (ii) not adhering to the terms and conditions set out in the agreement for sale which include failure to hand over possession in the form and within the time agreed upon. By introducing the system of registration based on disclosure of all material information and its display on the webpage created by the promoter in Authority's website, the Act seeks to deal with the problem effectively. The consequences provided for not adhering to the terms and conditions of the Act or the agreement for sale are likely to deter the promoters and thus provide much needed relief to the buyers, hitherto oppressed by the builders.

Instances are not wanting when projects are launched, consideration money is realized but the same is diverted to other projects. The systems of pre-launch bookings enable the builders to collect money when even the approvals are not in place with no assurance of even the launch of the project, not to speak of completion thereof. With the Act coming into force, not only such practices are likely to be checked, it will not be possible to divert funds from one project to another as the promoter will be under an obligation to deposit atleast 70% of the collection to a special earmarked bank account to be used for that very project.

The existing State legislations, such as Maharashtra Ownership Flats Act in Maharashtra, did attempt to bring about some discipline in the sector but did not have any appreciable effect as the persons aggrieved had no remedy except to approach the civil courts and consumer forums with long time and high cost involved in

grievance redressal. The setting up of the Regulatory Authority in each State/ Union Territory to deal with such matters and of a specialized Tribunal to give speedy finality to its orders addresses the problem of dilatory disposals providing further strength to the regulatory measures.

Registration and regulation of the activities of real estate agent is another new initiative in the regulatory regime. Real estate agents play a significant role in the transaction between the promoter and the buyer and are often instrumental in facilitating the abuses and malpractices by the promoters. The Act seeks to introduce discipline in their working also by the provision of registration and furnishing of information about themselves and their services.

The Act regulates and governs an area which has been the domain of the State Governments. The legal provisions, practices and proceedings vary from State to State. Appreciating that an uniform application hroughout India may have problems of implementation, the Act relies heavily on the appropriate governments for implementation. The Regulatory Authority and the Appellate Tribunals are to be established by the appropriate State governments which are vested with powers to issue directions on questions of policy. The rules to give effect to the legal provisions of the Act are to be framed by the appropriate governments within six months of the commencement of the Act. Leaving several matters to be prescribed, the state governments have been armed with power to adjust the working of the Act suiting to the peculiar customs, laws and practices of the States within the broad parameters laid down by the law.

Like any other reform, it is not unlikely that the legislation will not be welcome by the beneficiaries of hitherto unregulated sector. The fact, however, remains that not all the so called abuses are without reasons and even the straight forward players have to take the blame in the generally defamed market. It is hoped that this measure will, by introducing discipline, bring cheers to such builders as it is likely to wean away the unscrupulous builders bringing cheer to investors and restoring their confidence.

This book is an attempt to apprise the readers with the basic provisions of the Act. The law is in its nascent stage and a complete

picture of the regulatory regime will emerge only after the rules are framed but as the rule making authority is with the appropriate Governments and the rules framed by them may not be uniform, a comprehensive work incorporating the rules of all the States appears an unworkable proposition. Effort has however, been made to make mention of the corresponding provisions in the Act of Maharashtra State which pioneered such legislation to bring out the variations with the central Act. We will, however, explore the possibility of coming with a revised and enlarged addition when rules by some of the States are notified and some more clarity has emerged.

We acknowledge with sincere thanks the help from Shri. Bharat Zaveri, and Shri. Sunil Ramani, Advocates in giving shape to this work.

It is hoped that the book will serve the basic purpose of providing a glimpse of reforms introduced through the Act. Our sincere thanks are due to Shri Sanjay Chhabria, Managing Director of Radius Developers who not only inspired us to undertake this work but also agreed to publish it in record time. The views, comments and suggestions from the readers are welcome which will make it possible to improve and make the work more useful.

K. K. Ramani.

N. C. Jain

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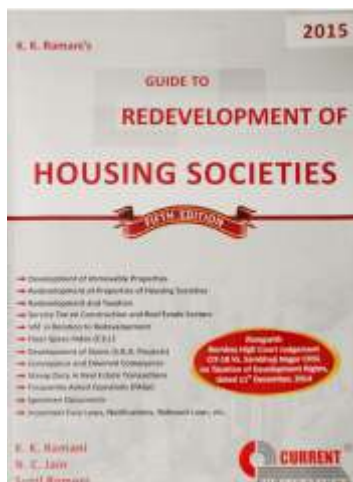
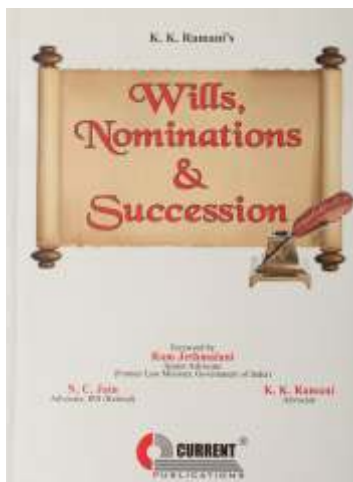
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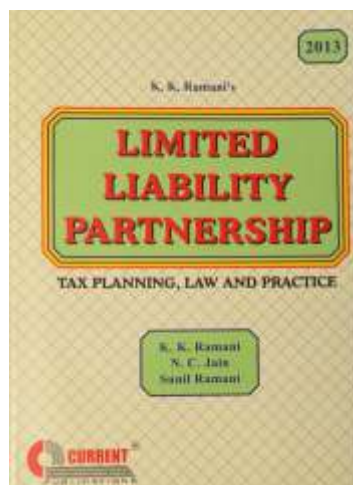
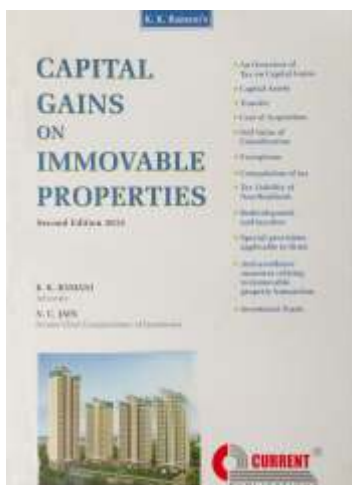
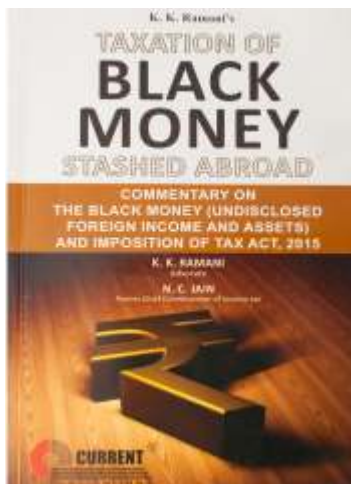
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Chapter - I

OWNERSHIP FLATS

INTRODUCTION

The concept of flat ownership is the product of acute shortage of the land for construction of accommodation resulting in ever increasing land prices particularly in the urban areas. The concept involves ownership of a part of building as opposed to the ownership of the whole and is made possible by construction of multi-units building on a piece of land in which different persons are able to exercise ownership rights in individual units, subject to certain conditions in the interest of peaceful and meaningful enjoyment of the property and avoidance of conflict with the developer of building and other owners of the flats in the same building.

1.0.1 Flat ownership is different from joint ownership / joint tenancy or co-ownership in which one or more persons hold legal rights in the property. Such ownership arises when two or more persons acquire any property, by purchase or otherwise, jointly without indicating that they are to take separate interest therein. Unity of title, unity of interest, and unity of possession is the basic feature of joint ownership. Each owner has the same or identical

interest in the same property in extent, nature and duration. No single flat owner has any separate share in the property. Flat ownership is also different from the system of coparcenership under Hindu Law where persons acquire interest in ancestral properties owned by the Joint Hindu family by birth, which common interest can be identified and converted into separate property by partition of the joint family as per the provisions of the Hindu Law. On partition of property under joint ownership or coparcenership, the co-owners or the coparceners begin to own a part of the property instead of the whole of it and if such partition is not by metes and bounds, each co-owner or the coparcener holds the property as tenant-in-common in which while there is unity of possession, each owner gets title and interest over his respective share in the property.

1.0.2 The system of co-ownership or coparcenership, (till partition), involves interest of all in the same property without identification of their part within the whole property. The system of part ownership was not common in India. It was Section 7 of the Transfer of Property Act, 1882 which recognized, for the first time, the right of a person, competent to contract and entitled to transferable property, to transfer such property either wholly or in part and either absolutely or jointly in the circumstances, to the extent and in the manner as prescribed in law. This provision, though enabling part ownership of a whole building, did not prove to be of much practical value as generally there were no identifiable independent units within the building. Structures designed as bungalows or *havelis* were incapable of being used as a building comprising of several independent livable units. The construction of building having different self-contained flats or residential apartments which could be owned and enjoyed separately and independently did not exist. This piquant situation, with the growing necessity of independent units and enabled by the provisions of the Transfer of Property Act, 1882 resulted in the construction of building with independent self-contained dwelling units generally referred to as flats capable of being owned and enjoyed by the respective owner(s) or

purchaser(s) thereof, as heritable and transferable property. The system was mainly pioneered by the city of Mumbai in India and became popular after independence.

1.0.3 An apartment or a flat in a building is not separate from the building. It is recognized as a separate property only in the flat ownership system. Thus, it has been held that a flat cannot be separately acquired under the Land Acquisition Act as separate property (Bijay Singh Surana Vs First Land Acquisition Collector, Calcutta AIR 1990 Cal 246).

OWNERSHIP OF FLATS IN ENGLAND

1.1.0 Strangely enough, while recognizing the Ownership of part of the property in India, the British government did not do it in its home country England. The Law of Property Act 1925 prohibits such joint ownership. As per the Act, legal estate is not capable of subsisting or of being created in an undivided share in a land. Section 34(1) of the Act clearly makes an undivided share in land incapable of being created. A limited exception is provided in respect of conveyance executed in favour of more than one person in which case, it operates as if the land is conveyed to the grantees or, in case of grant in favour of more than four persons, to the first four named grantees as joint tenants in trust for the persons interested in the land. Same is the position where the property is transferred by bequest or by any other method for the benefit of more than one person. No severance of joint tenancy so as to create tenancy in common in land is permissible. As a result, flat ownership system could not be possible in England.

1.1.1 With constant pressure of population after the second world war, high living cost and scarcity of accommodation, some way had to be found within the existing legal framework and consequently, the flat holding system in England came to be based on leasing of flats instead of full ownership basis.

OWNERSHIP OF FLATS IN EUROPE

1.2.0. In European countries, the system of flat ownership has prevailed since long, though the same was unregulated. This could not have continued for long and, therefore, different countries of the Continent brought about legislation for regulation since the beginning of 20th century which are different in details from each other, the basic features being that right of ownership in flats are rights of co-ownership against prohibition on such co-ownership rights in England.

OWNERSHIP OF FLATS IN USA

1.3.0 America has the system of flat ownership since the latter half of the 20th century. The system, however, is based on apartment ownership controlled and managed by condominium of flat owners. The system of apartment ownership is prevalent in India alongwith the system of ownership by co-operative housing societies, companies or other legal organizations of flat buyers. The Maharashtra Apartment Ownership Act 1970 permits such ownership system and is largely based on American model law. Other States in India also have similar Acts under which the apartments are managed by condominium of flat owners. In America, the first State to pass such legislation was Carto Rigo followed by other States. In 1962, the Federal Housing Administration drafted a model statute which has been adopted by most of the states in USA.

FLAT OWNERSHIP LAWS IN INDIA

1.4.0 As mentioned, the Transfer of Property Act, 1882 recognised for the first time, the right to transfer property either wholly or in part and either absolutely or jointly. Even with the legislation enabling ownership of part of building including flats therein, the real spurt in construction of such buildings was noticed after the second world war when cities like Mumbai and other were flooded with population from outside and accommodation problem became too acute. In Mumbai rented premises being too insufficient were not available at affordable rent. The Rent Control Acts were passed by different States which

made renting of new premises uneconomical. The circumstances of acute scarcity resulted in growth of building constructions based on system of flat ownership to avoid the Rent Control Acts. The city of Mumbai was the pioneer in such construction activities which was followed by other States.

1.4.1 In matter of law also, for regulating such construction activities it was the state of Maharashtra which took the lead. The State also passed legislation enabling the purchasers to have ownership rights by making the apartments heritable and transferable, if submitted to the relevant legislation. Other States followed and passed laws broadly on similar lines. A mention of legislative development in Maharashtra State is made herein below which being the pioneer in the area will provide broad indication to the nature of such laws passed by certain states.

MAHARASHTRA OWNERSHIP FLATS ACT, 1963 (MOFA)

1.5.0 The Ownership Flat system though instrumental in the growth of the Mumbai City gave rise to certain unhealthy practices. Many enterprising persons taking advantage of the prevailing acute shortage of housing accommodation, particularly in congested places like Greater Mumbai, started constructing and selling residential flats on ownership basis, collecting large sums of money even without a clear title over the land. Those who had the title over the land transferred only possession of building without passing on clear title over the land. Absence of any law recognising flats as a separate legal holding and regulating the construction, sale, management and transfer of title therein, including management of common facilities for smooth running of the system and proper enjoyment of living accommodation, began to be felt. When the malpractices of the builders became too rampant and the need for necessary regulation became very imperative, the Govt. of Maharashtra appointed a committee headed by Mr. B.B. Paymaster, Secretary Law and Judiciary Department to examine the question in all its aspects and make suggestions for preventing and remedying such malpractices and irregularities and thereby ensuring

protection of the buyers of such ownership flats against such malpractices. The recommendations made by the committee became the basis of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (No.XIV of 1963) referred to as MOFA in further discussion.

1.5.1 The Maharashtra Ownership Flats Act of 1963 (MOFA) was the first of its kind in India which was later followed by the other States in India. These Acts, interalia, were The Karnataka Apartment Ownership Act, 1972, The Karnataka Ownership Flats (Regulation of the Promotion, Construction, Sale Management and Transfer) Act, 1972; The Uttar Pradesh Ownership of Flats Act 1975; The Delhi Apartment Ownership Act, 1986, The Gujarat Ownership Flats Act 1973 and The West Bengal Apartment Ownership Act, 1972, The Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act 1987 and The Haryana Apartment Ownership Act 1883.

1.5.2 The Maharashtra Ownership Flats Act, 1963, as is evident from the title of the Act and the Preamble thereto, aimed at providing, during the period of shortage of housing, for the regulation of the promotion of (i) the construction, (ii) sale (iii) management and (iv) transfer of flats taken on ownership basis in the State of Maharashtra. The Act does not create any rights and is merely intended to prevent the abuses and malpractices which were rampant in the real estate sector. It is not, therefore, a substantive statute but only a regulatory one. Being an Act aimed to regulate the activities of the builders during the acute shortage of housing, it was initially to be in force for a period of five years. As there was no let up in the housing shortage, which situation kept aggravating, the same was extended from time to time and was last extended upto 31st March 2005. Subsequently, the Act was made perpetual by the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) (Retrospective Extension of Duration and Amendment) Ordinance 2005 which became an Amending Act No.37 of 2005, w.e.f. 1-4-2005.

1.5.3 MOFA in order to protect the interest of the purchasers obligated the promoters to furnish the necessary prescribed information to the purchasers: prohibited him from accepting amount in respect of the flat beyond the prescribed percentage without getting the agreement for sale executed and registered: prohibited him from creating any charge on the property after the flat is booked: obligated him to adhere to the plans and the specifications as approved and disclosed to the purchasers: and to use the amount collected in respect of maintenance etc. for those purposes only. The Act also obligated the promoter to get a cooperative Society or company or any other form of organization registered after a prescribed number of flats are sold and to convey the title over the land and building and the common area to such society, company or other organization of purchasers. Most of other obligations were also cast on the promoter. The law laid down consequences by way of penalties and prosecutions in case of defaults by the promoters.

To take care of the promoters reluctance in the matter of formation of societies or any other organization of purchasers and to convey title to such organizations, the Act provided for unilateral registration of societies and deemed conveyance under which, in case of promoter's failure, the purchasers could move to the Competent Authority which could order registration of conveyance deed even without the involvement of the land owner and/or Builder / Developer.

1.5.4 The Act mainly confines itself to regulating the activities of promoters of the building from the stage of booking of the flats to the stage when the organisation of buyers is made the legal owners thereof. Thereafter matters are governed by the Acts governing these organizations viz. the cooperative societies, companies or condominiums.

1.5.5 MOFA deals with and regulates the promotion of construction of flats, their sale, management and transfers. It does not lay down or give legal status of a flat owner in relation to his flat as also in relation to the organization formed by the flat

buyers viz. the co-operative society, company or any other association of which the flat buyer was to become a member. Such relationship is governed by the respective legislations, i.e. The Maharashtra Co-operative Societies Act, 1960, The Maharashtra Apartment Ownership Act, 1970 or The Companies Act, 1956. MOFA provided the obligations, duties and responsibilities of the promoter / builder in relation to the activities of construction, sale management and transfer of flats as well as the duty of the Flat Purchasers.

MAHARASHTRA APARTMENT OWNERSHIP ACT, 1970 (MAOA)

1.6.0 As mentioned earlier, the MOFA virtually ceases to have relevance once the promoter conveys his title over the land and building to the organization of flat buyers namely, cooperative society registered under the Maharashtra Cooperative Societies Act or to the company under Companies Act or any other organization governed by the respective Act. The title therefore vests in these collective entities in which flat buyers are members who get the occupation rights by virtue of their membership. Another alternative which gives ownership rights to flat buyers is for the promoter/builder to submit the property to the provisions of Maharashtra Apartment Ownership Act, 1970.

1.6.1 The Maharashtra Apartment Ownership Act, 1970 provides for the ownership of an individual apartment in a building to the flat purchaser and to make such apartment heritable and transferable property. Heritability and transferability of the apartment is the basic feature of holding the property governed by this Act, which distinguishes it from holding the rights over property through the Cooperative Societies or the Companies. The essential differences between holding the properties through the organization of flat purchasers under MOFA and directly under MAOA are as under: -

- i) The flat owners under MAOA are independent owners of their flats, whereas under MOFA the members of

society/company exercise their rights through the society or the company, which remains the legal owner thereof. Even though a condominium is formed under the MAOA, such condominium does not exercise the right of ownership and does not have corporate existence. It exists only for management of common facilities and regulating the mutual relation of members.

- ii) Under MOFA, flat forms part of the building, which is a unit of common ownership with the society/company, whereas, under MAOA each flat is an independent unit of ownership, though part of the same building.
- iii) Under MOFA, a flat owner as member of the society/company structure has only a right of occupancy and it is such right of occupancy, which is heritable and transferable. As against this, under the MAOA, the flat owner is also the owner of the physical structure of the flat entitled to all the rights of an owner.
- iv) The right of a flat owner to transfer his occupancy right in the flat is subject to the approval of the society formed in accordance with provisions of MOFA whereas there may not be any restriction on the right of transfer by an apartment owner under MAOA.
- v) A transfer of right by a flat owner in a cooperative society formed as per the requirement of MOFA is possible only to a member of the society. In case the buyer is not an existing member, he is required to be admitted as member. An apartment owner under MAOA is not subject to any such restriction.
- vi) Under the Society/company system prevailing under MOFA, the building and land belong to the society/company as a legal entity whereas the flat owner under MAOA is not only the owner of the flat but is also the owner of the proportionate land married to the building and also proportionate common areas as specified by the declaration of apartment ownership.

- vii) The land and building is transferred to the society/ company by a single deed of conveyance but in case of MAOA, a separate deed of transfer is required in respect of each flat including proportionate interest in the land married to it and proportionate common area.

MAHARASHTRA HOUSING (REGULATION & DEVELOPMENT) ACT 2012

1.7.0 As mentioned, MOFA was enacted to provide relief to the flat purchasers against sundry abuses, malpractices and difficulties related to construction, sale, management and transfer of flats. The Act and the rules were made with a view to prevent effectively the abuses and malpractices of promoters / developers. Although in a period of more than five decades it remained in operation, the housing activities became regulated to some extent, law was not sufficiently effective in protecting the interest of flat purchasers in the absence of an effective implementing arm to enforce its provisions. It was recognized that the aggrieved flat purchasers could only approach the Consumer Forum or the Civil Courts for acts of omission or commission of the builders. The Govt. of Maharashtra, therefore, passed Maharashtra Housing (Regulation & Development) Act, 2012 with the objectives of introducing better control and ensuring fairness and transparency in the construction, sale, management and transfer of ownership flats. The Act sought to introduce the system of registration of construction projects and provided for setting up of a Housing Regulatory Authority for regulating the activities of promoters which included the obligation to display all material facts relating to the project on the website of the authority. It also provided for setting up of a Housing Appellate Tribunal to decide appeals against the decisions, orders and directions of the Regulatory Authority.

1.7.1 With the coming into force of the Act and from the date or dates to be notified by the Maharashtra Government, the Maharashtra Ownership Flats Act, 1963 was to be repealed. The

Govt. notified section 1, 18, 19 and few other provisions of the Act including provisions enabling establishment of Regulatory Authority and Appellate Tribunal. **Before the entire Act could come into force, the Union Govt. passed an Act called Real Estate (Regulation & Development) Act 2016, which repealed the said State Act viz., The Maharashtra Housing (Regulation & Development) Act 2012 even before the State Act could be fully operative.** The repeal of the State Act was probably considered necessary to avoid duplicity of legislation in the state of Maharashtra dealing with the same objects as the Act passed by the Central Govt. is applicable throughout India except the State of Jammu and Kashmir.

1.7.2 As mentioned, there was already a regulatory Act called Maharashtra Ownership Flat Act 1963,(MOFA) which was to be repealed by its successor legislation the Maharashtra Housing (Regulation & Development) Act 2012. With the repealing Act itself having been repealed by the Central legislation, the Maharashtra Ownership Flats Act, 1963 continues to remain in force in the State of Maharashtra leading to duplicity of legislation on the same subject and resulting complications of administration and compliance. There is also Maharashtra Apartments Ownership Act 1970 which will also continue to remain in force. As a consequence, Maharashtra State will have the Central legislation viz. Real Estate (Regulation & Development) Act 2016, the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and the Maharashtra Apartment Ownership Act, 1970 dealing with ownership flats in Maharashtra.

Other States namely Karnataka, Uttar Pradesh, Delhi, Gujarat, West Bengal, Andhra Pradesh, Haryana and others which have their own legislation in line with MOFA/MAOA of Maharashtra, will also be in similar situation of duplicity of governing laws.

THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016 (hereinafter referred to as 'THIS ACT' OR RERA)

1.8.0. The Union Govt. being aware of rampant abuse and malpractices involved in real estate sector has enacted this Act which seeks to promote and regulate the activities of construction and sale of buildings, apartments in the building- residential or commercial- and plots carved out of land throughout the country, except the State of Jammu and Kashmir. It is to be noted that this Central Act will regulate residential as well as commercial apartments and buildings and also plots in a township project. The Act being the subject matter of this book, various aspects of the legislation are discussed in the chapters that follow.

The Real Estate Bill was passed by the Rajyasbha and the Loksabha on 10.03.2016 and 15.03.2016 respectively and assented to by the President on 25.03.2016. The same was published in official gazette on 26.03.2016.

OBJECTS AND REASONS OF THE RERA

1.9.0 The preamble to the RERA states the purpose and objects of the legislation as under:-

“to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

1.9.1 The Act is to serve the main purpose of protecting the interest of consumer in real estate sector by-

- i) establishing the Real Estate Regulatory Authority
- ii) regulating and promoting the real estate sector through such Authority

- iii) ensuring sale of plot/building/apartment in efficient and transparent manner
- iv) establishing adjudicating mechanism for determination of compensation payable under the Act and resolution of grievances.
- v) establishing the Appellate Tribunal to hear appeals against the orders of the Real Estate Regulatory Authority and the adjudicating authority.

APPLICATION OF THE ACT

1.9.2 The Act extends to whole of India except the State of Jammu & Kashmir

The application of the Act is not affected by any other Act that may be in force in the Union of India or any other State dealing with same or similar objects. Section 88 of the Act clarifies that the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force dealing with the similar objectives. In case of contradiction with provisions of any other law in force, section 89 lays down that the provision of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

1.9.3 The provisions of Section 88 & 89 raise an issue of applicability of Acts which were in force and continue to remain in force in certain States. A notable example is that of MOFA in Maharashtra which will also exist for the same purpose of regulating the construction, sale management and transfer of flats. When the two Acts are compared, there are provisions which are common in nature; which are common but differ in details; which exist in the RERA but not in MOFA such as provisions for setting up of Regulatory Authority and Real Estate Appellate Tribunal. Some of the provisions exist in MOFA but not in this Act such as provisions for unilateral registration of societies and deemed conveyance. While application of the Central Act is secured by the provisions of section 88 & 89 of the

Act, an issue remains as to the application of provisions of State Act e.g., MOFA and MAOA in Maharashtra, which are different in details and which do not find place in the Central Act.

1.9.4 A view can be taken- and the same finds support from section 89- that the Central Act will override the provisions of the State Act. With this view, the Central Act will prevail over the State legislation in matters where there are contradictory provisions in the State Acts and the State Acts will remain applicable when there is no contrary provision in the Central Act.

1.9.5 The Act will come into force on such date as may be notified by the Government of India. Different dates may be appointed for different provisions of the Act and such provisions will come into force from the date notified for these sections. Any reference to the commencement of the Act in these sections shall mean commencement of the Act on the dates when these sections come into force. In pursuance of the powers vested, the Government of India notified coming into force of 59 out of 92 sections of the Act from 1st May, 2016 setting in motion the process of making necessary rules and creating institutional infrastructure. As far as these 59 provisions are concerned, the Act has commenced from 1st May, 2016. These provisions relate to the definitions, Real Estate Regulatory Authority, Central Advisory Council, Real Estate Appellate Tribunal and miscellaneous provisions including the rule making power to the Appropriate Governments and the power to make regulations to the Regulatory Authority. The operation of Sec. 92 will result in the repeal of the Maharashtra Housing (Regulation and Development) Act, 2012.

RULE MAKING POWER

1.9.6 The RERA empowers the appropriate Governments i.e, the Governments of the State and Union Territories to appoint the Regulatory Authorities and the Appellate Tribunal in their respective States within one year of the commencement of the Act and also to frame rules for giving effect to the provisions of the Act within six months from the date of commencement. Thus,

even when the legislation is enacted by the Central Government, the responsibility of implementing the same has been entrusted to the respective State governments who are also to frame the rules within the broad parameters of the provisions of the Act. Since the legislation dealing with immovable properties are not uniform in States, the measure is expected to enable the States to adjust the working of the Act to conform to the prevailing legal practices in that State while maintaining uniformity at macro level throughout the country

1.9.7 As mentioned the Government of India vide notification **No. SO 1544 (E) dated 26.04.2016** brought into force 59 sections out of 92 sections. These are-

- Section 2 - definitions
- Section 20 to 39 - Provisions relating to Real Estate Regulatory Authority
- Section 41 & 42 - Provisions relating to Central Advisory Council
- Section 43 to 58 - Provisions relating to the Real Estate Appellate Tribunal
- Section 71 & 72 - Provisions relating to adjudication
- Section 73 to 78 - Provisions relating to finance, accounts, audits and reports
- Section 81 to 91 - Miscellaneous provisions including power of Appropriate Government to make rules and of regulatory authority to make regulations
- Section 92 - Repeal of Maharashtra Housing (Regulation & Development) Act, 2012

Since these provisions have come into effect from 1st May, 2016, the time of one year for setting up Real Estate Regulating Authority (Hereinafter referred to as (Authority) and Real Estate Appellate Tribunal (Hereinafter referred to as (Tribunal) by the Appropriate Governments has commenced from 1st May, 2016.

This will mean that these authorities will have to be set up by 30th April 2017 which will then frame regulations to carry out the purpose of the Act within three months of their establishment.

1.9.8 The Act did not commence on 1st May, 2016 in respect of provisions not contained in the notification. The leftout provisions mainly included provisions for registration of the projects, provisions dealing with the duties and responsibilities of promoters, allottees and real estate agents and provisions laying down penalties. These sections have been notified to commence from 1st May, 2017 in terms of the Notification **No.1216(E) dated 19th April, 2017** issued by the Ministry of Housing and Urban Poverty Alleviation which permits a period of six months from this date for the Appropriate Governments to frame rules to give effect to these sections.

The sections of the Act which have now been notified are those which enable the institutional structure namely the Regulatory Authority and the Appellate Tribunal to exercise their powers. For example, projects can only be sold or even advertised after they are registered with the Authority. Thus, in the absence of the same the regulatory provisions were inoperative.

So far as 59 notified sections which were notified earlier are concerned the Appropriate Governments were required to frame rules to give effect to these sections within six months from 1st May i.e. by 31st October 2016. This however, has not been done and with extensions obtained, the rules have been notified by some States only in later months. Certain States have notified draft rules for public comments which will be given final shape after such comments and suggestions are received and considered. Maharashtra was one of them. The State has, after consideration of the views of the stakeholders, notified the following Rules:-

- i. Maharashtra Real Estate (regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on

Website) Rules 2017 – No. REA. 2016/C.R. No. 79/DVP-2. Notified on 20th April 2017.

- ii. Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeals etc.) Rules 2017 –No. REA. 2016/C.R. No. 79/DVP-2. Notified on 19th April 2017.
- iii. Maharashtra Real Estate Regulatory Authority, Officers and Employees (Appointment and Service Conditions) Rules, 2017 vide Notification No. REA 2016/CR No. 79/DVP-2 Dated 17th April, 2017.
- iv. Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2017 vide Notification No. Dated April, 2017.
- v. Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017 vide Notification No. REA 2016/CR No. 123/DVP-2 Dated 18th April, 2017.

The following regulations have been notified by the Maharashtra Real Estate Regulatory Authority:

- i. Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017.
- ii. Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

The MahaRERA has also issued clarifications by way of FAQs and circulars/office orders which form appendices to the book.

Chapter - II

A BIRD'S EYE VIEW OF THE ACT

GENERAL

2.0.0 The Act seeks to safeguard the interest of the Allottees by ensuring full and correct information to be provided by the Promoter to the allottees, casting obligations on them to act in accordance with such information and ensuring working of the sector in a fair, professional, transparent and speedy manner. The Act also provides for consequences of violating and contravening these provisions. As an effective implementing arm and an authority to ensure compliance, the Act provides for setting up of a regulatory authority and the adjudicating officers and for expeditious settlement of appeals against their orders, for an appellate tribunal dealing with such matters only.

The salient features of the Act can be briefly stated as under;

SALIENT FEATURES

2.1.0 SCOPE OF THE ACT: The Act takes within its fold not only residential apartments but all apartments, plots and buildings, whether residential or commercial. The Real Estate Project, matters relating to which are sought to be regulated, has been defined to mean -

- Development of buildings;
- Development of a building consisting of apartments;
- Converting existing building into apartments (converting a bungalow or hotel into apartments);
- Development of large piece of land into plots with or without superstructure if such development is carried with the object of selling the buildings, apartments or the plots.

2.1.1. It will be noticed that this Act is wide enough in scope to cover development of land for buildings, apartments as well as plots. Further, it is not restricted to residential flats only but cover residential as well as commercial construction.

2.1.2. Consequently, the word Promoter is also defined in wider terms and includes,

- Person constructing or causing to construct an independent building or building consisting of apartments for the purpose of selling;
- Person developing land for carving out plots – whether with or without structure;
- Person converting existing building into apartments;
- Any development authority or other public body in respect of allottees of building, apartment or plots;
- Apex State level Co-op. Hsg. Finance Society and a Primary Co-Operative Housing Society which constructs apartments for its members;
- Any person acting as builder, colonizer, contractor, developer estate developer or the person claiming to be acting as Attorney of the holder of the land.

SETTING UP OF A REAL ESTATE REGULATORY AUTHORITY.

2.2.0. The Act requires the respective State Governments or Union Territories to constitute an Authority, referred to as Real Estate Regulatory Authority, to act as effective implementing

arm for the Act and ensure that obligations imposed on promoters, allottees and agents in terms of the Act and the agreement for sale are complied with and not violated without consequences provided under the Act. The Authority is to be constituted by the State Government within one year of the Act coming into force. An aggrieved person can file a complaint with the Authority for violation or contravention of any provision by the promoter, agent or the allottee. The Authority shall register and regulate real estate projects and also real estate agents, maintain a website for public viewing of relevant details relating to the project and ensure compliance of the obligations cast upon the promoters, agents and allottees. It may take action suo moto or on the basis of any complaint. It may impose penalties and/or interest, grant compensation and recover the same as arrear of land revenue. The Authority is also to act as a think tank for promotion of real estate sector and advise the Governments on matters relating to it.

Detailed discussion about the constitution, functions and nature of proceedings before the Authority is made in Chapter IV. The procedure for making the application for registration of the project to the authority and for processing of such applications is given in Chapter V.

REGISTRATION OF THE PROJECT;

2.3.0. The Act has a unique provision, which requires the promoter to get the real estate project registered with the Authority. A builder cannot advertise for the sale of building, apartment or plot without registration of the project with the Regulatory Authority. It is important that even the ongoing projects on the date of commencement of the Act for which completion certificate has not been issued, are required to be registered with the Authority within a period of three months from the date of commencement of the Act.

2.3.1 In short, registration formalises and institutionalizes the furnishing of basic information about the promoter, the project and persons like agents connected with it. This registration will

be extremely useful for all the buyers of the flats to help them in knowing the relevant facts for taking decision based on such facts. The registration granted to the project is to be valid upto the time stated in the registration application for completion of the project. The Act provides for extension as well as revocation of the registration by the Authority. Revocation can be done by the Authority *suo moto* or on the complaint, if the promoter makes any default under the Act or, violates any terms or condition of approval or, is involved in any kind of unfair practice. The Promoter cannot give misleading advertisement relating to the project which will amount to unfair practice.

PROJECTS EXEMPTED FROM REGISTRATION;

2.4.0 The requirement of getting the project registered does not apply to following projects:

- a) Where the area of the land does not exceed 500 sq. mtrs., or the development of the number of apartments does not exceed eight included in all phases. State Governments, have, however, been empowered to reduce these limits.
- b) Where the promoter has received completion certificate prior to the commencement of the Act;
- c) Where the project is for renovation or repair or redevelopment which does not involve selling or new allotment of buildings, apartment or plot.
- d) Where the Apartments or Building are given / allotted on tenancy basis.

In addition some of the States have framed rules exempting certain ongoing projects from the requirement of registration. A discussion about such projects is made in chapter IX.

NO ADVERTISEMENT WITHOUT REGISTRATION

2.5.0 Registration of the project is necessary before a promoter can advertise, market, book, sell, offer for sale or invite anyone to purchase the building, apartment or plot. Doing so without

registration will entail penalty upto 10% of the project cost. Even after the penalty order for violation of Sec. 3, if the promoter continues his activities then the promoter can be imprisoned upto three years or he can be fined upto 10% of the cost or can be punished by both.

DISPLAY ON WEBSITE OF THE REGULATORY AUTHORITY:

2.6.0 The State Government shall establish Regularity Authority and within a period of one year from its establishment the said Authority shall create web-based online system for receiving applications from promoters for registration of their project. After the project is registered, the promoter will be given registration number, login ID and a password to enable him access to the site. The promoter will be bound to create a webpage for his project and display the project details on the webpage so created, putting the information in public domain so that every interested buyer can obtain the required information and act on it making it difficult for the promoter to go back on his promises. On the expiry of the term of registration, the webpage of the promoter will be deleted and on the revocation thereof, the promoter shall be debarred from accessing the website.

OBLIGATION OF PROMOTER REGARDING ACCURACY OF FACTS IN ADVERTISEMENT ETC.

2.7.0 Where any person makes an advance or deposit on the faith of any information contained in any advertisement or on the basis of any model apartment, plot or building and sustains loss or damage by reason of any false statement therein, the promoter will be liable to compensate that person. The affected person will also have the right to withdraw from the project in which case he will be entitled to refund of entire amount paid by him along with interest at the prescribed rate and also the compensation as may be decided by the adjudicating officer appointed by the authority.

PROHIBITION TO ACCEPT MORE THAN 10% OF COST WITHOUT EXECUTION OF AGREEMENT

2.8.0 Promoter is debarred from accepting more than 10% of the cost of the building, apartment or plot as advance payment or application fees without first entering into a written agreement of sale and registering the same under the Indian Registration Act. The agreement of sale is to be as per the draft agreement submitted to the Authority which, to the extent possible will be as prescribed by respective rules and shall contain all important particulars including internal and external development works, schedule of payment, date of giving possession as well as the rate of interest payable by allottee and the promoter in case of their respective defaults. The rate of interest is to be prescribed in the rules to be framed by the State Governments. As per the Explanation to Section 2(za), the rate of interest payable by the allottees and that payable by the promoter shall be the same.

THE PROMOTER'S OBLIGATION TO ADHERE TO THE SANCTIONED PLAN, LAY OUT PLAN AND PROJECT SPECIFICATIONS

2.9.0 A very common issue is departure by the promoters from the sanctioned plan and specifications relating to internal and external development, amenities to be provided and material to be used. The Act takes care of such practices by casting an obligation on the promoter to develop and complete the construction in accordance with sanctioned plans, layout and specifications as approved by the Competent Authority. Even when there is a contrary stipulation in any law or contract, the promoter cannot make any addition or alteration from the sanctioned plan and specifications in respect of the building, apartment or plot without the previous consent of the buyer. He can only make such minor additions or alterations as may be required by the allottee or as may be necessary for architectural and structural reasons.

2.9.1 For any other alteration or addition within the project, the Act requires the previous written consent of at least two-third of

the total number of allottees, who have agreed to take the apartment etc.

PROMOTER'S OBLIGATION TO RECTIFY THE STRUCTURAL OR OTHER DEFECTS;

2.10.0 The Act further provides that in case any structural defect or any defect in workmanship, quality or provision of services is brought to the notice of the promoter within five years from the date of handing over of possession, the promoter will be bound to rectify such defects free of any charge within 30 days and in the event of his failure to do so, the allottee will be entitled to receive appropriate compensation.

PROMOTER'S OBLIGATION NOT TO USE THE SALE PROCEED RECEIVED IN ANY OTHER PROJECT

2.11.0 It is a general practice that the builders launch a project, collect money and utilise the same for some other project. Sometimes, proceeds are collected even before project is formally launched and the launch is delayed enabling them to use the funds in other projects. The Act takes care of such practices and obliges the promoter to deposit atleast 70% of the amount realised from the allottees of a project in a separate account with a scheduled bank which can be used only to cover the cost of that very project. The promoter can withdraw amount from such separate account in proportion to the percentage of the completion of the project by obtaining certificate from engineer, architect and C.A. He is also required to get his accounts audited within six months after the end of every financial year and produce a statement of account. A discussion about deposit and withdrawal of such funds in on-going projects is made in Chapter IX.

PROHIBITION ON TRANSFER OF THE PROJECT TO THIRD PARTY

2.12.0 The Promoter is debarred from transferring or assigning his majority rights to a third party without obtaining prior

written consent from two-third allottees and without the prior written approval of the Regulatory Authority. In case such consent is obtained, the new incoming promoter will be required to independently comply with all the pending obligations towards the allottees. It will also not result in extension of time to the incoming promoter to complete the project who will have to comply with all the obligations of the erstwhile promoter.

PROMOTER'S OBLIGATION TO COMPLETE THE PROJECT IN TIME

2.13.0 In case the promoter fails to complete and give possession in accordance with the terms of the agreement and by the agreed due date for any reason including discontinuance of business on account of suspension or revocation of registration, the allottee will have the option to withdraw from the project and will get the refund of amount paid with interest at the prescribed rate and also compensation. This will be without prejudice to other remedies available to him. In case he decides not to withdraw, he will be entitled to interest for every month of delay at the rate prescribed which will be at par with the interest that he would have been liable in case of default in payment by him.

2.13.1 The promoter shall also be liable to compensate the allottee for any loss suffered by him due to defective title of the land and such claim of the allottee will not get barred by any law of limitation.

PROMOTER'S OBLIGATION TO OBTAIN COMPLETION CERTIFICATE;

2.14.0 Promoter has the responsibility, to obtain the completion certificate or the occupancy certificate or both as per local laws and make it available to the allottee or their association. Where the promoter is carrying on development on leasehold land, it will be his responsibility to obtain a certificate that all the dues in respect of leasehold land are paid and to hand over the certificate to the Association of Allottees.

PROMOTER'S OBLIGATION TO ENABLE THE FORMATION OF SOCIETY OR ASSOCIATION OF ALLOTTEES

2.15.0 After majority of allottees have booked their plot/apartment/building, the promoter is to enable the formation of an association or society or co-operative society of the allottees or a federation, as per the applicable laws. In the absence of any applicable law, such association should be formed within three months of booking by the majority of allottees.

OBLIGATION TO TRANSFER TITLE TO ALLOTTEE AND TO THE ASSOCIATION OF ALLOTTEES;

2.16.0 The Act makes the promoter bound to execute registered conveyance deed of the building, apartment or plot in favour of the allottees and of undivided proportionate title in the common areas to their association and hand over physical possession of the respective areas to the allottees and the association.

2.16.1 In the absence of any local law to this effect, the conveyance deed is to be executed within three months from the date of issue of occupancy certificate. In case the Promoter delays the occupancy certificate and delays the execution of conveyance deed, the allottees can approach the Regulatory Authority to redress their grievance.

A discussion about the provisions relating to conveyancing under this Act and the Rules of certain States in this regard is made in chapter X.

PROMOTER'S OBLIGATION TO GET THE PROJECT INSURED

2.17.0 The Promoter is bound to obtain all such insurance policies as may be notified by the appropriate government and pay the premium and charges in respect of it before transferring the insurance policies to the association of allottees.

ESTABLISHING REAL ESTATE APPELLATE TRIBUNAL

2.18.0 Any relief mentioned in the legislation is meaningless until the same can be enforced within a reasonable time. Legislations like MOFA of Maharashtra provide for obligations on the promoter but the aggrieved allottee had only to approach the civil courts or the consumer forums for redressal of his grievance. The Maharashtra Housing Act 2012 (which has been repealed) appreciated this problem and provided for setting up of a Regulatory Authority and special Tribunal to decide appeals against the orders and directions of the Regulatory Authority. This Central Act has also provided for setting up of a Real Estate Appellate Tribunal to be established by the respective State Governments or the Union Territories within a period of one year from the date of coming into force of the Act.

Detailed discussion about the Constitution, functions, procedure and nature of proceedings before the Tribunal is made in Chapter IX

SETTING UP OF ADJUDICATION AUTHORITIES

2.19.0 The courts under the present system take long time to decide the compensation that may be payable to the allottees. In order to determine the compensation in speedy manner, the Act provides for appointment of Adjudicating officers by the authority who will be judicial officers for determining the compensation to be paid-

- i) where person making advance or deposit suffers loss as a result of incorrect information in advertisement
- ii) where defects or deficiencies brought to the notice of the promoter within a period of five years from the date of possession are not rectified
- iii) where the promoter fails to complete or is unable to give possession within time specified in the Agreement or on account of revocation of registration under this Act or discontinuance of business of a developer

- iv) where the allottee suffer any loss on account of the defective title over the land.

2.19.1 For determining the amount of compensation, the Authority shall appoint in consultation with the Appropriate government one or more judicial officer who will be working or retired District judge, as the Adjudicating officer for holding enquiry and adjudicating compensation.

2.19.2 Appeal lies against the orders of the adjudicating officer to the Real Estate Appellate Tribunal

RIGHTS AND DUTIES OF ALLOTTEES

2.20.0 The Act prescribes the rights and duties not only of the promoter but also of the allottees. The rights include

- i) obtaining information relating to sanctioned plan, layout plan alongwith specifications
- ii) knowing stage-wise time schedule of completion of the project.
- iii) claiming possession of building/apartment or plot. The association of allottees will be entitled to claim possession of common areas including the land
- iv) claiming refund alongwith interest and compensation from the promoter in the event of his failing to hand over possession in accordance with the provisions of the Act and the terms and conditions of the agreement for sale.
- v) receiving the necessary documents and plans after receiving of possession from the promoter

2.20.1 The duties and responsibilities of the allottee include –

- i) making necessary payment at the proper time and pay all charges and dues
- ii) paying interest at prescribed rate for delay in payment
- iii) participating towards the formation of association of allottees or the Federation

- iv) taking physical possession within two months of the issue of the occupancy certificate
- v) participating towards registration of conveyance deed.

REGULATION OF REAL ESTATE AGENTS

2.21.0 The Act seeks to regulate not only the conduct of the promoters and the allottees, but also that of real estate agents who facilitate the sale or purchase of the apartment etc. in a registered project. For this purpose it prohibits any person to act as agent without obtaining registration from the Authority. For the purpose of registration as an agent he has to make an application in the prescribed form.

2.21.1 The Authority is to take decision on the application within the prescribed time. In case of not taking decision within time, the registration will be deemed to have been granted. The registration will be valid for the period as may be prescribed and can be renewed. The registration can be revoked if the agent commits breach of any condition of registration or of any terms or conditions under the Act, or where the Authority is satisfied that registration has been obtained through misrepresentation or fraud.

2.21.2 The registered agent shall quote the registration number in every sale made through him. He is prohibited from arranging any sale in any planning area which is not registered with the Authority. He is not to involve himself in any unfair practice which include making any statement which falsely represents the services as of a particular standard or grade or, representing false approval or affiliation of himself or the promoter or, permitting publication of false advertisement or, making a false or misleading representation concerning the services. He is also obliged to facilitate possession of all information and documents which the allottee is entitled to.

PENALTIES AND PROSECUTIONS-

2.22.0 The Act provides for the prosecution and penal consequences of contravention of the legal provisions and

defaults by the promoters, the allottees and the real estate agents in complying with the statutory obligations imposed on them. These provisions are summarised in tabular form below;

A. **PROMOTER**

i) Contravention of the provisions of Section 3 i.e., making any invitation for sale without getting the project registered (Sec.59)	Penalty up to 10% of estimated cost of the project – For the continued default imprisonment up to three years or, fine upto 10% of the cost or, both
ii) Contravention of Section 4 i.e., failure to make application for registration, submitting false information, failure to keep 70% in separate bank account etc (Sec.60)	Penalty up to 5% of the estimated project cost
iii) Contravention of any other provision of the Act/Rules/Regulations (Sec.61)	Penalty up to 5% of the estimated project cost
iv) Failure to comply with the directions/orders of the Regulatory Authority (Sec.63)	Penalty for every day of the default which can cumulatively go upto 5% of the estimated project cost.
v) Failure to comply with the orders, decisions of the Appellate Tribunal (Sec.64)	Imprisonment upto three years or fine for every day of default which can cumulatively go upto 10% of the estimated cost of the project.

B. **AGENT**

i) Failure to comply with order or direction of the Authority (Sec.65)	Penalty for every day of the default which can cumulatively go upto 5% of the estimated cost of the building/apartment or plot.

ii) Failure to comply with order or direction of the Tribunal (Sec.66)	Punishment with imprisonment upto one year or with fine for each day of default which can cumulatively go upto 10% of the cost of the building/apartment or plot.

C. ALLOTTEES

i) Failure to comply with orders of the Authority (Sec 67)	Penalty per day of the default which can cumulatively go upto 5 % of the cost of building/plot or apartment.
ii) Failure to comply with decision or orders of the Tribunal (Sec.68)	Punishment of imprisonment upto one year or with fine for each day of default cumulatively going upto 10% of the cost of building/apartment or plot.

RULES TO GIVE EFFECT TO THE ACT

2.23.0 The unique feature of the Act is that while RERA is a Central Act enacted by the Parliament, the same is to be implemented by the respective State Governments/Union Territories. The appropriate government has to appoint the Regulatory Authority and set up the Appellate Tribunal. It has power to supersede the Authority, to issue directions to the Authority and obtain reports and returns.

The appropriate governments have also been vested with the rule making power which they are to complete within six months of the commencement of the Act. The Regulatory Authority is required to make regulation, within three months of its establishment.

Since the rule making power is with the State Government, it is expected that each State will take into account the special circumstances of the State within the broad parameters laid down

in the Act. It will also provide an opportunity to reconcile the provisions of State and Central Act, to the extent possible.

REPEAL OF MAHARASHTRA HOUSING (REGULATION AND DEVELOPMENT) ACT, 2012

2.24.0 As mentioned in para 1.9.6, Section 92 repeals the Act passed by the Maharashtra Legislature with the same objectives which was known as Maharashtra Housing (Regulation and Development) Act, 2012. The notification issued on 26th April 2016 brings this Section in force from 1st May, 2016 which means that the Act stands repealed from that date.

Chapter - III

TERMS AND EXPRESSIONS

3.0.0 Section 2 of the Act defines and gives meaning to the terms and expression used in the Act. Certain terms and expressions which are significant in understanding of the import of the provisions are explained hereunder.

ADVERTISEMENTS

3.1.0 The term is used, interalia, in Section 3 in relation to the prohibition on the promoter to make an offer or invitation to the public for purchasing building, apartment or plot without getting the project registered and in Section 12 relating to promoters liability for compensation in case of any loss suffered by the allottee by reason of any incorrect statement contained therein.

3.1.1 ‘**Advertisement**’ has been defined as -

“advertisement” means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

3.1.2 The term is not confined to advertisement in print or visual media but extends to any document including vouchers, leaflets, pamphlets containing details of the project issued for the purpose to make the project known to the public with an intent to invite them to buy the building, apartment or plot or to make advance or deposits for the purpose of such buying.

3.1.3 Section 12 of the Act places information contained in the notice, advertisement or prospectus on the same footing and provides for compensation by the promoter in the event of any person making an advance or deposit sustaining any loss by reason of any incorrect or false statement contained therein. 'Prospectus' has been defined as any document described or issued as a prospectus or any notice, circular or other document offering for sale or inviting any person to make advances or deposits for such purpose.

3.1.4 It is not merely the information contained in advertisement or prospectus that can be the basis of compensation but also any model apartment, plot or building deviation from which can lead to liability for compensation. Ministry of Housing has clarified that any medium adopted in soliciting for sale would be covered under the said definition which will include sms and emails.

ALLOTTEE

3.2.0 The term has significance as the Act revolves round the obligations of the promoters towards the allottee and vice-versa. The term occurs at several places; almost in every provision dealing with such obligations. The term has been defined as -

"allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

3.2.1 In other words, the term is used for the transferee of the building, apartment or plot from the promoter who gets the

property by whatever mode including by allotment, by sale, as consideration for services, by exchange for development rights or by any other means. The building, apartment or plot transferred need not be a freehold property only. An allottee of a building apartment or plot on leasehold land is also an allottee.

3.2.2 The term, however, does not include a person to whom the building or apartment or plot has been leased out. An issue in this connection may arise as to whether a long term lease, say of 99 years or 999 years can be taken as sale. Although a long term lease is technically a lease and a lessee is not an allottee within the meaning of the Act, the long term lease with provision for extension gives right to occupy in perpetuity and is a viable and proven form of ownership. The possibility of such lease being taken as sale cannot be ruled out. MahaRERA has clarified that long term lease will be within the purview of RERA.

APARTMENT

3.3.0 The Act takes within its regulatory functions, the construction, sale, management and transfer of a building, an apartment or a plot. The real estate project which is the focus point of the Act means development of land for construction of a building or, a building consisting of apartments or, development of land into plots. The term apartment' is defined as -

"apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;"

3.3.1 The term 'Flat' under the Maharashtra Ownership Flats Act, 1963 (MOFA) which continues to be applicable within the state of Maharashtra has been defined as under:

“Flat” means a separate and self-contained set of premises used or intended to be used for residence, or office, or show-room or shop or godown or for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment.”

3.3.2 As the term 'Flat' under MOFA, includes the 'apartment'. It follows that 'apartment' under MOFA has the same characteristics as of 'Flat' under that Act. The terms being synonymous, what applies to 'Flat' applies to 'apartment', which is not separately defined under MOFA. Maharashtra Apartment Ownership Act, 1970 which too continues to have application in Maharashtra defines 'Apartment' as -

“apartment” means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residence, office, practice of any profession, or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to public street, road or highway or to a common area leading to such street, road or highway;”

3.3.3 From all these definitions it emerges that apartment is an unit in the building known by different names, depending upon the use to which it can be put to. The basic characteristics is that it is a self-contained unit separate and unconnected with other units and meant for residential or commercial use which include office shop, showroom, godown or any other business place.

3.3.4 As explained by the Supreme Court in Nahalchand Laloochand Pvt. Ltd. Vs. Panchali CHS Ltd. in Civil Appeal No. 2544 of 2010 in the context of 'Flat' under MOFA, a set of premises is called self-contained “if it has the following basic amenities available: (a) sanitary; (b) washing, bathing and (c) other conveniences (cooking etc.) for the use of its occupant/s although as provided in the explanation appended to Section 2(a-1) such provision may be common to two or more sets of premises. The nature of construction and user are important features of this definition clause. A unit or accommodation to fit in the definition

of 'flat' must meet twin-test namely: (i) self contained test and (ii) user test. The other predominant characteristic is that it must form part of a building. Crucially, for the relevant premises to be 'flat, It must be a separate and self contained premises; It must form part of building;"

3.3.5 The definition does not specifically mention units in an industrial complex such as factory or galas in industrial estates. It appears that non-mention of industrial use is conscious omission suggestive of such units being outside the term 'apartment' and accordingly, outside the regulatory framework under the Act. Certain Authorities including Maharashtra Regulatory Authority have however, taken a view that RERA regulates constructions for industrial use also.

APPROPRIATE GOVERNMENT

3.4.0 The responsibility of implementation of the Act is on the Appropriate Governments which are to set up the Regulatory Authority, appoint Adjudicating officers and constitute the Appellate Tribunal. The Appropriate Government has also to frame rules for the implementation of the Act within six months of the commencement of the Act. The term Appropriate Government has been defined as under:

"appropriate Government" means in respect of matters relating to, – (i) the Union territory without Legislature, the Central Government; (ii) the Union territory of Puducherry, the Union territory Government; (iii) the Union territory of Delhi, the Central Ministry of Urban Development; (iv) the State, the State Government;

3.4.1 For States the expressions 'Appropriate Government' means that State itself. The Central Government is the Appropriate Government in respect of Union Territories like Andaman & Nicobar Island which do not have legislature. Rule 2(e) of Andaman & Nicobar Islands Real Estate (Regulation and Development) (General) Rules 2016 defines Appropriate Government as Central Government.

3.4.2 The important responsibilities of the appropriate government as per the FAQs issued by Ministry of Housing are as under;

- a) As per section 84 the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
- b) As per section 20 the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30th April, 2017.
- c) As per section 20 the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
- d) As per section 43 the appropriate Government is required to establish the Appellate Tribunal within 1 year from its commencement i.e. maximum by 30th April, 2017.
- e) As per section 43 the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
- f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
- g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
- h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.

BUILDING

3.5.0 The Act regulates transaction in buildings, apartments or plots. 'Building' is defined as -

"building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;"

3.5.1 From the definition it comes out that a building need not be a self-contained independent building to form part of a real estate project. It can be a part of the total structure or erection making extension of an existing building by way of construction of additional floors, a building for purpose of the Act.

3.5.2 The use for industrial purposes is conspicuous by its absence in the definition of building also which lends support to the view that premises used for industrial purposes are outside the purview of the Act.

CARPET AREA

3.6.0 The term is defined as

"carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment".

3.6.1 The term is significant because under clause (h) to Section-4 (2), the promoter has to provide information about the number, type and carpet area of apartments for sale in the project along with area of exclusive balcony or verandah and the exclusive open terrace areas. Since balcony, verandah and open terrace areas are excluded from the computation of 'carpet area' separate information in regard thereto is required to be furnished.

3.6.2 Whereas, the area covered by the internal partition walls is included within the carpet area, the term excludes the area covered by outer walls of the apartment.

3.6.3 The Regulatory Authority of Maharashtra has issued detailed clarification about the interpretation of the words 'internal partition wall' and 'external partition wall' for the sake of uniformity in the calculation of carpet area of an apartment across all the projects. Although such clarification is binding within the jurisdiction of the Authority only, the same may be referred to for guidance as to possible view. The clarification by way of Circular No. 4/2017 dated 14.06.2017 is Appendix – F in the book.

COMMON AREAS

3.7.0 The term is used in various context. An important provision contained in Section 17 is relating to conveyance deed in respect of the building, apartment or plot to be executed by the promoter in favour of the allottee and that of undivided proportionate title in common area to the association of allottees.

3.7.1 Further, the rules framed by most of the state governments mandates furnishing of information relating to common areas as part of information to be submitted by the promoter along with his application for registration of the project. Rule 3(2)(f) of Maharashtra Rules require furnishing of information relating to FSI/TDR and other entitlement proposed to be utilized and the amenities and common facilities (including common areas, parking spaces).

3.7.2 The term common area is defined as;

“common areas” mean –

- i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
- ii) *the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- iii) *the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*
- iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*

- v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*
- vii) all community and commercial facilities as provided in the real estate project;*
- viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;*

3.7.3 A noticeable feature of the definition is that 'Common Area' includes the entire land for the real estate project. The entire land on which the project is developed being part of the 'common area' will mean conveyance of undivided proportionate title in land to the association of allottees when the building is conveyed to the allottees. A peculiar situation may arise in case of an apartment on ground floor with part of land attached to it as garden. Not only the land, the common area will involve separation of staircases and lift, lobbies, fire escapes, common entrance etc. from the building, undivided proportionate title in which is to be conveyed to the association of buyers.

3.7.4 The state laws, wherever they are operative along with RERA provide for total conveyance to either the allottee or the organization of buyers. For example, provision under MOFA does not make a difference between the building and the land underneath. Section 11 thereof provide for conveyance of right, title and interest in the land as well as building including common area to the organization of buyers. The State law of Tamil Nadu on the other hand provide for total conveyance to individual allottees. RERA by providing for conveyance of building to the allottee and of common area to association of buyers, makes a significant departure from the legislation of the States where they have their own Act dealing with the same subject.

3.7.5 Certain States like Maharashtra, Tamil Nadu and others, by their rule making power have deviated from the above position under RERA for conveyance. State of Maharashtra for

example, has provided for conveyance of building including common area to the legal entity formed by the flat buyers. On the other hand, the State of Tamil Nadu has provided for conveyance to the individual allottees. Similar is the position in other states which have avoided split conveyancing.

COMPETENT AUTHORITY:

3.8.0 "competent authority" has been defined to mean

"the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;"

3.8.1 The term has relevance in the context of statutory sanctions required in respect of plan, layout plan, specification, issue of commencement certificate, completion certificate, occupation certificate and other permissions and certificates to be issued by such authority.

3.8.2 In case of lapse of registration or on revocation of the registration, the Regulatory Authority is empowered, in consultation with Appropriate Government, to entrust the completion of remaining development work to the Competent Authority or to the association of allottees.

3.8.3 Comparing the definition with the meaning given to it under MOFA, it can be seen that Competent Authority under this Act is different Authority than under MOFA. Section 5A of MOFA defines Competent Authority as under –

"5A. Competent Authority- The State Government may, by notification in the Official Gazette, appoint an officer, not below the rank of the Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under section 5, 10 and 11 of this Act."

Competent Authority under MOFA is an Authority to perform certain actions under that Act viz., the function of unilateral registration of the Society and deemed conveyance whereas under this Act a Competent Authority exercises powers to give permissions for development of immovable property.

COMPLETION CERTIFICATE/OCCUPATION CERTIFICATE

3.9.0 Completion Certificate has been defined in section 2(q) as under;

"completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

3.9.1 Occupation Certificate has been defined in section 2 (zf) as under;

"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

3.9.2 The difference between the two as has been explained by the Ministry of Housing in their FAQs is that while occupation certificate relates to the occupation of the apartment/building which has provision for civic infrastructure such as water, sanitation, and electricity and is habitable, completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

3.9.3 The two definitions are very broad and use the term 'by whatever name called'. Thus, if in State / U.T. only one certificate is issued which provides for both the aspects covered under the two definition, it would suffice the requirements under the Act.

3.9.4 The Act has however, used these terms as mutually exchangeable. Somewhere, for example in proviso to section 3, section 11 (4)(b), the law has used 'completion certificate', it has used 'occupation certificate' in section 17. Under section 19(10) the allottee is to take possession within two months of the issue of occupation certificate.

3.10.0 COVERED PARKING (under Maharashtra Rules) is defined as

“Covered parking space” means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking”.

As per Maharashtra Rule 10, Agreement for Sale between the Promoter and the Allottee shall be in accordance with Model Agreement given as Annexure-A to the Rules. Clause 1.a makes it clear that allottee can purchase covered car parking spaces situated at the basement and/or stilt and/or at the podium for a specified cost. This implies that covered parking has been made salable as independent unit to the allottees but promoter in Maharashtra is not entitled to sell open parking which falls under the definition of common area. The closed garage can be sold even to a person who has not purchased any apartment.

3.10.1 Under Tamil Nadu Rules 'Covered parking' is included under 'reserved car park' which is defined as under;

“Reserved Car Park” means an enclosed or unenclosed, covered or open area which is sufficient in size to park vehicles and which may be provided in basements and/or stilt and/or podium and/or independent structure built for providing parking spaces and/or parking provided by mechanized parking arrangements and which is not a garage.”

Rule 9(4) provides that under the agreement for sale or construction agreement, the promoter is permitted to allocate exclusive rights of usage of reserved car park to the allottee and

such right of exclusive usage shall form an indivisible part of the apartment and shall be transferable along with the apartment.

GARAGE:

3.11.0 Garage is defined as

"garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;"

3.11.1 Analysing the definition, garage should have following characteristics.

- (i) The place should have a roof and walls on three sides. This characteristic would mean that stilt parking and the open parking areas are excluded.
- (ii) The place should be meant for parking any vehicle.
- (iii) An unenclosed or uncovered parking space such as open parking space is not garage. This reiterates and clarifies the first requirement of a garage having a roof and walls on three sides.

The meaning given to 'Garage' under this Act is the same as in the Apex court decision in Nahalchand Laloochand Pvt. Ltd. vs. Panchali Cooperative Housing Society Limited Civil Appeal No. 2544 of 2010 which was a decision under the MOFA. In the absence of any definition of the term in that Act, the court took a meaning as would be understood by a flat purchaser who would contemplate garage which has a roof and walls on three sides.

3.11.2 The term is used in RERA as item (i) of section 4(2) listing the information to be furnished along with the application for registration. The information required is about the number of garages for sale in the project. The words 'for sale' point to the saleability of the place falling within the definition of 'garage'. In case the garage is sold along with the building/apartment as per the agreement of sale, it will be a part of the building/apartment subject to regulation in the same manner as the building/apartment. The Garage, under RERA can however, be sold to the

allottee independent of the apartment also as clarified by the Ministry of Housing through the FAQs.

3.11.3 Although, garage is a parking place, its treatment is different from open parking area or stilt parking area in the building. It is relevant to refer to the definition of common area as per clause (n) of section 2. Item (iii) of the clause includes within common area -

*“the common basement, terrace, parks, play areas, **open parking areas** and common storage spaces.”*

'Open parking areas', being part of common areas under RERA and of 'reserved parking area' under Tamil Nadu Rules, are, unlike garages, not subject of sale which imply that the builder will be prohibited from selling it and charging a price for such area. This has been confirmed by the Ministry of Housing through their FAQs. That explains its not being part of the information to be furnished with the application for registration. Most of the States including the State of Uttar Pradesh, Madhya Pradesh and Karnataka have prescribed submission of information relating to the open parking areas/ parking slots also as additional information to be furnished along with application for registration. 'Open parking areas' in such information, unlike garages, is not preceded by the words 'for sale'. Tamil Nadu Rules require information about parking spaces as shown in the approved plan which also does not have the words 'for sale' following it. Further, being common area, its title is to be conveyed to the organization of the allottees in terms of section 17 of this Act which rules out its sale.

3.11.4 Coming to stilt parking, although in the context of MOFA, the issue as to whether stilt parking can be equated with garage and can be sold as a separate space, came for consideration before the Supreme Court in *Nahalchand Laloochand Pvt. Ltd. Vs Panchali Co-op Housing Society Ltd.* (Supra). The court observed that stilt area is a space above the ground and below the first floor having columns that support the first floor and the building. The court held that it may be useful as a parking place but we do not

think that for purposes of MOFA, such portion could be treated as garage. What is held for purpose of MOFA can be good for this Act as well. Except for the fact that it has a roof, it is open parking area and hence, a part of common area. The apex court held stilt parking as common area and therefore not subject to sale. Under Tamil Nadu Rules, also stilt parking being 'reserved parking area' is not salable as independent unit.

3.11.5 From the discussion ever, it comes out that while garage is made salable under RERA open parking area and stilt parking area and parking of the type mentioned in the definition of reserved parking area under Tamil Nadu Rules are not. Rules of Maharashtra State, however, deviate from this position about the salability of stilt parking. The rules have classified such parking as 'Covered Parking Space' and has defined it as under;

“(j)Covered parking space” means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking”.

Further, rule 3(2) which prescribes additional information to be furnished in the application for registration contains information about the number of covered parking spaces. The intent and purpose of defining this category of parking space and mandating furnishing of information about it as an additional information can be gathered from the draft agreement of sale which is part of the rules. Para 1a (iii) of the draft agreement reads as under;

“The Allottee hereby agrees to purchase from the Promoter and the Promoter hereby agrees to sell to the Allottee covered parking spaces bearing Nos_____ situated at_____ Basement and/or stilt and /or _____podium being constructed in the layout for the consideration of Rs. _____/-.”

The expressions 'agrees to purchase' and 'agrees to sell' bring out the significance of the term 'covered parking space defined in

Maharashtra Rules. It makes it clear that covered parking space which is another name for stilt parking space is also salable parking place and can be sold by the promoter for a consideration. This nullifies the decision of the Supreme Court in *Nahalchand Laloochand Private Limited Vs. Panchali Co-op. Hsg. Soc.* Supra.

PROMOTER

3.12.0 The term Promoter who is the person around him most of the provisions revolve has been defined in section 2(zk) as-

- (i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of –*
 - (a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
 - (b) *plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
- (iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (v) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation. – For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

3.12.1 Basically, the promoter is one who develops or causes to develop a real estate project i.e. a project which involves development of land for construction of independent buildings, buildings consisting of apartments, or division of land into plots. Conversion of an existing building, not having independent residential or commercial unit which can be occupied by different persons, into apartments is also a real estate project. The essential condition is that these buildings, apartments or plots are for sale to the general public. Development for self use does not make the developer, a promoter. So is the case of development for letting out.

3.12.2 The concept of development for sale has somewhat been deviated from in case of development authority or any other public body which are categorized as promoter not only when they construct buildings or apartments but also in respect of plots or flats owned by such authority or body or which are placed at their disposal by the government for the purpose of selling all or some of them. The term also includes the Apex State Level, cooperative housing, Finance Society and a primary cooperative housing society, which construct apartments or buildings for allotment to their members. The allotment, though not sale in technical sense, is taken to be so for the purpose of this Act.

3.12.3 The explanation provides that where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act. The explanation has

relevance in case of joint development arrangements where the owner of land or building transfers the development rights to another person for consideration which may be a part of the constructed building. The land owner in such cases gets right of sale in respect of his portion. In such cases he, as well as the developer, will be the promoters who will be jointly responsible under this Act.

MahaRERA has vide Circular No. 7/2017 clarified that in case of project being implemented jointly by promoter and co-promoter, the agreement between them shall clearly lay down the entity which is principally and primarily responsible for completion of the real estate project. In case of shared responsibility, the agreement shall clearly lay down the responsibility assumed by each. The copy of the agreement is required to be uploaded at the time of registration.

REAL ESTATE PROJECT

3.13.0 The term is related to and should be read with 'promoter' as the object for the activities of the promoter is the development of Real Estate Project. It means the project involving construction of independent building or buildings consisting of apartments or, development and division of land into plots for the purpose of selling them to the general public. The term is defined as -

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

3.13.1 It will be noticed that if an already existing building or part thereof is converted into building consisting of apartments for selling them, such project shall be considered also a real estate project for the purposes of this Act.

3.13.2 The term is all encompassing and includes not merely the buildings, apartments or plots but also area for common use by way of staircase, lifts, open parking space, garden, terrace, swimming pool and other facilities and amenities. Such area is referred to as “common area” which is also a part of the project.

3.13.3 The Real Estate Project also includes development works – external and internal – to be carried out which are integral part of the project. External development work includes roads, landscaping, water supply, sewage and drainage system, electric substation and other works to be executed in periphery of the project. Internal development work consists of internal roads, footpaths, sewage, gardens, community buildings and management of waste, water conservation, energy management, fire protection and other social infrastructure such as education, health and other public amenities.

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 Governments. 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 Authorities, 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, to sue or, be sued.

COMPOSITION OF THE AUTHORITY

4.2.0 The Authority shall consist of a Chairperson and two or more wholtime members who will be appointed by the respective State Government / Union Territory from amongst persons having special knowledge and professional experience of atleast 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.

The specific powers of the chairperson as laid down in Tamil Nadu State in its rules are as under;

- a) matters pertaining to human resources, wages and salaries structures, emoluments, perquisites and personnel policies;
- b) matters pertaining to appointments, promotions and confirmation for all posts;
- c) acceptance of resignations by any officer or employee;
- d) In addition, the Chairperson will be responsible for officiating against sanctioned posts;
- e) authorization of tours to be undertaken by any member, officer or employees within India and allowance to be granted for the same;
- f) all matters in relation to grant or rejection of leaves;
- g) permission for hiring of vehicles for official use;
- h) nominations for attending seminars, conferences and training courses in India;
- i) permission for invitation of guests to carry out training course;
- j) sanction, scrapping or write-off of capital assets which due to normal wear and tear have become unserviceable or are considered beyond economical repairs;
- k) matters relating to disciplinary action against officer and employee;
- l) any other powers that may be required for the efficient functioning of the Authority and enforcement of the provisions of the Act and these rules.

The Chairman of the Authority shall also exercise such other

powers that may be required for the efficient functioning of the Authority and enforcement of the provisions of the Act and the rules and regulations made thereunder

4.2.3 The Act debars a serving or retired State Government servant from being appointed as 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 advise to any person using information which was obtained in there official capacity and which was unavailable to the public.
- (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-moto* or on request from the State government in matters relating to development of real estate sector. For details of such advisory functions, chapter XII may be referred to. The Act also provides for establishment of a council to advise the Central Government in certain specified matters.

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, 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-moto*, relating to this Act or the rules or regulations made thereunder, 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.

The manner of filing complaints and procedure for making enquiries is detailed in chapter XI

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;
- (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, 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 The Act provides that-

- (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 moto, 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;
 - (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

The rules framed by the State have prescribed certain additional powers to the authority which are :-

ADDITIONAL POWERS

- 4.6.1** (1) In addition to the powers specified in sub-section (2) of section 35 the regulatory authority shall have the following additional powers:
- (a) require the promoter, allottee or real estate agent to furnish in writing such information or explanation or produce such documents within such reasonable time, as it may deem necessary;
 - (b) Requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (Central Act 1 of 1872), any public record or document or copy of such record or document from any office.
- (2) The regulatory authority may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the regulatory authority in the conduct of any inquiry or proceedings before it.
- (3) On receipt of the application in prescribed form and complete in all respects under section 4 read with rule 3 for registration of a project, the Authority may review the documents submitted along with the application under rule 3 and enquire, inter alia, into the following matters and such other matters, as it may consider necessary, prior to grant of registration within the time specified under sub-section (1) of section 5, namely:-
- (a) the nature of rights and interest of the promoter to the land which is proposed to be developed;
 - (b) extent and location of area of land proposed to be developed;

- (c) layout plan of the project;
 - (d) financial, technical and managerial capacity of the promoter to develop the project;
 - (e) plan regarding the development works to be executed in the project; and
 - (f) Conformity of development of the project with neighbouring areas.
- (4) The Authority may in the interest of the allottees, enquire into the payment of amounts imposed as penalty, interest or compensation, paid or payable by the promoter, in order to ensure that the promoter has not:
- (a) withdrawn the said amounts from the account maintained as provided under sub-clause (D) of clause (I) of sub-section (2) of section 4; or
 - (b) used any amounts paid to such promoter by the allottees for the real estate project for which the penalty, interest or compensation is payable, or any other real estate project;
 - (c) Recovered the amounts paid as penalty, fine or compensation from the allottees of the relevant real estate project or any other real estate project.

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

4.7.1 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.

Rule 26 of Tamil Nadu rules provide that any interest or penalty or compensation imposed on a promoter or an allottee or real estate agent shall be recoverable under section 40 of the Act, from such promoter or allottee or real estate agent, as the case may be, in the same manner as applicable in respect of land revenue as provided in the Tamil Nadu Revenue Recovery Act, 1864.

In Karnataka, the amount due is to be recovered as arrears of land revenue in the manner provided in Karnataka Land Revenue Act, 1964 and the Rules made thereunder.

ENFORCEMENT OF ORDERS

4.8.0 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 prescribed by the Appropriate Government under the rules. The rules in this respect, in general, have prescribed that the orders/directions shall be enforced in the same manner as if it were a decree or order made by a civil court in a suit pending before it and in the event of its inability to execute the order, it will be lawful for the adjudicating officer, the Authority or the Tribunal to send such order to the civil court within the local limits of jurisdiction within which the real estate project is located for execution.

Rule 27 of the Tamil Nadu Rules and Rule 26 of Karnataka Rules provide for orders of the Adjudicating Officers, Authority or Appellate Tribunal, as the case may be, to be enforced in the same manner as if it were a decree or order made by the principal civil court of original jurisdiction in a suit. In the event such authority is unable to execute the order, it shall send a copy of such orders to the civil court having jurisdiction over the local limit within which the project is located or the principal civil court within the local limits of which the person actually resides or works for gain to execute such orders alongwith a certificate stating that such an order has not been executed by it.

SUPERSESION 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.

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 ensuring the genuineness of the project and credibility of promoter 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 by putting 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 this Act obligates every promoter of the project to make an application to the 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. Rules of the States require application in prescribed form till the procedure is made web based as per section 4(3). The Tamil Nadu Rules/ Karnataka Rules requires application for registration to be made in writing in triplicate by the Promoter or his authorized signatory enabled by a Letter of Authority or Board Resolution in Form "A"

WHO IS REQUIRED TO MAKE THE APPLICATION?

5.1.0 The application is required to be made by every person who is a promoter within the meaning of this Act i.e. a person -

- (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) which is an Apex State level Cooperative Housing Finance Society or a primary Housing Society which constructs apartments etc. for their members.
- (v) who is any 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 if the purpose of construction of flats or development of plots is sale to the general public.

In short every person who constructs or get 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. Object of sale being the necessary condition, construction or development carried out for a specific person or entity will not make the person a promoter with obligation to get the project registered. Nor a project where construction is carried on for letting the building or units in the building on hire. Same is the case where a project is for constructing building or units in building not for sale but for the purpose of residence of employees.

Although, a contractor is mentioned as a promoter, a person who merely undertakes the construction works for others without authority to sell will not be a promoter to get the project registered. It is the contractee for whom he works who will be the promoter.

Situations arise where the person constructing the project for purposes of sale and the person actually selling the apartment, plot or building are different. Such situation generally arises in case of development or redevelopment of land or existing buildings where the project is developed by one on the land or building owned by another and the owner of land / building is provided a share in the constructed space or plots developed in the project as a consideration for the development rights to be used over the land. The explanation to section 2(zk) provides that where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells the apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under the Act or the rules or regulations made thereunder.

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.

REGISTRATION OF ONGOING PROJECTS

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. As mentioned Section 3 has come into effect from 1st May, 2017. The obligation is cast only for those projects for which completion certificate is not issued till the date of coming into force of this Act. The Act does not define an ongoing project which raises issues as to promoter's obligation in respect of buildings in which all units are constructed and sold but completion certificate is not issued for any reason.

For a discussion on such ongoing projects chapter IX may be referred to.

PROJECTS IN PLANNING AREA

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

The words 'Planning Area' has been defined as under;

"planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time"

The planning area is the area for development, presently or in

future as specified by the government of the relevant state or the authorities established under any law of the State Government for exercising authority over the land under its jurisdiction. Projects in Chennai metropolitan area are projects within the planning area in Tamil Nadu.

PROJECTS WHICH ARE EXEMPTED FROM THE REQUIREMENT OF 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 meters;
- (ii) the total number of flats proposed to be developed inclusive of all phases is not more than eight.
- (iii) 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) 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.

Acting within its power of rule making, the Government of Maharashtra in 'explanation' to rule 3 has clarified the scope of renovation, repair or redevelopment project which are exempted from registration. It is prescribed that the registration of a real estate project shall not be required,-

- (i) for the purpose of any renovations or repair or redevelopment which does not involve marketing, advertisement, selling or new allotment of any apartment, plot or building as the case may be under the real estate project;
- (ii) only structural repairs of existing buildings are being undertaken by or through any Public Authority or as per

requirement under any law, rules or regulations of the State Government or directions of any Competent Authority.

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. None of the State / UT has reduced the threshold limits for registration of projects as laid down in RERA.

INFORMATION TO BE FURNISHED IN THE APPLICATION;

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

- (a) a brief details 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 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;

5.3.1 In addition to the information prescribed above, various states have prescribed certain additional information to be provided by the promoter. The additional information prescribed by Maharashtra Government as per Rule 3 is given below. The information required by other States is based more or less on same lines:-

- (a) Authenticated copy of the PAN card of the promoter;
- (b) Name, photograph, contact details and address of the promoter if he is an individual or authorized representative; or the name, photograph, contact details and address of the chairman, partners, directors, as the case may be, and the authorized representative in case of other entities.
- (c) A copy of the legal title report reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by practicing advocate;
- (d) Where the promoter is not the owner of the land on which development is proposed, a copy of the collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be, entered into between the promoter and such owner, reflecting the consent of the owner of the land and authenticated copies of legal title report reflecting the title of such owner, on the land proposed to be developed;
- (e) The information relating to the encumbrances in respect of the land where the real estate project is proposed to be undertaken and the details regarding the proceedings which are sub-judice (if any) in respect of such land;
- (f)
 - (i) sanctioned plan where the project is being developed along with information relating to the FSI/ TDR and other entitlements which are proposed to be utilized in accordance with the relevant Development Control Regulations for the time being in force, for carrying out such sanctioned plan and the amenities and common facilities (including common areas, parking spaces) to be provided in accordance with the sanctioned plan;
 - (ii) the Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter;

- (iii) proposed Floor Space Index to be consumed and sanctioned Floor Space Index. In case the sanctioned Floor Space Index is different than what is proposed to be consumed by the promoter, then the proposed Floor Space Index shall be disclosed at the time of registration and as and when the Floor Space Index is sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;
- (iv) proposed Number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s). In case the sanctioned number of building(s) or wing(s) is different than what is proposed to be constructed by the promoter, then the proposed number of building(s) or wing(s) shall be disclosed at the time of registration and as and when the additional number of building(s) or wing(s) are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;
- (v) proposed number of floors in respect of each of the building or wing to be constructed and sanctioned number of floors in respect of each of the building or wing. In case the sanctioned number of floors is different than what is proposed to be constructed by the promoter, then the proposed number of floors shall be disclosed at the time of registration and as and when the additional number of floors are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;
- (vi) Aggregate area in sq. meters of the recreation open space;
- (vii) The number of covered parking spaces,
- (g) the particulars in respect of Architecture and Design Standards, Type of Construction Technology, Earthquake Resistant Measures and the like to be adopted for Buildings and for Common Areas and of amenities/facilities in the Layout Plan of the real estate project;

- (h) the nature of the organisation of allottees to be constituted and to which the title of such land parcels is to be conveyed and the specific local laws to govern such organisation of allottees on completion of real estate project;
- (i) the promoter shall also provide such other information and documents, as may be required by the Authority under these rules or the regulations.

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. The declaration as per Tamil Nadu Rules/ Karnataka Rules is to be furnished in Form B to the effect :-

- (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. A detailed discussion about such requirement is made in para 6.9.0 and chapter IX.

- (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;

Certain States including Tamil Nadu, Maharashtra, Karnataka, Madhya Pradesh and Union Territory of Andaman & Nicobar Islands have added another declaration that the promoter shall not discriminate against any allottee at the time of allotment of any apartment / plot or building as the case may be.

The Act does not lay down any additional information to be submitted in respect of ongoing projects. The rules of certain State/UT however, prescribed certain information in respect of ongoing projects to be submitted in addition to the requirement prescribed in respect of a new project. These are mentioned in Chapter IX.

5.4.0 FEES PAYABLE ALONG WITH APPLICATION FOR REGISTRATION

The application for registration is to be accompanied by the fees payable by specified modes. The amount of fees payable as

prescribed by the rules vary from state to state and is generally based on whether the project is residential or commercial and whether it is on land upto 1000 sq. mtrs. or above. The State of Maharashtra has not made any distinction between the residential and commercial project and has prescribed a fee to be computed at the rates of ten rupees per sq. mtr., subject to minimum fee of Rs.50,000 and maximum of Rs. 10 Lakhs. The registration fees is to be paid through NEFT or RTGS system or any other digital transaction mode.

The Tamil Nadu rules have not prescribed a fee but has left it to be specified by the authority from time to time. The registration fee shall not be levied for the Tamil Nadu Slum Clearance Board developed projects, Affordable Housing Projects of the Tamil Nadu Housing Board and Housing Projects executed by the Tamil Nadu Police Housing Corporation.

The Union Territory of Andaman & Nicobar Islands has prescribed Rs. 5 and Rs. 10 for Group Housing Projects upto 1000 sq. mtr. and above respectively subject to maximum of rupees 5 lakhs. The same is Rs. 10 and Rs. 15 subject to maximum of rupees 7.5 lakhs for mixed development projects, Rs. 20 and Rs. 25 subject to maximum of rupees 10 lakhs for commercial projects and Rs. 5 per sq. mtr. subject to maximum of rupees 2 lakhs for plotted development.

5.5.0 REVIEW OF DOCUMENTS BY THE AUTHORITY

The rules framed by certain States including Karnataka entitle the Regulatory Authority, on receipt of application for registration, to review the documents submitted along with the declaration and enquire, *inter-alia*, into the following matter and such other matters as it may consider necessary, prior to grant of registration namely

- (a) the nature of rights and interest of the promoter to the land which is proposed to be developed;
- (b) extent and location of area of land proposed to be developed;

- (c) layout plan of the project;
- (d) financial, technical and managerial capacity of the promoter to develop the project;
- (e) plan regarding the development works to be executed in the project; and
- (f) Conformity of development of the project with neighboring areas.

GRANT/REFUSAL OF REGISTRATION;

5.5.1 The 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. Under Tamil Nadu Rules/ Karnataka Rules, on grant of registration, the Authority shall issue to the Promoter a Registration Certificate with a proper registration number in Form "C".

5.5.2 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. Under Tamil Nadu Rules/ Karnataka Rules, the Authority shall inform to the applicant in Form "D" and shall also inform the concerned Competent Authority or Statutory Authorities.

5.5.3 In case the applicant moves for withdrawal of application, he can do so before the expiry of 30 days. Under Tamil Nadu Rules registration fees as specified in the regulations made by the Authority shall be retained as process fees and the balance will be refunded to the promoter within 30 days. In Union Territory registration fees to the extent of Rs. 10 and Rs. 50 per sq. mtr. shall

be retained and the remaining refunded within 30 days. In Maharashtra registration fee to the extent as specified by the regulations framed by the Authority shall be retained as administrative charges towards processing of application and the remaining amount shall be refunded to the promoter.

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. Most of the rules including Tamil Nadu Rules provide for waiver of fees in such cases. 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. Under the Maharashtra rules, the period for which registration is valid shall exclude such period where actual work could not be carried by the promoter as per sanctioned plan due to specific orders from any court of law or Tribunal, Competent Authority, Statutory Authority, High Power Committee etc. or due to such mitigating circumstances as may be decided by the Authority. Maharashtra in the model agreement for sale has provided for giving reasonable extension of time for giving delivery of apartment if the completion of building in which the apartment is situated is delayed on account of i) war, civil commotion or act of god and ii) any notice, order, rule, notification of the government and/or other public or competent authority. These circumstances can as well be taken as reasonable causes for extension of registration.

Question arises as to whether advertisement or sale made after the lapse of registration period will be against the provisions of law. In Tamil Nadu the Rules provide that any sale of an unit in the project after the lapse of the registration period and after the

issue of completion certificate from the Competent Authority within the prescribed period as per local laws shall not be violative of the provisions of the Act and shall not be treated as offence prescribed in sub section 2 of section 59 of the Act. MahaRERA has clarified that no registration is needed after issue of O.C. Hence sale of apartments in building with OC does not require RERA registration.

EXTENSION OF REGISTRATION

5.7.0 The Act provides for extension of registration on application by the promoter for such time as it considers necessary but under the law such extension shall not exceed a period of one year. However, the rules have different prescription for such extension. The Tamil Nadu rules as well as rules of other states provide that extension of registration of the project shall not be beyond the period as per local laws for completion of the project or the phase thereof, as the case may be

5.7.1 The application for renewal of registration as per Tamil Nadu/Karnataka rules as well as the rules of most of the states is required to be made not less than 3 months prior to the expiry of original registration. Under Tamil Nadu Rules the Authority may condone the delay in filling the application on payment of late fee of 10% of the registration fees as fixed by the Authority. The application for the extension is to be made in form E with explanatory note setting out the reasons and need for extension with supporting documents. The application must be accompanied by fees which is to be determined with reference to the fees payable on original registration. In Karnataka and Madhya Pradesh for example, the fees payable with application for extension is half the amount of fees payable on original application. Maharashtra has prescribed the same fees for renewal whereas the fees payable as per the rules of Union Territory of Andaman & Nicobar Islands is half of the original fees. Tamil Nadu has left it to be determined by the Authority in the regulations to be framed by it.

5.7.2 In Tamil Nadu grant of extension shall be informed to the

promoter in Form “F” and in case of rejection, the Authority shall inform the promoter in Form “D”. Information shall also be sent to respective Competent Authority and Statutory Authority.

REVOCATION OF REGISTRATION:

5.8.0 The Act provides for revocation of registration by the Authority *suo moto* 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.

5.8.1 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. Under the Maharashtra Rules the Authority shall also give notice to the concerned Competent Authority and association of allottees, if any. In case Association of Allottees is not formed, the Authority may in its discretion also give notice to allottees to submit their say in this behalf. The Authority is also required to give adequate opportunity to any party which through defined instrument of debt or equity have created third party interest in the project. Under rule 8 of the

Tamil Nadu Rules, upon revocation of registration of a project, the Authority shall inform the promoter about such revocation in form D. The details of such revocation of registration shall be released to press periodically and hosted in the website of the Authority

CONSEQUENCES OF REVOCATION:

5.8.2 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 to entrust the remaining work to some entity 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. It

shall also take such measures as may be required to protect the interest of other parties who, through mortgage or other investments are interested in the project.

5.8.3 What is prescribed as a 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 up to 10% of the estimated cost of the project. 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 up to three years or with fine which may extend up to a further 10% of the estimated project cost or, with both.

The Maharashtra rules have clarified that in case of ongoing projects, the prohibition to advertise or selling before registration will apply only at the end of 90 days from the date of notification of section 3 of the Act which gives him a free period of 3 months from the date of the commencement of the Act. Any booking etc. made within this period of 90 days will not attract consequences under the Act.

The Tamil Nadu Rules makes a provision that any sale of an unit in the project after the lapse of registration period and after the completion certificate from the Competent Authority within the prescribed period as per local laws shall not be violative of the provisions of the Act and shall not be treated as offence prescribed in sub-section (2) of Section 59 of the Act. Similar clarification has been issued by Maha RERA.

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. The MahaRERA has devised the site in a way which creates the webpages and display the information therein automatically with display on the website.

Additional information to be displayed on the website as per the rules of certain States / UT is mentioned in Annexure –A.

Maharashtra, as per its rules has prescribed for display on website all the disclosures made by the promoters to the authority with regard to the Real Estate Project for which registration has been given. Exception has been made for the following;

- a) Projects launched in past 5 years [4(2)(b)]
- b) Plan of development work to be executed [4(2)(e)]
- c) Proforma of allotment letter etc. [4(2)(g)]
- d) Number, type & carpet area of apartment for sale [4(2)(h)]
- e) Number and area of garages for sale [4(2)(i)]
- f) Declaration as per 4(2)(l) items (A),(B),(C),(D)

The authority as however been empowered to specify further details to be made available on the website. It shall also ensure that such information is updated at the interval of every quarter.

ANNEXURE A

The disclosure to be made on the website, as per the rules framed by the States are generally as under. There may be slight variations in these rules

(A) Details of the promoter including the following:

- (i) Developer or Group Profile:

(a) a brief detail of his enterprise including its name, registered address, type of enterprise, proprietorship, limited liability partnership, societies, co-operative society, partnership, company, competent authority and the particulars of registration and in case of a newly incorporated or registered entity, brief details of the parent entity including its name, registered address, type of enterprise (proprietorship, societies, co-operative society, limited liability partnership, partnership, companies, competent authority);

(b) Background of promoter - educational qualification, work experience and in case of a newly incorporated or registered entity work experience of the parent entity.

(ii) Track record of the promoter:

(a) number of years of experience of the promoter or parent entity in real estate construction in the state or union territory;

(b) number of years of experience of the promoter or parent entity in real estate construction in other states or union territories;

(c) number of completed projects and area constructed till date;

(d) number of ongoing projects and proposed area to be constructed;

(e) details and profile of ongoing and completed projects for the last five years as provided under clause (b) of sub-section (2) of section 4.

(iii) Litigations: Details of past or ongoing litigations in relation to the real estate project.

(iv) Website:

(a) Web link to the developer or group website; and

(b) Web link to the project website.

(B) Details of the real estate project including the following:

(i) Compliance and registration:

(a) authenticated copy of the approvals and commencement certificate from the competent authority as provided under clause (c) of sub-section (2) of section 4;

(b) the sanctioned plan, layout plan and specifications of the project or the phase thereof, and the whole project as sanctioned by the competent authority as provided under clause (d) of sub-section (2) of section 4; and

(c) Details of the registration granted by the Authority.

(ii) Apartment and garage related details:

(a) Details of the number, type and carpet area of apartments for sale in the project as provided under clause (h) of sub-section (2) of section 4;

(b) Details of the number and areas of garage for sale in the project as provided under clause (i) of sub-section (2) of section 4; and

(c) Details of the number of open parking areas available in the real estate project.

(iv) Registered Agents: Names and addresses of real estate agents as provided under clause (j) of sub-section (2) of section 4.

(v) Consultants: Details, including name and addresses of contractors, architect and structural engineers and other persons concerned with the development of the real estate project as provided under clause (k) of sub-section (2) of section 4, such as:-

(a) name and address of the firm;

(b) names of promoters;

(c) year of establishment; and

(d) names and profile of key projects completed.

(vi) Location: 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 as provided under clause (f) of sub-section (2) of section 4 of the Act.

(vi) Development Plan:

(a) The plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy etc. as provided under clause (e) of subsection (2) of section 4;

(b) Amenities: a detailed note explaining the salient features of the proposed project including access to the project, design for electric supply including street lighting, water supply arrangements and site for disposal and treatment of storm and sullage water, any other facilities and amenities or public health services proposed to be provided in the project; and

(c) Gantt Charts and Project schedule: the plan of development works to be executed in the project and the details of the proposed facilities to be provided thereof.

(C) Financials of the promoter:

(i) Authenticated copy of the PAN card of the promoter; and

(ii) Audited balance sheet of the promoter for the preceding financial year and income tax returns of the promoter for three preceding financial years and in case of a newly incorporated or registered entity annual returns of the last three financial years of the parent entity.

(D) The promoter shall upload the following updates on the webpage for the project, within seven days from the expiry of each quarter:

(i) List of number and types of apartments or plots, as the case may be booked;

(ii) List of number of garages booked;

(iii) Status of the project:

- (a) status of construction of each building with photographs;
- (b) status of construction of each floor with photographs; and
- (c) status of construction of internal infrastructure and common areas with photographs.

(iv) Status of approvals:

- (a) approval received;
- (b) approvals applied and expected date of receipt;
- (c) approvals to be applied and date planned for application;
- (d) modifications, amendment or revisions, if any, issued by the competent authority with regard to any license, permit or approval for the project; and
- (e) downloads:

(v) Approvals:

(v.1) No Objection certificates

- (a) Consent to Establish and Operate;
- (b) Environmental Clearance;
- (c) No Objection Certificate (NOC), Fire Department;
- (d) Permission from Water and Sewerage department;
- (e) Height clearance from Airport Authority of India; and
- (f) Such other approvals as may be required and obtained for the project.

(v.2) Authenticated copy of the license or land use permission, building sanction plan and the commencement certificate from the competent authority obtained in accordance with the laws applicable for the project, and where the project is proposed to be developed in phases, an authenticated copy of the license or land use permission, building

sanction plan and the commencement certificate for each of such phases;

- (v.3) Authenticated copy of the site plan or site map showing the location of the project land along with names of survey numbers, khatha numbers and area of each parcels of the project land;
- (v.4) Authenticated copy of the layout plan of the project or the phase thereof, and also the layout plan of the whole project as sanctioned by the competent authority;
- (v.5) Floor plans for each tower and block including clubhouse, amenities and common areas;
- (v.6) Any other permission, approval, or licence that may be required under applicable law; and
- (v.7) Authenticated copy of occupancy certificate and completion certificate including its application.

(vi) Legal Documents:

- (a) details including the proforma of the application form, allotment letter, agreement for sale and the conveyance deed;
- (b) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development is proposed to be developed along with legally valid documents with authentication of such title, if such land is owned by another person;
- (c) Land Title Search Report from an advocate having experience of at least ten years in land related matters;
- (d) details of encumbrances on the land on which development is proposed including any rights, title, interest or name of any party in or over such land along with details or no encumbrance certificate from the concerned sub-registrar of at-least twelve years in land related matters;
- (e) where the promoter is not the owner of the land on which development is proposed details of the consent

of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed;

(f) Sanction letters:

(a) from banks for construction finance;

(b) from banks for home loan tie-ups.

(g) Contact details: Contact address, contact numbers and email-ids of the promoter and other officials handling the project; and

(h) Such other documents or information as may be specified by the Act or the rules and regulations made there under.

(2) For the purpose of clause (c) of section 34, the regulatory authority shall maintain a database and ensure that the information specified therein shall be made available on its website in respect of each project revoked or penalised, as the case may be.

(3) For the purpose of clause (d) of section 34, the regulatory authority shall ensure that the following information shall be made available on its website in respect of each real estate agent registered with it or whose application for registration has been rejected or revoked:

(a) For real estate agents registered with the Authority:

(i) registration number and the period of validity of the registration of the real estate agent with the regulatory authority;

(ii) brief details of his enterprise including its name, registered address, type of enterprise, proprietorship, societies, co-operative society, partnership, companies etc.;

(iii) particulars of registration including the bye-laws,

memorandum of association, articles of association etc. as the case may be;

(iv) photograph of the real estate agent if it is an individual and the photograph of the partners, directors etc. in case of other persons;

(v) authenticated copy of the PAN card; and

(vi) income tax returns filed under the provisions of the Income Tax Act, 1961 for three financial years preceding the application or in case the applicant was exempted from filing returns under the provisions of the Income Tax Act, 1961 for any of the three years preceding the application, a declaration to such effect;

(vii) Authenticated copy of the address proof of the place of business and the contact address, contact numbers and email-ids of the real estate agent and other officials responsible.

(b) In case of applicant whose application for registration as a real estate agent has been rejected or real estate agent whose registration has been revoked by the regulatory authority:

(i) registration number and the period of validity of the registration of the real estate agent with the regulatory authority;

(ii) brief details of his enterprise including its name, registered address, type of enterprise, proprietorship, societies, co-op. society partnership, companies etc; and

(iii) Photograph of the real estate agent if it is an individual and the photograph of the partners, directors etc. in case of other persons.

(c) Such other documents or information as may be specified by the Act or the rules and regulations made there under.

(4) The Authority shall maintain a back-up, in digital form, of the contents of its website in terms of this rule, and ensure that such back-up is updated on the last day of each month.

ADDITIONAL INFORMATION IN ANDAMAN & NICOBAR ISLAND RULES

The Andaman & Nicobar Island rules require following further information;

- i) Name, Address, Contact details and photographs of promoter in case of individual and of chairman, director, partners as the case may be and that of authorized persons.
- ii) Advertisement and prospectus issued in regard of the project.
- iii) Details of the number, type and carpet area of apartments for sale in the project along with the area of the exclusive balcony or varanda and the exclusive open terrace areas with the apartment, if any, or details of the number, type and area of plots for sale in the project or both as the case may be.
- iv) The stage wise time scheduled of completion of project including the provisions for civic infrastructure like water, sanitation and electricity etc.
- v) Details of mortgage, or charge, if any created on the land and the project.

5.10.1 In addition to the information relating to the project required to be furnished in the application for registration 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 Maharashtra, as per its rules has prescribed for display on website all the disclosures made by the promoters to the authority with regard to the Real Estate Project for which registration has been given. Exception has, however, been made for the following;

- a) Projects launched in past 5 years [4(2)(b)]
- b) Plan of development work to be executed [4(2)(e)]
- c) Proforma of allotment letter etc. [4(2)(g)]
- d) Number, type & carpet area of apartment for sale [4(2)(h)]
- e) Number and area of garages for sale [4(2)(i)]
- f) Declaration as per 4(2)(l) items (A), (B), (C), (D)

The exceptions shall not apply to promoters who shall in accordance with sub-section (1) of Section 11 enter all details of the proposed project as provided under section 4(2) and 3(2) in all the fields as provided for public viewing on the web page created on the website of the Authority. The authority has been empowered to specify further details to be made available on the website. It shall also ensure that such information is updated at the interval of every quarter.

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

Chapter - VI

PROMOTER'S OBLIGATIONS

6.0.0 The Act seeks to protect the interest of allottees by casting obligations on the promoter to ensure fairness and transparency in their dealings with them, empowering the regulatory authority to enforce observance of such obligations and providing deterrence by way of stringent penal consequences for defaults. In general, the promoter has been made responsible for all obligations, responsibilities and functions under the Act, the rules and the regulations thereunder and also as per the agreement for sale. His responsibility under section 11(A)(a) is towards the allottees or the association of allottees till the conveyance of all the apartments, plots or buildings to the allottees and to their association. His responsibility towards allottees, however, continues under section 14(3) even after conveyance in respect of structural defects brought to his notice within 5 years from the date of handing over possession. Under the provisions of sub-section (3) of Section 18, if the promoter fails to discharge any obligation imposed on him under the Act or in accordance with agreement for sale, he shall be liable to pay compensation to the allottee as per the provisions of the Act. The obligations cast on the promoters and the responsibilities imposed are stated hereinafter.

TO GET THE PROJECT REGISTERED WITH THE REGULATORY AUTHORITY [SEC.3]

6.1.0 This is the basic starting point of regulatory framework under which any activity involving the allottees and interface with them can commence only thereafter. The registration serves the basic and most essential purpose of establishing the genuineness of the project and providing essential details concerning the project, the promoter and all persons connected with the project by bringing such information in public domain. For discussion about such obligation and matters relating to registration chapter V may be referred to.

TO CREATE A WEBPAGE AND DISPLAY THE PROJECT [SEC 11 (1)]

6.2.0 After the project is registered, a login ID and password is provided by the Regulatory Authority to the promoter which enables him to have access to the authority's website and create a webpage for the project. The page is to display the prescribed information about the project, the antecedents of promoter and his past activities, financials of promoters, layout plans, approvals, time of completion and other details which a buyer would necessarily like to have. It also bring the disclosures on record and avoid any dispute as to what was disclosed. For the details to be displayed and updated on the website reference may be made to the Annexure to chapter IV.

6.2.1 Any Advertisement or prospectus issued or published by the promoter has necessarily to mention prominently the website address of the Authority wherein all details of the registered projects have been entered and include the registration number obtained from the Authority as well as matters incidental thereto. The promoter is also to upload the quarterly updates of booking of apartments and garages, approvals obtained and pending and the status of the project.

MahaRERA has vide Circular No. 08/2017 laid down Standard Operating Procedure for updating registered projects and revising/correcting information with respect to projects and agents. The circular is Appendix-F of the book.

NOT TO ADVERTISE OR MAKE OFFER FOR SALE WITHOUT REGISTERING THE PROJECT [SEC.3(1)]

6.3.0 Section 3 of the Act prohibits a promoter from advertising, marketing, booking, selling or offering for sale any plot, apartment or building in the project in the planning area without registering the project unless, the project is such which does not require registration. Such exempted projects find mention in para 5.1.0. The requirement of registration applies to those projects also which were outgoing on the date Section 3 comes into force. Provisions in respect of such outgoing projects are mentioned in chapter IX.

In case any invitation to purchase is made by way of advertisement, prospectus or by any other means without getting the project registered, it is violation of the legal provision and might involve penal action in which case the amount of penalty can be upto an amount equal to 10% of the cost of the project as estimated by the Authority. In case of non-compliance of the order in this regard and continued defaults, the promoter may be made punishable with imprisonment for a term upto three years or with fine which may be upto further 10% of the estimated cost or, with imprisonment as well as fine. For provisions relating to registration of project, reference may be made to chapter V.

TO MAKE AVAILABLE CERTAIN DOCUMENTS AT THE TIME OF BOOKING AND ISSUE OF ALLOTMENT LETTER [SEC.11(3)]

6.4.0 The promoter is required to make available the following information to the allottee at the time of booking and issue of allotment letter:

- a) sanctioned plans, layout plans along with specifications approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;
- (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

TO OBTAIN THE COMPLETION CERTIFICATE OR THE OCCUPANCY CERTIFICATE [SEC 11(4)(B)]

6.5.0 The responsibility to obtain the completion certificate or the occupancy certificate or both as per laws of the relevant local authority or any other law in force in the concerned State/Union Territory, is on the promoter who should, after obtaining it, make it available to the allottees individually or in case any association has been formed, to the association of allottees.

6.5.1 In the absence of completion/occupancy certificate it will be unlawful for the promoter to hand over possession to the allottee. The failure to obtain such certificate will, therefore, result in another default under section 18 i.e., his failure to give possession in accordance with the terms of agreement relating to the time of such handing over which will lead to consequences laid down under that section as discussed in para 6.11.0.

TO OBTAIN LEASE CERTIFICATE [SEC 11(4)(C)]

6.6.0 Where the real estate project is developed on a leasehold land, the promoter is responsible for obtaining the lease certificate from the relevant authorities specifying the period of lease and certifying that all dues and charges in regard thereto have been paid. The certificate needs to be made available to the allottees.

TO ENSURE VERACITY OF ADVERTISEMENT [SEC 12]

6.7.0 The advertisement, prospectus or any other document designed to canvass and invite the public to purchase should have information which is not incorrect, false or misleading. A buyer taking decision to buy on the basis of false, incorrect or misleading information contained in the advertisement and making an advance or deposit on that basis is entitled to be compensated by the promoter, if he sustains any loss or damage by reason of acting on such information. The compensation is to be determined by the Adjudicating officer appointed by the Authority and appeal lies against such determination to the Real

Estate Appellate Tribunal. What applies to advertisement, equally applies to model apartment, plot or building which also generally move the buyers in taking the decision.

6.7.1 Apart from compensation, the buyer has also the option to withdraw from the project in which case he is entitled to refund of entire money paid with interest at the rate as may be prescribed by the State Govt. in the rules to be framed by them and the compensation as may be determined by the Adjudicating Authority. In exercise of their power, States have prescribed the rate of interest to be payable by the promoters and the allottees in case of defaults by them attracting interest. The prescribed rates of interest are mentioned in para 6.20.0.

NOT TO ACCEPT DEPOSIT OR ADVANCE EXCEEDING 10% OF COST WITHOUT EXECUTING AGREEMENT TO SELL [SEC13]

6.8.0 A promoter is prohibited from accepting any sum exceeding 10% of the cost of the apartment, plot or building as advance payment or application fee unless, he executes an agreement for sale with the allottee and gets it registered under the law relating to registration.

6.8.1 A model agreement for sale is to be prescribed in the rules and shall specify inter alia the particulars of development of the project along with specifications, internal development works and external development work, the dates and the manner in which payment towards the cost is to be made and the date on which possession of the apartment, plot or building is to be handed over. It will also mention the rate of interest payable by the promoter to the allottees and by the allottees to the promoter in case of their respective default which will be the same in both the cases. The agreement for sale is expected to be on the lines of model sale agreement. Variations are possible provided they are within the provisions of this law and the rules and regulations made thereunder. A proforma agreement for sale is required to be submitted along with the application for registration.

TO KEEP 70% OF THE AMOUNT RECEIVED IN SEPARATE BANK ACCOUNT [SEC.4 (L)(D)]

6.9.0 In order to ensure that the amount received by the promoter from the allottees of a particular real estate project is used towards meeting the land cost and cost of construction of that very project only, the law requires promoter to deposit 70% of the amount realized from time to time in respect of a particular project, in a separate account with a scheduled bank. A declaration to this effect is to be made by the promoter along with the application for registration. The amount so deposited is to be used for the land cost as well as the cost of construction of that project only. To ensure this, the law provides that only so much amount can be withdrawn from this account as does not exceed the amount proportionate to the completion of the project as certified by an engineer, an architect and a chartered accountant in practice.

6.9.1 In case of ongoing projects, the State of Maharashtra has provided that in the event where the estimated receivables of the ongoing project is less than the estimated cost of completion of the project, then 100% of the amount to be realized from the allottees shall be deposited in the separate bank account. Such a provision is not contained in RERA.

6.9.2 The law does not clarify whether the percentage completion contemplated is in terms of the physical completion i.e. the percentage of construction completed to the total construction to be carried out or, in terms of the cost i.e the percentage of the cost incurred to the total estimated cost of the project. Further, whether such percentage is to be applied to the amount standing in deposit in the separate bank account or to the total estimated cost of the project. Each State was supposed to make rules to give effect to the provision.

The explanation to Tamil Nadu Rule 5 provides for determination of percentage completion by taking the proportion of the cost incurred on construction and land cost to the total estimated cost of the project. Such proportion is to be

certified by the chartered accountant. To take an example, if the total estimated cost of the project is Rs. 100 cr, the land cost is Rs. 20 cr and the construction cost is Rs. 25 cr, the amount that can be withdrawn will be 45 % of the amount. The rules also provide that after completion of the project, the promoter shall be entitled to withdraw the balance amount lying in the separate account subject to obtaining the certificate from the engineer, architect and the chartered accountant.

The engineer shall certify that the items shown in the cost of construction is matching to the physical condition at site of the real estate project; the architect shall certify that the physical condition at the site is built as per the sanctioned plan; and the chartered accountant shall certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project.

The Tamil Nadu Rules define the land cost as the market value of the land including the cost incurred by the promoter towards the stamp duty and the registration fees for acquiring ownership over the land either for freehold or leasehold. The provision taking the market value of the land as its land cost appears to be inconsistent with the idea of depositing 70% in a separate account to be used for meeting the cost. Taking the value of land as its cost, in a way, results in withdrawal of profit which is contrary to the purpose of the provision and may be susceptible to challenge as to its legality.

Karnataka takes the land cost as the cost incurred by the promoter for acquisition of ownership and title or the Guidance value in accordance with section 45-B of the Karnataka Stamp Act, 1957 relevant to the date of registration of the real estate project, whichever is higher. Karnataka Rule may also involve a higher amount than the actual cost taken as land cost. The cost so determine is to be increased by i) the amount paid for acquisition / purchase of TDR etc. and ii) amount paid to the Competent Authority for project approval, no objection certificates, stamp duty, transfer charges, conversion charges, taxes, statutory payments to state and central government.

The construction cost under Tamil Nadu Rules is defined to mean the cost incurred by the promoter towards the onsite expenditure for the physical development of the project including the cost incurred by way of fees / charges paid towards obtaining necessary statutory clearances including cost of Transfer of Development Rights, Premium Floor Space Index charges, Finance Cost for the construction of the project and professional consulting charges.

Under Karnataka Rules construction cost includes all such costs incurred by the promoter towards on-site and off-site expenditure for the development of the real estate project including payment of taxes, fees, charges, premiums, interest etc. to any Competent Authority or Statutory Authority of the central or state government including interest paid or payable to any financial institutions including scheduled banks or non-banking financial companies etc.

The Rules framed by the Maharashtra Government has however, taken the view which follows the cost basis of working out the amount that can be withdrawn. Under Rule 5 of the Rules, the promoter shall obtain a certificate from the chartered accountant certifying the proportion of cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the escrow/separate account

To put it differently, the withdrawable amount will be determined as per the formula-

$$\text{Total estimated cost} \times \frac{(\text{Total cost incurred on construction} + \text{Land cost})}{\text{total estimated cost}}$$

6.9.3 The above formula will effectively mean that withdrawal is permitted upto the actual cost incurred on construction plus land cost. To take an example, A project has a total estimated cost of say, 100 crore including land cost of 40 crore and the estimated realization from the project is 120 crore. In this case, if he proposes to withdraw when, as per the certificate of the chartered

accountant, an amount of Rs. 45 crore had been incurred as construction cost, his eligibility to withdraw will be upto Rs. 85 crore computed as under;-

$$100\text{Crore} \times \frac{(45\text{ crore} + 40\text{ crore})}{100\text{ crore}}$$

6.9.4 This leaves a question unanswered under Tamil Nadu, Maharashtra and Karnataka Rules as to whether “land cost” would mean cost of land contracted to be incurred, whether paid or not, or the cost in respect of which payment has been made. In case the former meaning is adopted, the person who has not made full payment and the one who has made full payment will be at the same position. In the example given above, in case one promoter has made full payment of land and another is yet to make payment, the entitlement of both will be 85 crore. The legislature does not appear to have the intention of treating them differently. The word 'incurred' suggest that the agreed cost is to be taken irrespective of payment. This is the view taken by the Maharashtra Authority which takes the amount as land cost if a debt is created. The State of Rajasthan is specifically provides for an amount to be taken as land cost if the amount is paid to the land owner. Gujarat uses the expression 'incurred or paid' by the promoter.

6.9.5. The promoter is further obliged to get his accounts audited within 6 months after the end of every financial year and produce statement of account certified by the chartered accountant in practice to the effect that the amount collected has been utilized for the very project and the withdrawal from the bank account has been in accordance with the legal provisions i.e., in proportion to the work completed.

6.9.6. The provision is likely to be instrumental in preventing the prevailing practice of shifting the funds collected from one project to another project causing consequent delay in the completion of the project for which the amount was realized. Many a times projects are launched even before getting approvals and booking amount is realized which, in the

intervening period, is used for completion of some other project. The requirement of parking the funds in a separate account and withdrawing from it only for purpose of meeting the cost of that project will avoid the possibility of siphoning of funds from one project to another.

6.9.7. The provision and the rules as framed by the States take care of the problem in cases where land cost, which forms the major component of total project cost, is met by the promoter out of his own funds before the realizations start coming from the project. The rule takes into consideration the cost incurred on construction including total land cost. This will mean that the promoter will be able to withdraw from the bank account total land cost and not merely the cost proportionates to construction. Land cost and construction cost has been defined in the rules.

TO ADHERE TO SANCTIONED PLANS AND PROJECT SPECIFICATIONS [SEC 14]

6.10.0 The webpage of the project contains details of sanctioned plan or layout plans and also specifications approved by the authorities. These are also made part of agreement for sale. The promoter is under the obligation to develop and complete the project in accordance with such approved plans and specifications disclosed to the allottees and not to depart in any manner including in the matter of fixtures, fittings, amenities and common areas in respect of any apartment, plot or building. He is prohibited from making any addition or alteration in the plan, specifications, fixtures, fittings and amenities unless he obtains the previous consent of the person who bought it on the faith of such disclosure. He can only make such minor additions or alterations as may be required by the allottee himself or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee. The explanation to the provision explains the import of minor additions and alterations as under

"Explanation-For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc."

State of Maharashtra permits the promoter to aggregate any contiguous land parcel through acquisition of ownership and title or by receiving development permission including for redevelopment project and thereupon may also obtain phase-wise approval from the relevant competent authority.

6.10.1 The obligation to adhere to the sanctioned plan in respect of individual apartment, plot or building as stated above is not affected by any stipulation contained in any law, contract or agreement and holds good inspite of any contrary stipulation to this effect. The obligation is absolute unaffected by anything contained in any law, contract or agreement.

6.10.2 There are situations where the promoter wants to construct floors in existing buildings or additional buildings or wings not disclosed in original sanctioned layout plan in order to exploit the available Floor Space Index. In some cases, he may seek to make alteration in common areas within the project. The Act prohibits him from doing so unless he obtains the previous written consent of at least two-thirds of the allottees (other than the promoter) who have agreed to take apartments in the approved buildings. For counting the two-third number, the allottee who is allotted more than one apartment in his own name or in the name of his family, is to be treated as one allottee only. In case apartment, etc. are booked by persons such as companies or firms or association of individuals in their name and also in the name of their associated enterprises or related enterprises all such allottees will be counted as one allottee only.

In the absence of any provision defining 'associated enterprises' and 'related enterprises', the application of the provision may involve disputes leading to litigation.

The obligation to adhere to the development as per sanctioned plan of the building or the layout takes care of a common grievance of the allottees in such matter. The necessity of obtaining previous written consent of the specified number of allottees is likely to put the matter beyond disputes. However, the provision has been diluted by certain states. State of Maharashtra for example, has provided that the previous written consent of at least 2/3 of the allottees may not be necessary for implementation of the proposed plans/ specifications as disclosed in agreement executed with the allottee prior to registration or for any alterations or additions or modifications in the sanctioned plans, layout plans and specifications of the buildings or common areas which are required to be made by the promoter in compliance of any direction or order etc. issued by the competent authority or any other statutory authority under any law of the State or the Central Government. Maharashtra rules also entitles the promoter to aggregate any contiguous land parcel through acquisition of ownership and title or by receiving development permission including for redevelopment project and thereupon may also obtain phase-wise approvals from the relevant competent authorities to sanctioned plan under applicable laws.

Tamil Nadu State has provided that if the project has been conceived to be developed in phases and the plans for the initial phase are approved by the planning authority prior to the notification of the rules, then, for such project, the requirement of obtaining 2/3 consent from existing allottees, under clause (ii) of subsection (2) of section 14 of the Act is dispensed with for addition/ revision/ modifications of plans for subsequent phases of development, provided the scheme of developing the project in phased manner has been agreed upon by the allottee and promoter in the agreements executed between them and when there is no reduction in the common area and there is no change in the total built up area of the registered phase / project.

TO REFUND THE AMOUNT RECEIVED IN CASE OF FAILURE TO GIVE POSSESSION IN TIME [SEC 18 (1)]

6.11.0 If the promoter fails to complete the project or is unable to give possession of the building, apartment or plot in accordance with the terms of the agreement for sale or within the time specified therein, the allottee has the option either to withdraw from the project or to continue with it. In the former case, the promoter is under an obligation to return the amount received by him with interest at the rate prescribed or to be prescribed by the State Government in the rules and also to pay compensation as may be determined by the Adjudicating officer. For prescribed interest rates para 6.20.0 may be referred to.

Tamil Nadu Rules specifically provide that in case of termination of the agreement, such refund and / or penalty and / or compensation shall be made by the party in breach to the other party simultaneous to the execution of appropriate cancellation agreement and registration, if required. If the defaulting party fails to come forward for execution of registration, the Authority shall have the right to execute such agreement on behalf of the defaulting party.

The Rules also provides that the entitling allottee shall get full refund at any time if the builder has not followed the time schedule. The builder shall not keep 10% of the booked value of the property.

In this connection, it may be relevant to mention para 6 of the draft agreement of sale of Maharashtra which reads as under;-

“The Promoter shall give possession of the Apartment to the Allottee on or before day of 20.... If the Promoter fails or neglects to give possession of the Apartment to the Allottee on account of reasons beyond his control and of his agents by the aforesaid date then the Promoter shall be liable on demand, to refund to the Allottee the amounts already received by him in respect of the Apartment with interest at the same rate as may mentioned in the clause 4.1 herein above from the date the Promoter received the sum till the date the amounts and interest thereon is repaid.

Provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of Apartment on the aforesaid date, if the completion of building in which the

Apartment is to be situated is delayed on account of –

- (i) war, civil commotion or act of God;
- (ii) any notice, order, rule, notification of the Government and/or other public or competent authority”.

6.11.1 In case the allottee decides to continue with the transaction, the promoter will be liable for interest for every month of delay computed till the date of handing over of the possession, at the prescribed rate. The responsibility of the promoter to refund the amount along with interest and compensation remains the same even when the failure to complete and give possession in time is due to discontinuance of business as developer on account of suspension or revocation of the registration or, for any other reason.

6.11.2 The allottee's any other remedy under any other Act remains unaffected by such refund of consideration and payment of interest and compensation.

TO COMPENSATE THE ALLOTTEE FOR LOSS DUE TO DEFECTIVE TITLE OF THE LAND [SEC 18 (2)]

6.12.0 In case the allottee sustains any loss due to defective title of the land on which the project is being developed or has been developed, the promoter will be under an obligation to compensate the allottee by the amount and in the manner as may be determined by the Adjudicating Authority. The allottee's claim arising from loss due to defective title of the promoter will not be barred by limitation under the Limitation Act or any other Act in force.

TO ENABLE FORMATION OF ASSOCIATION OR SOCIETY OF THE ALLOTTEES OR A FEDERATION OF THE SAME [SEC 11(4)(E)]

6.13.0 The Act being a regulatory Act to regulate the construction, sale, management and transfer, deals with matters upto the stage construction is complete and possession is handed over to the allottees except for the limited purpose of rectifying the defects brought to promoter's notice within 5 years of handing over of the possession. The apartments being only an identified part of the building, the management of the building does not rest with individual allottees but with a body representing all the allottees in the project. The law, therefore, envisages formation of a collective body which can be a co-operative society with allottees as members or, a company with allottees as shareholders or, any other association of allottees in accordance with the applicable law of the State. Once such collective body is formed, the promoter is supposed to hand over the management of the building, its common area, amenities and facilities to such collective body and thereafter, the management is carried out in accordance with the law applicable to such collective entity. In case, for example, it is decided to form a cooperative society in Maharashtra, the provisions of Maharashtra Cooperative Societies Act become applicable for regulating the relationship of the allottee members inter-se and with the society.

6.13.1 In case of layout plan, where the development of land consists of construction of several buildings, such societies or associations are formed for each building separately and for management of area and facilities common to all the building, an Apex Body or Federation is constituted with membership of individual societies.

6.13.2 The Act requires the promoter and allottees to form an association or society or cooperative society or a federation of the same under the applicable law of the State. The time within which such association or society is to be formed and the manner of constituting it will be governed by the relevant law. In case, however, there is no law governing such association in any State, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees

having booked their plot or apartment or building, as the case may be, in the project.

As per the Tamil Nadu Rules, the association of the allottees shall be formed, registered and governed by the provisions contained in the Tamil Nadu Apartment Ownership Act, 1994 and the applicable rules for the time being in force. The Association shall take over the maintenance of the project including the common areas and amenities provided in the project within three months from the date of intimation by the promoter upon completion of the project.

The State of Maharashtra has prescribed a period of three months from the issue of occupation certificate in respect of such building or wing or, when a minimum of 51% of total allottees in such building or wing have booked their apartments, whichever is earlier, as the period when a cooperative housing society or a company or any other legal entity of purchasers is to be constituted. Where a Promoter is required to form an Apex Body, he is required to submit an application to form and register within a period of three months from the date of receipt of occupation certificate of the last of the building which was to be constructed in the layout.

6.13.3 The provision as it exists, does not appear to cast responsibility on the promoter alone of formation of such entity of allottees and to decide the nature of entity to be formed. The promoter under the provision is to enable such formation which imply creating circumstances for such formation and extending all cooperation in the process of formation of the entity decided to be formed by the allottees. This might involve problem in practical working as the allottees are spread over, unknown to each other and may find it difficult to come together for taking a decision and acting on it. In the States which have their own legislations, as in Maharashtra, the responsibility of deciding the nature of collective entity viz., cooperative housing society or company or any other association is on the promoter who has also to take action for formation. Maharashtra State has gone a step further by providing for registration on direction of the authority

to the promoter to apply for formation of such legal entity, if the promoter fails to discharge his duty and is reluctant to cooperate. In the absence of a similar provision casting responsibility of formation on any specific person- promoter or allottees – the word 'enable' can be subject to different meanings and should be taken care of by the rules to be framed.

TO PROVIDE ESSENTIAL SERVICES TILL HANDING OVER TO THE ASSOCIATION OF ALLOTTEES [SEC 11(4)(D)]

6.14.0 As mentioned earlier the management of the land and building and the common area and facilities eventually is to be taken over by the association of allottees. The Act provides that till it is done and maintenance work is taken over by such association/ society, the promoter will have the responsibility of providing and maintaining the essential services, on reasonable charges.

TO EXECUTE CONVEYANCE IN FAVOUR OF ALLOTTEES AND THEIR ASSOCIATION [SEC 11(4)(F)]

6.15.0 As mentioned, after the project is completed, occupation certificate is issued by the competent authority and possession is handed over to the allottee, the legal title over the building or the apartment or the plot is to be passed on to the allottee and the association of allottees by executing a registered conveyance deed in their favour.

6.15.1 The Act requires the promoter to execute registered conveyance deed of the apartment, plot or building in favour of the allottee and pass on to him all title document pertaining thereto within the period prescribed under the local laws. In case there is no local law providing for execution of conveyance deed and related matters and no period for conveying the title is agreed, the conveyance deed in favour of allottee should be executed and registered within a period of three months from the date of issue of occupancy certificate.

Under Maharashtra Rules, however, in the absence of any agreement as to the period of conveyancing, it should be

executed within three months from the date of issue of occupancy certificate or when 51% of the total number of allottees in such building or wing have paid the full consideration to the promoter, whichever is earlier. In case of plots, the period of conveyance of title by the promoter to the allottees will be three months from the date the allottees have paid full consideration.

6.15.2 While the conveyance deed of building, plot or apartment is to be executed in favour of the allottee, the law requires conveyance of the undivided proportionate title of the allottee in the common area, to be executed in favour of the association of allottees. This should also be done within a period of three months from the issue of occupancy certificate, if there is no local law prescribing such period. The law, thus, provide for split conveyancing of the project i.e. of building to individual allottees and of common area to association of allottees.

6.15.3 'Common area' has been defined in Sec.2 (n) to include

- i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
- ii) *the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- iii) *the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*
- iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
- v) *installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- vi) *the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*

vii) all community and commercial facilities as provided in the real estate project;

viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;"

6.15.4 It is seen that common area, inter-alia, includes the entire land and amenities built thereon for the real estate project or its phase, if the project is developed in phases. The entire land as well as other amenities and facilities built over it is to be conveyed to the association of allottees. Certain states including the state of Tamil Nadu and Maharashtra have deviated from the provisions of the Act by prescribing rules of conveyancing which conforms to their respective State Acts. The detailed discussion in regard to the execution of conveyance and the practices followed by different states is contained in chapter X.

PAY ALL OUTGOINGS TILL TRANSFER OF PHYSICAL POSSESSION [SEC.11(4)(G)]

6.16.0 The promoter is obliged to pay all outgoings including land cost, ground rent, municipal or other taxes, charges for water or electricity, maintenance charges, mortgage loan and interest thereon and all other liabilities payable to competent authorities, banks and financial institutions relating to the project, out of money collected from the allottees for the purposes till he hands over physical possession to allottees or their association.

In case he fails to pay such outgoings which remain pending on the handing over of possession, he continues to remain liable even after the property is transferred to the allottees or their association and is also liable for the cost of any legal proceedings which may be taken against him by the person or authority to which the amount was payable.

NOT TO CREATE ANY CHARGE AFTER EXECUTION OF AGREEMENT FOR SALE [SEC 11(4)(H)]

6.17.0 The promoter is prohibited from creating any charge on the apartment, plot or building after the agreement for sale is

executed. If any charge is created in contravention of the provision, even if there is any contrary provision in any other law, such charge will not affect the right and interest of the allottee.

TO GET THE PROJECT INSURED [SEC.16]

6.18.0 The promoter is under an obligation to obtain all such insurances as the appropriate government may notify which may include –

- i) the title of the land and building, and
- ii) construction of the real estate project

He is liable to pay all premiums in respect of insurances relating to the project till the project along with the insurance is transferred to the association of allottees. The insurance shall be for the benefit of the allottees or their association and shall stand transferred to their benefit when the agreement for sale is entered with them. All documents relating thereto shall be handed over to the association of allottees when such association is formed.

NOT TO ASSIGN HIS MAJORITY RIGHTS AND LIABILITIES TO A THIRD PARTY [SEC.15]

6.19.0 Having got the project registered and having started the sale of building, apartment or plot, the promoter cannot leave it midway by transferring his majority rights and liabilities to a third party. Such assignments can be possible only with prior written consent of atleast 2/3 number of allottees and approval of the Regulatory Authority. In working out the number of allottees whose consent is required, the promoter himself will not be taken as an allottee. Further, in case the buildings, apartments or plots are booked in the name of family members, all such family members together are to be taken as one allottee only. Similarly, if the buildings, apartments or plots are booked in the name of concerns viz., companies, firms or other associations and also in the name of their associated or related entities, the concern and its associated/related entities together will be considered a single allottee.

6.19.1 In case the transfer takes place after obtaining the consent of atleast 2/3 allottees and approval of the Authority, the transferee will step into the shoes of the transferor. This will mean that the rights of the persons who became the allottee prior to such transfer will remain unaffected. Further, the new promoter will now be required to independently comply with all the obligations to which the outgoing promoter would have been subjected to, had the transfer not taken place. In case of any default in complying with such pending obligations, the incoming promoter will be liable to all the consequences which the erstwhile promoter would have been subjected to had he not transferred the rights and liabilities under the project.

6.19.2. The transfer so effected will not result in extension of time to the new promoter for completing the real estate project and he will be bound by the time period for completion declared by the erstwhile promoter in his declaration which is displayed on the website.

INTEREST PAYABLE/RECEIVABLE

6.20.0 In order to curb the prevalent practice of the promoters to charge interest at high rates in case of defaults by the allottees and to pay interest at nominal rates in case of defaults by the Promoters, RERA provides for interest to be charged as well as paid at the same rate. Such rate is to be prescribed by the States. The State of Tamil Nadu, Karnataka and others have prescribed the State Bank of India highest marginal cost of lending rate plus 2%. The State of Maharashtra also has prescribed the rate at 2% above the highest marginal cost of lending. In case the SBI marginal cost of lending rate is not in use, it would be replaced by such benchmark lending rate which the SBI may fix from time to time for lending to the general public.

6.20.1 Interest is payable by the promoter in the following circumstances

- i) Where person making advance or deposit suffers loss as a result of incorrect information in advertisement

- ii) Where defects or deficiencies brought to the notice of the promoter within a period of five years from the date of possession are not rectified
- iii) Where the promoter fails to complete or is unable to give possession within time specified in the Agreement or on account of revocation of registration under this Act or discontinuance of business of a developer

Interest is receivable by the promoter under section 19(7) when the allottee fails to make timely payment towards any amount or charges to be paid by him as his share of registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

6.20.2 Most of the rules including the State of Uttar Pradesh and Union Territory of Andaman & Nicobar Islands and Gujarat provide for payment of amount to be refunded along with interest and compensation within a period of 45 days from the date on which such refund along with applicable interest and compensation becomes due. The State of Maharashtra in their rules has prescribed a period of 30 days only within which such amount should be refunded. State of Karnataka prescribe a period of 60 days from the date the amount of such refund along with interest becomes due. Tamil Nadu state has prescribed the longest period of 90 days within which such refund along with applicable interest will be payable.

Chapter - VII

REGULATIONS 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 men 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.

The rules framed require an application to be made to the authority in a prescribed form along with the specified documents. In general, the rules require the application to contain the following details;

- a) brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies etc.);
- b) particulars of registration including the bye-laws, or memorandum of association and articles of association, etc. as the case may be;
- c) photograph of the real estate agent if he is an individual and the photograph of the partners, directors, etc., in case of other entities;
- d) authenticated copy of the PAN Card;
- e) income tax returns filed under the provisions of the Income Tax Act, 1961 (Central Act 43 of 1961) for three financial years preceding the application or in case the applicant was exempted from filing returns under the provisions of the Income Tax Act, 1961 for any of the three years preceding the application, a declaration to such effect;
- f) authenticated copy of the address proof of the place of residence and business;
- g) details (if any) of all real estate projects and their promoters on whose behalf he has acted as real estate agent in preceding five years;
- h) details of all civil and criminal cases pending against him,

if an individual, or any of the partners, directors, trustees etc. in case of other entities:

- i) authenticated copies of all letter heads: rubber stamps, acknowledgement receipts proposed to be used by the real estate agent
- j) such other information and documents, as may be specified by the Authority in regulations.

The application is to accompany fees through NEFT or RTGS or any other digital transaction mode. In Maharashtra the fee to be paid is a sum of Rs. 10000 in case the applicant is an individual and Rs. one lakh in case of applicant being other than individual. Tamil Nadu has prescribed fees of Rs. 25,000/- for individual and Rs. 50,000/- for any one other than individual. State of Madhya Pradesh have prescribed Rs. 10000/- for individual and Rs. 50,000/- for non-individual. The Union Territory of Andaman & Nicobar Islands require Rs. 25,000/- for individual and Rs. 2,50,000/- for others. In Karnataka the fee is Rs. 25,000/- for individual and Rs. 2,00,000/- for others.

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 government of Maharashtra has prescribed a period of 30 days for the authority to take a decision. 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. The validity of registration in Maharashtra and most of other States is five years except in case of Uttar Pradesh which has prescribed a period of ten years.

RENEWAL OF REGISTRATION

7.2.1 The rules provide for renewal of registration. In general, the application for renewal of registration is required to be made 30 days before the expiry of original validity period. State of Maharashtra has however prescribed a period of 60 days in this regard. The state of Karnataka has prescribed a period of 3 months. The application for registration should be accompanied by the prescribed fees which in the case of Tamil Nadu is Rs.5,000/- for individual and Rs.50,000/- for others. In Karnataka the fee payable is Rs.5,000/- for individual and Rs.25,000/- for others. In Maharashtra, the prescribed fee for renewal is the same as for fresh registration. The renewal is granted if the real estate agent continues to comply with the provisions and the rules and regulations thereunder.

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 can not 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 without getting himself registered.

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.

The functions of a real estate agent as prescribed in the Tamil Nadu rules include providing assistance to enable the allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be.

The Maharashtra rules, in addition, require the agent not to involve himself in any unfair trade practices, namely –

- (i) making any statement, whether orally or in writing or by visible representation which-
 - (a) falsely or knowingly represents that services or amenities are of a particular standard or grade
 - (b) represents that the Promoter or himself has approval or affiliation which such promoter or himself does not have
 - (c) makes a false or misleading representation concerning the services which the promoter does not have
- (ii) permitting the publication of any advertisement, whether in any newspaper or other media, of services that are not intended to be offered by the promoter
- (iii) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be
- (iv) discharge such other functions as prescribed by the regulations of the Authority

This is adopted by and large from the provision of clause (c) of section 10 of the Act.

7.5.1 Further, the Agent is required to maintain and preserve such books of accounts, 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 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 upto Rs. 10000/- per day for every day during which the default continues. The total amount of penalty so computed can be upto 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 upto 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 upto 10% of the cost of building, apartment or plot. He can be subjected to imprisonment as well as penalty in appropriate cases.

Chapter - VIII

RIGHTS AND DUTIES OF ALLOTTEES

8.0.0 The Real Estate (Regulation & Development) Act is a comprehensive legislation which regulates the activities of all stakeholders namely, the promoters, the agents and the allottees. The allottee being one of the parties to the transaction is bound by the terms and conditions of the agreement of sale executed in terms of the Act. The Act in Chapter IV lays down the rights of the allottee which he has against the promoter and which are to be enforced by the Regulatory Authority.

RIGHTS OF THE ALLOTTEES

TO OBTAIN INFORMATION [SEC. 19 (1)]

8.1.0 The allottee has the right to obtain information relating to the project including the information about the sanctioned plan/layout plan and the specifications as approved by the competent authority. The information is required to be contained in the webpage of the Authority's site and updated regularly in terms of the provisions of sec. 11(1) of the Act. The right to obtain this information is significant as Sec. 14 obligates the promoter to

adhere to the sanctioned plan and project specification, departure from which empowers the allottees to act against the promoter and stop him from doing so. In case the promoter intends to make any additional construction beyond what is sanctioned in the plan and disclosed to the allottees, he can do so only after obtaining prior written consent of at least 2/3rd number of allottees.

8.1.1 Besides, the allottee is also entitled to all other information which are related to matters provided in the Act, rules or regulations made thereunder or, in the agreement for sale.

TO KNOW STAGE-WISE TIME SCHEDULE OF COMPLETION [SEC. 19(2)]

8.2.0 This is also the information required to be displayed on the website. Apart from the time scheduled for the completion, the allottee is entitled to information regarding water, sanitation, electricity and other amenities and services as agreed with the promoter in the agreement for sale.

TO CLAIM POSSESSION [SEC. 19(3)]

8.3.0 The allottee is entitled to claim possession of the building, apartment or plot as per the declaration given by the promoter in his application for registration of the project. While possession of the building apartment or plot is to be given to the allottee, that of common area is to be handed over to the association of allottees.

Certain states like Tamil Nadu have made a departure from the above provision. Rule 9 (3) provides that the promoter may convey the undivided share of land including the proportionate undivided share in the common area directly to the respective allottee. In that case requirement of transfer of common area to association as provided under section 17 of the Act shall not arise.

TO CLAIM REFUND IN THE EVENT OF NON-COMPLETION [SEC. 19 (4)]

8.4.0 The allottees is entitled to claim the refund of the amount

paid alongwith interest at the prescribed rates, and compensation as may be determined by the adjudicating authority in the event of failure by the promoter to give possession in accordance with the terms of the agreement for sale. Even if such failure is due to discontinuance of business as a developer on account of suspension or revocation of registration, the allottee's right to claim such refund and other amount remains unaffected.

Under Maharashtra model agreement of sale, the promoter is entitled to reasonable extension of time for giving delivery of apartment if the completion of building in which the apartment is to be situated is delayed on account of (i) war, civil commotion or act of God and (ii) any notice, order, rule, notification of the government and/or other public or competent authority.

TO OBTAIN DOCUMENTS AND PLANS [SEC. 19(5)]

8.5.0 The allottees are entitled to have documents and plans including that of common area after the possession is handed over by the promoter to him or the association of allottees.

RESPONSIBILITIES OF ALLOTTEES

TO MAKE PAYMENT [SEC. 19(6)]

8.6.0 Every allottee, who has entered into an agreement to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, as may be payable. The obligation to make payment within specified time may be changed with mutual agreement.

TO PAY INTEREST AT PRESCRIBED RATE [SEC. 19 (7) & (8)]

8.7.0 The allottee is liable to pay interest at the rate to be prescribed for any delay in payment of any amount which is due

from him in respect of cost, maintenance, registration or under any other head. The liability towards interest may be reduced by the mutual agreement between the promoter and the allottee.

For the rates prescribed for payment of interest para 6.20.0 may be referred to.

TO PARTICIPATE TOWARDS FORMATION OF SOCIETY/ASSOCIATION [SEC. 19(9)]

8.8.0 Every allottee of the building apartment or plot is required to participate in the formation of an association or society or cooperative society of the allottees or a federation of the same. A discussion about such formation is made in para 6.12.

TO TAKE PHYSICAL POSSESSION [SEC. 19(10)]

8.9.0 Allottee shall take physical possession of the building, apartment or plot within a period of two months of the issue of occupancy certificate. As per the Tamil Nadu model sale agreement, the promoter, upon obtaining the occupancy certificate shall offer in writing the possession of the apartment/plot to the allottee to be taken within 3 months from the date of issue of such notice. The Maharashtra model agreement of sale has similar provision in regard to taking physical possession of the apartment/plot.

TO PARTICIPATE IN REGISTRATION OF CONVEYANCE DEED [SEC. 19(11)]

8.10.0 Under section 17(11) the promoter is required to execute a registered conveyance deed of the building, apartment or plot in favour of the allottee and of the undivided proportionate title in the common areas in favour of their association. While the primary responsibility of conveying the title is that of the promoter, the allottee is also responsible to participate in the process and extend all cooperation in the matter. A discussion about registration of conveyance deed is made in chapter X.

PENAL CONSEQUENCES IN CASE OF FAILURE [SEC. 67]

8.11.0 The allottee, in case he fails to comply with or contravene any order decision or direction of the RERA, is liable to a penalty computed per day for the period during which such default continues. The penalty may cumulatively extend upto 5% of the cost of the building, apartment or plot allotted to him as may be determined by the authority.

8.11.1 In case he fails to comply with or contravenes any order or direction of the Real Estate Appellate Tribunal he can be punished with imprisonment for a term upto one year or with fine for everyday during which such default continues which may extend upto 10% of the cost of the building, apartment or plot. He may also be punished by imprisonment as well as fine in appropriate case (Sec. 68).

Chapter - IX

ONGOING PROJECTS

9.0.0 The Application of RERA is retrospective in the sense that it regulates not merely the projects launched after its coming into force but also the projects which commenced prior to that date but had not completed on the date of commencement of the Act. Such projects have been referred to as “Ongoing Projects” and are subjected to all the provisions of the Act, including that of registration with the Authority, if completion certificate has not been issued in respect of such projects on the date the provision comes into force.

WHAT ARE THE ONGOING PROJECTS

9.1.0 Although, obligation has been cast on the promoter to get certain ongoing projects registered, the Act does not define the ongoing projects. Only those ongoing projects are required to be registered in respect of which the completion certificate has not been issued as on the date of commencement of the Act, i.e. the commencement of the provisions of section 3. In the absence of any meaning given to the term “ongoing”, the same has to be understood as per general understanding which points to a project which is not completed.

9.1.1 In the Rules framed by most of the States also, the term remains undefined. The rules of the State of Uttar Pradesh, however, define this term as a project where development is going on and for which completion certificate has not been issued. From this broad meaning, certain States make certain exclusions which will be discussed in later part of the chapter. It will be seen that the essential characteristic of ongoing project is the incomplete development which is in progress. If the development is complete it ceases to be ongoing and the issue or non-issue of completion certificate becomes meaningless.

9.1.2 The question then arise as to when the 'development' can be said to be complete. Does it mean completion of construction or sale or both? The question is relevant to determine the status of a project in which the construction is complete but completion certificate is not received. Does the completion of construction mean completion of development under the Act disqualifying the project as ongoing? As generally understood, incomplete construction and non-receipt of completion/occupation certificate go hand in hand and cannot form two different cumulative conditions because issue of occupation certificate itself implies that construction is complete. If 'construction' alone is taken to be 'development' for the purpose, the project will cease to be ongoing with the completion of construction making the other condition of issue of completion certificate redundant. This interpretation will not be in consonance with the object of the legislation which is to protect the interest of the buyers which relationship takes shape when the property is purchased.

9.1.3 The other basis can be the sale of buildings/apartments or plots. Where the sale of all the apartments/plots is made but the construction is not complete, the project is still ongoing. Completion of construction, although not the sole basis is one of the essential determinant of the status of the project. The same is also within the regulatory powers of the Authority. The sale also, by itself, therefore cannot be the basis of determining the nature of the project. A reasonable view, therefore, appears to be that a project will cease to be 'ongoing' where construction is fully

complete and the apartments/plots stands sold. In such cases there will be no requirement of registration even where the completion/occupation certificate is not issued. If any of the two remains to take place and completion certificate is not issued, the project qualifies to be 'ongoing'.

The above view is, however, contentious. Another view is also prevailing under which the project in which construction has completed and all flats/apartments are also sold will remain ongoing if the completion certificate has not been issued.

As per the clarification issued by MahaRERA, the project ceases to be ongoing if OC is received. Thus, if construction is complete and OC is issued, the project will not be on-going even if the flats were unsold. Further, it has been clarified that if construction is completed and apartments occupied, it will not be ongoing even if OC is not obtained.

9.1.4 It may be mentioned that the state of Uttar Pradesh does not consider a project as ongoing if the construction is complete and 60% of apartments/plots are sold. Such provision is not found in the rules of other States.

9.1.5 Most of the States have desisted from taking a position different from the Act. Certain States have, however, partially deviated from the Act and have prescribed additional basis for deciding whether a project can be treated as 'ongoing project'. The State of UP, for example, while defining ongoing project in Rule 2(h) has provided for exclusion of projects which fulfill any of the following criteria on the date of notification of the Rules: -

- (i) Where services have been handed over to the Local Authority for maintenance.
- (ii) Where the common areas and facilities have been handed over to the Association or the Residents Welfare Association for maintenance.
- (iii) Where all development work have been completed and sale/lease deeds of 60% of the apartments/houses/plots have been executed.
- (iv) Where all development work have been completed and

application has been filed with the Competent Authority for issue of completion certificate

Almost similar provision exists in Karnataka Rules which provide that on-going project will mean a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules.

- (i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;
- (ii) in respect of apartments where common areas and facilities have been handed over to the registered Association consisting of majority of allottees;
- (iii) where all development works have been completed as per the Act and certified by the competent agency and sale/lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;
- (iv) where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate/occupation certificate; and
- (v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial Occupancy Certificate is obtained.

9.1.6 The purpose and rationale of the provision in these Rules do not appear to be in consonance with the objectives of the Act. The 'Real Estate Project' is defined to mean development of land or building and as such once development is completed as specified in situation (iii) and (iv) of the UP rules, the project is completed and should not be treated as ongoing. In all the above four situations, if the development is complete which means that construction and sale is complete that itself is sufficient to take the project out of the purview of 'ongoing project'. In any case, the conditions relating to handing over of services/ common area

and facilities to the association for management does not appear to have any relevance as the object of the Act is to safeguard the interest of the purchasers against the practices of promoters and not in matters relating to management after sale which is taken care of by the respective Acts governing the association of allottees.

It may be that development in the above situations has been taken to mean construction only. In case construction is completed and services/ common area are handed over as per situation (i) and (ii) in the rules, the project, will not be ongoing even if it is not fully sold. The exclusion on the basis of handing over of services/ common area is not in accordance with the purpose and objectives of the Act which is to safeguard the interest of allottees.

Situation (iv) although a deviation from the Act, appears to be taking realistic view of the matter by substituting the requirement of issue of certificate by the requirement of filing the application for certificate. Many a times although the project is complete in all respect, the issue of certificate is not within the control of the promoter and as such, the filing of application excludes it from 'ongoing projects'. The other side of it is that in case the completion certificate is not received by reason of any violation committed by the promoter, the allottees will be deprived of the relief provided to them under the Act.

9.1.7 The state of Tamil Nadu while defining the term 'On-going Project' has diluted the concept of completion certificate. It provides that On-going projects will excludes such projects in Chennai Metropolitan Area for which application for completion certificate has been filed with Chennai Metropolitan Development Authority subject to furnishing certificate from the Architect / Licensed Surveyor / Structural Engineer associated with the project to the effect that all buildings in the project have been structurally completed i.e. all the columns, beams and slabs have been erected supported with photographs. This means that instead of waiting for the issue of Occupation Certificate / Completion Certificate for a project to be out of on-going project, it will be sufficient if an application has been made. Further, even

if all the norms prescribed for the issue of Completion Certificate have not been achieved, an application can be made if the project has achieved the construction level mentioned above.

It has however been provided that the Chennai Metropolitan Development Authority will issue Completion Certificate for those projects in compliance with the Completion Certificate norms prescribed. In case the application is rejected for violation of norms, such projects will be intimated to the Real Estate Authority and will be bound for registration with the Real Estate Regulatory Authority. The rules do not make it clear as to whether the three months period prescribed in the Act will be applicable and, if so whether it will be reckoned from the date of commencement of the Act or from the date the application is rejected.

In case of projects under execution outside Chennai Metropolitan Area for which no provision and procedure is prescribed for issue of Completion Certificate, on completion of prescribed level of construction, they shall be intimated to the concern Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of the rules with a copy marked to the office of the Director of Town and Country Planning who will make public the list of all such projects in the official website on the 16th day of the notification of the rules.

In layout projects, i.e. where land is developed into plots, the project will be excluded from on-going projects if the roads and open spaces are gifted to the local body concerned.

Since some of the agreements must have already been executed, the State of Tamil Nadu has provided that it is not mandatory to substitute the prescribed form of agreement for any agreement to sell, construction agreement or any other document executed by the allottee, prior to the notification of the rule which remains legally valid and enforceable. It shall, however, not be construed to limit the rights of the allottee under the Act.

REGISTRATION OF ONGOING PROJECT

9.2.0 Section 3 of the Act prohibits a promoter of project from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase any plot, apartment or building without registering the project with the Regulatory Authority. A similar prohibition is cast on the promoters whose projects are on-going. They have been obligated to make an application for registration to the Authority within a period of three months from the date of commencement of the Act.

9.2.1 Identical time limitation of 3 months from the commencement of the Act is provided in the Rules framed for almost every State/U.T. Governments. The essential contents of the application for registration as per Section 4 of the Act, procedure for making application, documents to be submitted, declarations to be made by the promoter, procedure for making application for extension, validity of registration and other matters relating to registration of projects apply with equal force to application for registration of ongoing projects.

ADDITIONAL DETAILS TO BE SUBMITTED FOR ONGOING PROJECT

9.3.0 Rules framed by different States require the application for registration of ongoing project to contain the same details as laid down for a new project in Section 4(2) of the Act (Refer Para_5.3.0). The declaration as per (A) (B) (C) (D) u/s 4(2)(l) are to be furnished in case of ongoing projects as well. The States, acting within their power to make rules, have prescribed details to be furnished in addition to the details required under the Act. In general these additional details are:

- (a) brief details of the enterprise including its name, registered address, type of enterprise, proprietorship, societies, co-operative society, partnership, companies etc;
- (b) particulars of registration including the bye-laws, memorandum of association, articles of association etc. as the case may be

- (c) photograph of the real estate agent if he is an individual and the photograph of the partners, directors etc. in case of other entities;
- (d) authenticated copy of the PAN card;
- (e) income tax returns filed under the provisions of the Income Tax Act, 1961 for three financial years preceding the year of the application or in case the applicant was exempted from filing returns under the provisions of the Income Tax Act, 1961 for any of the three year preceding the application incorporating a declaration to that effect;
- (f) authenticated copy of the address proof of the place of business; and
- (g) such other information and documents, as may be specified by regulations.

9.3.1 The Rules of Maharashtra and some other States require the promoters of an on-going project to submit the application for such project within three months disclosing all details of ongoing real estate project as required under Sub-section (1) of section 4 and Rule 3. In addition information is required of the extent of the construction work completed in respect of buildings as per the last sanctioned plan of the project and the extent of development of common areas, amenities etc. along with expected period of completion of the on-going real estate project. The Promoter shall submit a certificate from the Project Architect certifying the percentage of completion of construction work of each of the building / wing of the project, a certificate from the Engineer for the estimated balance cost to complete the construction work of each of the building / wing of the project, and a certificate from a Chartered Accountant for the estimated balance cost to complete the project. The promoter shall also submit a certificate from a Chartered Accountant certifying the balance amount of receivables from the apartments/flats/premises sold or allotted and in respect of which agreements have been executed and estimated amount of receivables in respect of unsold apartments /flats/premises calculated at the prevailing ASR rate on the date

of certificate. The Promoter shall further disclose the number of the apartments sold or allotted to the allottees and if such apartments are sold on 'carpet area basis' or on other basis such as built up area, super built up area, etc., for each building as per last approved sanctioned plan, the details thereof; In case of plotted development, the promoter shall disclose the area of the plots sold to the allottees including extent of share of common areas and amenities etc.

Maharashtra rules also require the Promoter to disclose the original time period informed to the allottees at the time of sale for completion of the project and also the delay and the time period within which he undertakes to complete the pending project which shall be commensurate with the extent of development already completed.

DEPOSIT OF SEVENTY PERCENT OF MONEY RECEIVED

9.4.0 The Act provides for a declaration from the promoter to the effect that 70% of the amounts realized 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. Withdrawal from such account will only be to cover the cost of the project, and will be in proportion to the percentage of completion of project after the amount proposed to be withdrawn is certified by an engineer, an architect and a chartered accountant in practice as to the proportion of the percentage of completion of the project. The promoter is also under an obligation to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice who will verify that the amount collected for a particular project and the withdrawal has been in accordance with the proportion to the percentage of completion of the project.

9.4.1 Same provision exists for on-going projects. Various States, in exercise of their rule making power, have made rules to give effect to the above provisions and clarify matters involved in giving effect to it. The State of Maharashtra, in case of ongoing

project, has gone a step further by providing that in the event where the estimated receivable of the ongoing project is less than the estimated cost of completion of the project, then 100% of the amount to be realized from the allottees shall be deposited in the said separate account.

THE WORKING OF THE AMOUNT TO BE DEPOSITED IN SEPARATE BANK ACCOUNTS

9.5.0 The Act requires 70% of the amount realized from the allottees to be deposited in a separate bank account. In case of ongoing projects in respect of which certain amount has already been realized before the commencement of the provision (01.05.2017), a question arises as to whether the base for computation of the amount should be realization from the project as a whole or, only the realization made after the provision came into force. In the absence of any specific clarification to the contrary, the provision as applicable to a new project should be applicable to an ongoing project also. In the States which have not made any specific provision in the matter, the provision of the Act should be applicable which require deposit of the amount to be calculated on the total amount realised from the project. It may, however, be unworkable as most of such realization might already have been spent.

9.5.1 It may be useful to refer to the provision made in the Andaman and Nicobar Islands Real Estate (Regulation and Development) (General) Rules, Rule 4 of which deals with ongoing projects. Sub-Rule (5) of the Rule reads as under:-

*“For projects that are ongoing and have not received completion certificate, on the date of commencement of the Act, the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, **seventy per cent of the amounts already realized from the allottees, which have not been utilized for construction of the project or the land cost for the project as required under sub-clause (D) of clause (I) of sub-***

section (2) of section 4, which shall be used for the purposes specified therein”.

Similar provision exists in Karnataka Rules which provide that the promoter shall deposit in the separate bank account, 70% of the amount already realized from the allottees, which have not been utilized for construction of project or the land cost.

The rule appears to take a realistic view of the situation in such cases as it requires only unutilised amount, out of amount already realized from the allottees, to be the base for computing 70% to be deposited in the bank account. Normal provision will apply in respect of realizations, made after commencement of the provision.

9.5.2 Rule in this regard as contained in the Maharashtra Rules take a different but a practical view, The Rules require seventy percent of the amount **to be realized from the allottees** to be deposited in such separate account. The Promoter is required to submit a certificate from a chartered accountant certifying the balance amount of receivables from the apartments/flats/premises sold or allotted in respect of which agreements have been executed, and estimated amount of receivables in respect of unsold apartments/flats/premises calculated at the prevailing ASR rate on the date of certificate. It is 70% or 100% of this amount which need to be deposited in case of ongoing projects. The Rules framed by the State of Gujarat have similar provision and require 70% of amount to be realized should be taken for deposit in separate bank account.

WITHDRAWAL OUT OF DEPOSITS IN ONGOING PROJECTS

9.6.0 The declaration submitted by the promoter in terms of proviso to clause (1)(D) of section 4(2) of the Act states that the promoter shall withdraw the amount from the separate account to cover the cost of the project, in proportion to the percentage of the completion of the project. Further, the amounts from the separate account shall be withdrawn by the promoter after it is certified by the engineer, an architect and a chartered accountant

in practice that the withdrawal is in proportion to the percentage of the completion of the project.

HOW TO COMPUTE THE WITHDRAWABLE AMOUNT ?

9.7.0 Reading of the provision brings out that in order to compute the amount that can be withdrawn one needs to compute the percentage of completion. The law does not clarify whether the percentage contemplated is in terms of the physical completion by taking the percentage of construction completed to the total construction to be carried out or, in terms of the cost by taking the percentage of the cost incurred to the total estimated cost of the project consisting of land cost and the construction cost. Further, whether such percentage is to be applied to the amount standing in deposit in the separate bank account or to the total estimated cost of the project. Each State was supposed to make rules to give effect to the provision.

9.7.1 The rules framed by the Maharashtra Government have however, taken the view which follows the cost basis of working out the amount that can be withdrawn. Under the Rules, the promoter shall obtain a certificate from the chartered accountant certifying the proportion of cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the separate account. To put it differently, the withdrawable amount will be determined as per following formula-

$$\text{Total estimated cost} \times \frac{(\text{Total cost incurred on construction} + \text{Land cost})}{\text{total estimated cost}}$$

The above formula will effectively mean that withdrawal is permitted upto the actual cost incurred on construction plus land cost. To take an example, A project has a total estimated cost of say, 100 crore including land cost of 40 crore and the estimated realization from the project is 120 crore. The same was registered as ongoing project when 40% of the realizable value i.e. Rs.48 crore had already been realized. As per the Rules, the promoter will be depositing the balance realizable i.e. Rs 72 crore as and when

realized. In this case, if he proposes to withdraw when, as per the certificate of the chartered accountant, an amount of Rs. 45 crore had been incurred as construction cost, his eligibility to withdraw will be upto Rs. 85 crore computed as under:-

$$100\text{Crore} \times \frac{(45 \text{ crore} + 40 \text{ crore})}{100 \text{ crore}}$$

Since the total deposit at any time will be upto Rs.72 crore only, he will be eligible to withdraw the entire amount in deposit any time.

Probably the intention of the law is to apply the percentage not to the total estimated cost but to the amount in deposit in the escrow/separate account so that some amount always remain in the account. There is, however, no clarity on the subject.

So far as ongoing projects are concerned the Circular No. 05/2017 of MahaRERA clarifies that Rule 5(1)(i)(b) of Maharashtra Rules applicable to new projects shall also apply mutatis mutandis to ongoing projects.

The clarification will mean that for computing the amount that can be withdrawn, the base will be the cost incurred from the inception of the project and not from the date on which the ongoing project is registered. This creates an anomaly as, while for deposit only the amount to be realized is to be taken into consideration, withdrawal can be made of the entire cost from the inception of the project. The anomaly is sought to be removed by providing in Circular No. 07/2017 that 100% of the amount received towards consideration till the date of registration will be taken as the amount withdrawn till date of certificate to be issued by the chartered accountant for the first withdrawal.

HOW TO ASCERTAIN THE LAND COST

9.8.0 For ascertaining the land cost the rules framed by most of the Governments provide that the land cost shall be the cost incurred by the promoter, irrespective of the fact whether the land is freehold or leasehold. Some of the rules state that it will include charges incurred to obtain the approval of the Competent Authority. The State of Maharashtra has, by way of explanation, provided that the land cost shall include;

- (i) the costs incurred by the Promoter for acquisition of ownership and title of the land parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost.
- (ii) premium payable to obtain development or redevelopment rights,
- (iii) amount paid for acquisition of TDR;
- (iv) premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- (v) consideration payable to the outgoing developer to relinquish ownership and title rightsover such land parcels;
- (vi) amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, Transfer charges, Registration fees etc; and
- (vii) ASR linked premiums payable by any Promoter as per requirement of Law, rules or regulations for obtaining right for redevelopment of lands owned by Public Authorities as per act or rules or regulations of the State or Central Government.

9.8.1 It also provides that where the promoter due to inheritance, gift or otherwise, is not required to incur any cost towards acquisition of ownership and title of the land, the cost of land shall be reckoned on the basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act relevant on the date of registration of the project.

9.8.2 The clarification issued by MahaRERA vide Circular No. 7/2017 takes a liberal view of land cost by substituting the acquisition cost of land by a notional cost arrived at by indexing the cost of acquisition of land or development rights or leasehold rights. Indexed cost is the acquisition cost indexed by the cost

inflation index notified by the Central Government for purposes of section 48 of the Income Tax Act. In case the land was acquired before April 2001 it will be the indexed cost of its ASR value as on 1st April 2001. This leaves a question unanswered as to whether “cost incurred” would mean cost contracted to be incurred, whether paid or not, or the cost actually paid. In case the former meaning is adopted, the person who has not made full payment and one who has made full payment will be at the same position. In the example given above, in case one promoter has made full payment of land and another is yet to make payment, the entitlement of both will be 85 crore. The legislature does not appear to have the intention of treating them differently. The word 'incurred' suggest that the agreed cost is to be taken irrespective of payment. The same views has been taken by MahaRERA in Circular No. 07/2017 wherein it has been stated that the expression ‘incurred’ would mean amount of product or services received creating a debt in favour of a seller or supplier and shall also include the amount of product or service received against the payment.

HOW TO ASCERTAIN THE CONSTRUCTION COST

9.9.0 Almost all the Rules provide that the construction cost shall be the cost incurred by the promoter towards the on-site expenditure for the physical development of the project. The Maharashtra Rules provide that the cost of construction shall include all such costs, incurred by the promoter, towards the on-site and off-site expenditure for the development of the project including payment of taxes, fees, charges, premiums, interest etc. to any competent authority or statutory authority of the central or State government including principal sums and interest, paid or payable to any financial institution including money lenders. The meaning given by the Maharashtra rules is too all encompassing and beneficial to promoters in the matter of eligibility to withdraw from the bank account.

9.9.1 Rules in the matter of determining land cost and construction cost have been framed by other states also. The

States of Madhya Pradesh and Uttar Pradesh have restricted construction cost to the on-site expenditure only. For the Rules relating to determination of land cost and the construction cost under the Tamil Nadu Rules and the Karnataka Rules para 6.9.2 may be referred to.

PENALTY, INTEREST OR COMPENSATION PAYABLE BY THE PROMOTER NOT TO BE WITHDRAWN

9.10.0 Most of the Rules provide for additional power to the Real Estate Regulatory Authority, in the interest of allottees, to enquire into the payment of amount imposed as penalty, interest or compensation paid or payable by the promoter in order to ensure that the promoter has not withdrawn the amount from the account or shown such amount as used for the real estate project for which penalty etc. was payable or, has recovered the amount from the allottees of the project. The law does not permit such payment to be included in the cost of construction used for the construction of the project and as such the same is not withdrawable.

Chapter - X

FORMATION OF ASSOCIATION OF ALLOTTEES AND TRANSFER OF TITLE

GENERAL

10.0.0 In the scheme of the Real Estate (Regulation and Development) Act, 2016 (RERA), except for regulation of structural defects or any other defect in workmanship, quality or provision of services or non-compliance by the promoter in construction as per agreement of sale brought to his notice by the allottees within five years from the date of handing over possession, RERA ceases to have relevance after the conveyance is effected in terms of clause (f) of sub-section (4) of Section 11. After the conveyance is effected, the ownership rights are vested in the allottees and in association of allottees or competent authority formed in accordance with clause (e) of that sub-section. The association of allottees, which may be a cooperative housing society or a company or any other body, is then responsible for the management of the building in accordance with the relevant Acts and by-laws in case of society, and articles of association in case of a company.

FORMATION OF ASSOCIATION OF ALLOTTEES

10.0.1 As discussed in para 6.13.0 RERA obligates the promoter to form a society or cooperative society or a company or any other association of the allottees, or a federation of the same, under the applicable laws. In the absence of local laws, such association shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building in the project.

10.0.2 The State of Maharashtra in its Rules has prescribed a period of three months from the issue of occupation certificate in respect of such building or wing or, when a minimum of 51% of total allottees in such building or wing have booked their apartments, whichever is earlier, as the period when a cooperative housing society or a company or any other legal entity of purchasers is to be constituted. Where a Promoter is required to form an Apex Body, he is required to submit an application to form the same within a period of three months from the date of receipt of occupation certificate of the last of the building which was to be constructed in the layout.

10.0.3 The rules of Maharashtra state differ from the provisions of RERA in the matter of timeline for formation of the association of allottees. Whereas RERA provides for formation within three months from the majority of allottees booking the flat, under the rules such formation may have to be made earlier i.e. within three months of the issue of occupation certificates if the OC is received more than three months before the majority of buyers booking the flats. MahaRERA, in a different context i.e. in relation to conveyance of title, has clarified that the rules being a subsidiary legislation, the substantive provisions of the Act shall prevail. Applying the same principle to resolve the contradiction between the Act and the rules in matter of formation of association, it can be said that the provisions of RERA will be applicable and the association will be required to be formed within three months of the majority of allottees booking the flat.

10.0.4 The provision of RERA, as stated above prescribe the

timeline to be applicable 'in the absence of local laws'. In Maharashtra, the local law namely, Maharashtra Ownership Flats Act is in force which has provision dealing with the matter of formation of association. As per sec. 10 (1) of MOFA, read with Maharashtra Cooperative Societies Act, the promoter should take steps for formation of such association as soon as 51% of the allottees subject to the minimum number of 10 persons have taken the flats.

TRANSFER OF TITLE

10.1.1 Under the provisions of RERA, once the association of allottees in the form of a society or cooperative society or a company or in the form of any other legal entity is registered, the promoter is required to convey the title of the undivided proportionate common area to such association or the competent authority within the time as specified in the Act and the rules.

10.1.2 The provision is somewhat removed from the practice prevailing in most places under which the possession of the building along with the common areas is conveyed to the association of allottees. In places where the condominiums are formed, the title of the property along with proportionate share in undivided common area is passed on to individual allottees. Maharashtra, for example gives an option to the developer to submit the property to the provisions of Maharashtra Apartment Ownership Act, 1970 in which case conveyance of property as well as proportionate undivided share in common area is conveyed to the individual purchaser. The prevailing system in most of the States require conveyance either to the association of allottees or individual allottees.

The bifurcation of the title between the structure of the building and the common area, as provided in RERA, may involve legal as well as operational problems in actual working. "Common area" has been defined under the Act to mean-

- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

- (ii) the staircases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

10.1.3 It will be seen that 'common area' comprises of not merely land but also the built up spaces and amenities some of which like staircases, lifts, lift lobbies, fire escapes, common entrances etc. are within the building itself and some like parks, play areas and others are outside it. Segregating the apartment and the common areas within the building for separate conveyancing may be a complicated task. It was expected that the modalities of conveyance as per the law will be worked out by the appropriate governments but most of the rules are silent about the matter.

10.1.4 Apart from practical problems, an issue will arise in States like Maharashtra which have their own State laws governing the same matter, running parallel to the central legislation RERA but are different from the provision under the Act. In accordance with Sec. 89 of the Act, the provisions of RERA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The provisions of RERA

should, therefore, be applicable in those states inspite of conflicting provisions in the local laws of the state. As per Sec. 11(4) (F) of RERA the structure must be conveyed to the allottees and common area including land to the Association.

However, it is noticed that certain States in their rules have chosen to follow the provisions of the respective State Act in matters of conveyance of title which might raise question of legal validity of such rules.

CONVEYANCE IN MAHARASHTRA

10.2.0 The position in Maharashtra is also influenced by the fact that there is already an Act in force viz. The Maharashtra Ownership Flats Act, 1963 (MOFA) which obliges the promoter to complete the title of the property and convey the same to the society, company or any other association of flat buyers within the prescribed time. There is another Act in force viz. the Maharashtra Apartment Ownership Act, 1970 (MAOA) which is also in operation. This Act, unlike MOFA, gives the individual apartment owner heritable and transferable rights over the apartment along with proportionate undivided interest in common areas and facilities. The promoter of the project has the option to submit the premises to the provisions of MAOA in which case, the title of apartment along with proportionate undivided share in common area is passed on to the respective allottee, who in turn form an association referred to as condominiums for proper management of the building. Both the legislations are to work along with RERA as, with the coming into force of RERA, they have not been repealed. It will be noticed that unlike RERA, which provides for split conveyance, both these Acts provide for conveyance of title to one person or entity only i.e, either to the association of allottees under MOFA or, to the individual allottee under MAOA.

10.2.1 The rules framed under RERA seek to go by the pattern of MOFA and provide for entire conveyance to the legal entity of allottees. The Rules provide for conveying the title to legal entity of allottees in case of single building within three months from

the date on which the occupation certificate is issued or from the date when 51% of the total number of allottees in such building or wing have paid full consideration to the promoter, whichever is earlier. In case of layout, the rules provide for structure of the building or a wing of building (excluding basements and podiums) to be conveyed to the legal entity within one month from the date of registration of cooperative society or company or constitution of other association of allottees or, within three months of the date of issue of occupation certificate, whichever is earlier. These time limits are to apply in the absence of any period for conveyance agreed upon between the promoter and the allottees and are subject to promoter's right to dispose of the remaining apartments, if any.

10.2.2 As regards the undivided or inseperable land underneath all buildings/ wings along with structures of basement and podiums constructed in a layout, if no period is agreed, the promoter shall , subject to his right to utilize the balance development potential of the layout, execute the conveyance of the entire undivided or inseperable land underneath all buildings, jointly or otherwise, within three months from the date on which the Apex Body or Federation or Holding Company is registered or, the association of allottees is duly constituted or, within three months from the date of issue of occupancy certificate of the last building or wing, whichever is earlier.

10.2.3 In case the promoter fails to convey the title in accordance with the above rules, the Authority shall, by an order, direct the promoter to convey the title in favour of such legal entity. It is also provided that after conveying the title to the legal entity, the promoter shall continue to have the rights and entitlement to advertise, market, book, sell, or offer to sell or allot to persons any apartment or building or plot which is still unsold without any restriction on the entry in the building and development of common areas.

10.2.4 The Maharashtra rules are not in line with the provisions of section 17 of RERA. Apart from the fact that they provide for

conveyance of the property including land and common area to the legal entity of the allottees only whereas RERA provides for conveyance of only the common area to such legal entities, the timeline provided is different from section 17 of RERA. Section 17 of RERA provides that the promoter shall execute a registered conveyance deed within a specified period as provided under the local laws. In the absence of any local law, conveyance shall be carried out by the promoter within three months from the date of issue of occupancy certificate. The rules are also not in agreement with the clauses of the model agreement of sale forming annexure to the rules. The clause 9.2(ii) and 9.2 (iii) of model form of agreement attached to the rules provide a still different timeline and states that the conveyance of title has to be effected within three months of registration of the legal entity of the allottees.

10.2.5 With contradictory stipulations in RERA, Maharashtra Rules and model agreement, a clarification was issued by MahaRERA vide his order No. 04/2017 in which the principle was recognized that rules are subsidiary legislation which cannot override the substantive provisions of the Act. Accordingly, it was said that all agreements executed post May 1, 2017 shall be governed by section 17 of RERA and the conveyance should be executed within three months from the date of issue of occupancy certificate.

10.2.6 The clarification while upholding the applicability of section 17 of RERA, ignores the fact that the timeline of three months from the date of issue of occupancy certificate is to apply in the absence of any local law. One will therefore have to go through the local law if any existing in the state. As stated before, Maharashtra has MOF which is in operation. Section 11 of MOFA provides for execution of conveyance in accordance with the terms agreed to between the promoter and the purchaser. As per Rule 9 of MOFA Rules, in the absence of any period agreed upon, the promoter should convey the title within four months from the date of registration of the society. In case of condominium, the deed of apartment should be executed within four months from the date of giving possession to the purchasers.

10.2.7 In the ultimate analysis therefore, the timeline for conveying the title will be as provided in MOFA i.e. the time as agreed to between the promoter and the purchaser and, in the absence of any agreed timeline, the conveyance in Maharashtra has to be within four months from the date of registration of the legal entity.

CONVEYANCE UNDER TAMIL NADU RULES

10.3.0 In Tamil Nadu also we have a parallel legislation i.e. the Tamil Nadu Apartment Ownership Act, 1994 which having not been repealed, will be in force along with RERA. The Act in the matter of ownership is more or less in line with the Maharashtra Apartment Ownership Act and provide for the ownership of an individual apartment in a building along with undivided interest in common areas and facilities appurtenant to such apartment and make such apartment heritable and transferable immovable property. Section 5 of the Tamil Nadu Apartment Ownership Act lays down that each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the deed of apartment executed and registered in accordance with the provisions of the Act. Section 11 of the Act requires the deed of apartment and every endorsement thereon relating to the transfer of apartment and the floor plan of the building to be registered under the Registration Act.

10.3.1 The Tamil Nadu Real Estate (Regulation & Development) Rules, 2016 accordingly, take the corresponding position by providing for conveyance of undivided share of land including the proportionate undivided share in common areas directly to the respective allottee. Sub- rule (3) of Rule 9 reads as under-

“Project relating to construction of apartment, the promoter may convey the undivided share of land including the proportionate share in the common area directly to the respective allottees”

10.3.2 It may also be relevant to refer to para 10 of the draft agreement of sale which forms part of the rules. Para 10 of the draft agreement reads as under;

“The Parties hereto agree and confirm that the execution and registration of the Sale Deed envisaged for conveyance of the Schedule B property to the Allottee shall be completed only on receipt of all monies due from the Allottee to the Promoter under this Agreement as well as other agreements, if any, executed between the Parties under the scheme of development.”

(Note: Schedule B mentions Description of undivided share of land/plot hereby agreed to be conveyed to the Allottees.)

10.3.3 The rule although framed to give effect to the provisions of RERA makes a departure from its provision and provide for conveyance only to the allottees. Such conveyance will be of undivided share of land including the proportionate undivided share in the common area directly to the respective allottee. The provision is in conformity with the provision contained in the Tamil Nadu Apartment Ownership Act 1994 and also the Maharashtra Apartment Ownership Act 1970.

10.3.4 Para 20 of the draft agreement for sale makes it explicit that the promoter has assured the allottees that the project in its entirety is in accordance with the provisions of Tamil Nadu Apartment Ownership Act, 1994.

10.3.5 To what extent a subordinate legislation like the rules can be contrary to the Act can be a matter of debate. The relevant rule specifically overrides the provisions of section 17 of RERA and makes it clear that the requirement of transfer of common area to the association of allottees as provided under section 17 of the Act shall not arise.

CONVEYANCE IN GUJARAT

10.4.0 Gujarat also has its State Act namely viz The Gujarat Ownership Flats Act, 1973 which also remains in force along with RERA as it has not been repealed.

10.4.1 So far as Ownership is concerned, the Act is on the line of Maharashtra Ownership Flats Act, 1963 and provides for conveyance to the organization of persons who have taken flats.

Section 11 of the Gujarat Ownership Flats Act, 1973 is on line with Section 11 of MOFA and reads as under;

“A promoter shall take all necessary steps to complete his title and convey to the organization of persons, who take flats, which is registered either as a cooperative society or as a company as aforesaid, or to an association of flat-takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed u/s 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power”.

10.4.2 The Rules framed by the State of Gujarat are silent on this matter. This implies that conveyance will have to be as per the provisions of RERA in spite of a different provision in the local Act namely viz Gujarat Ownership Flat Act. In case, however, Gujarat follows the example of Maharashtra and Tamil Nadu and acts as per the State Act, the conveyance will be to the association of allottees.

CONVEYANCE IN KARNATAKA

10.5.0 The State Act of the Karnataka viz The Karnataka Apartment Ownership Act is in line with the Tamil Nadu Apartment Ownership Act and Maharashtra Apartment Ownership Act under which each apartment together with its undivided interest in common areas and facilities appurtenant to such apartment is considered for all purposes a heritable and transferable immovable property. Each owner is given exclusive ownership and possession of his apartment and is required to execute a declaration that he submits his apartment to the provisions of the Act and executes a deed of apartment in relation to his apartment.

10.5.1 The rules framed by the Karnataka Government to give effect to RERA do not have any rule dealing with for transfer of title and, in case the State decides to go as per the State Act, the

conveyance will be to the individual allottees and not to the legal entity of the allottees.

10.6.0 The above discussion brings out departure from RERA provision by the states insofar as, instead of split conveyance to the allottees and the organization of the allottees, provision is made in the rules for effecting conveyance either to the individual allottee or to the organization of allottees so as to conform to their State Act which is also remain in force.

CONVEYANCE IN UNION TERRITORY OF ANDAMAN & NICOBAR AND CHANDIGARH

10.7.0 The rules do not have any specific provision for compliance in respect of conveyance. The draft agreement for sale issued, however, have followed the system of Tamil Nadu providing for execution of conveyance of the title of apartment/plot together with proportionate undivided share in common area within three months from the date of issuance of the occupation certificate / completion certificate to the allottee.

10.7.1 Para 10 of the draft agreement as per the Andaman & Nicobar Islands (Regulation and Development) (Agreement for Sales) Rules 2016 and Chandigarh Real Estate (Regulation & Development) (Agreement for Sale), Rules 2016 may be referred to.

OTHER STATES

10.8.0 States which have not framed any specific rule dealing with conveyance will be going by the provision of section 17 of RERA by making conveyance to allottee as well as organization of allottees of their respective entitlement under the Act.

DEEMED CONVEYANCE IN MAHARASHTRA

10.9.0 A peculiar feature in Maharashtra is the provision for deemed conveyance which can be resorted to by following the prescribed procedure in MOFA in case where the promoter does not make conveyance and is reluctant to do so for whatever reason. The competent Authority, in such cases are empowered

to direct conveyance, even in the face of opposition from the promoter, if they are satisfied that it is a fit case for conveyance. The Rules retain the practice by laying down that the legal entity shall be entitled to have an unilateral deemed conveyance executed in their favour and have it registered under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963.

10.9.1 MOFA by the amendment in 2008 introduced the concept of deemed conveyance to take care of the situation in which the promoter fails to execute the conveyance even at the risk of prosecution and other consequences. This was done by inserting sub-section (3) (4) and (5) to Section 11 of MOFA. Sub-section (3) provides that if the promoter fails to execute the conveyance in favour of the society or the company or the association, the members of such organisation may make an application in writing to the Competent Authority(CA) accompanied by the true copies of the agreement for sale executed by each individual member or the occupation certificate, if any, for issuing a certificates that such society/ company/ association is entitled to have an unilateral conveyance executed in its favour and to have it registered.

10.9.2 On receipt of such application, if the Competent Authority, after making such enquires as it considers necessary, after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard feels satisfied that it is a fit case, he will, within a reasonable time not exceeding six months, issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act 1908 certifying that it is a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant as deemed conveyance.

ADJUDICATION

10.10.0 After issue of Certificate by the Competent Authority, the next step is to move for adjudication of deemed conveyance. The

Inspector General of Registration vide the Circular dated 12-04-2012 had advised the Collectors of Stamps to do the work on priority basis and for this purpose, if required, to form a separate Group of Officers.

The Collector of Stamps is required to guide himself by the last member of any flat for the purpose of determining the stamp duty in case the last member purchased the flat / shop / tenement before the issue of Circular i.e. 12-04-2012. Although an enquiry will be made of all the transactions such an enquiry will not result in withholding the process of adjudication. But if the last member purchased the flat after 12-4-2012, the Collector will look into all the transactions for the purpose of ascertaining proper valuation of stamp duty and recovery of the short fall.

In case the agreements were executed prior to 10-12-1985 and such agreements were registered, the valuation will be based on the true market value on the date of execution. In case the agreements were not registered but there is evidence to the effect that agreement was executed prior to 10-12-1985, the benefit of stamp duty based on market value on the date of execution will still be available. Such evidence can be by way of certified copy of bank Pass Book / Statement, if payment was made by cheque or, by way of other document like electricity bill, telephone bill, municipal assessment bill or list of members submitted to the Registrar of Societies at the time of registration of the Society. If no evidence is available, the stamp duty will be based on the market value of the date on which the deemed conveyance is submitted for adjudication.

If the agreements or other similar documents are pending with the Sub Registrar or any other authority for any reason, the circular requires presentation of such documents to the adjudication authorities so that the adjudication proceedings are not hindered and delayed.

REGISTRATION

10.11.0 The Circular dated 12-04-2012 referred to above requires presentation of the deemed conveyance, duly adjudicated, to the

Competent Authority for execution and thereafter to the concerned Sub Registrar within a period of 4 months from the date of execution. On submission of all the documents, the Registering Officer is required to complete the registration procedure as per the Registration Act.

In case all the agreements are already registered, the deemed conveyance is considered a supplementary document to such agreements and registration fee of only Rs.100/- per agreement is charged. For those who are to be registered for the first time, the true market value of such properties collectively is taken and registration fee is charged at the rate of 1% plus Rs.100/- per agreement for those who have already registered. The registration fee, in any case is not to exceed Rs. 30,000/- in respect of any document.

RULES TO GIVE EFFECT TO DEEMED CONVEYANCE

10.12.0 The concept of unilateral deemed conveyance remained an almost dormant provision mainly for want of notification of Rules laying down the procedure and essential contents of the application to the Competent Authority. This was made good by notification of the amending Rules under MOFA vide Notification No. FOB 2008/CR 170/PR II dated 27th September, 2010.

10.12.1 Rule 12 introduced vide notification dated 27th September, 2010 has prescribed Form VII in which application under Sub-Section (3) of Section 11 is to be made for issue of a certificate that such society/company/AOP is entitled to have unilateral deemed conveyance in its favour. References to Form VII bring out the following essential facts/ information to be furnished in the application.

- (i) As per Para 1, the applicants have to state their identity as to whether the application is being made by the co-operative society or the company or the Association of apartment takers. The copy of the Registration Certificate of the Society/ Company / Association of apartment takers needs to be annexed to the application.

The mention of 'Association of apartment takers' as one of the eligible applicant entities is somewhat confusing as 'Apartment takers' have, under the 2010 amendments, been defined as persons who have purchased the apartment in a property which has been submitted under the provisions of the Apartment Ownership Act, by executing and registering a Declaration as provided by that Act.

The Association of apartment Owners contemplated under Apartment Ownership Act 1970 is not a legal entity and a deed of conveyance under the general law cannot be executed in its favour. Under the Act, the promoter or owner has to execute a deed of apartment in favour of each flat (apartment) owner separately. The Association or the condominium as it is commonly known is an organisation created to regulate mutual relationship between individual flat owners and for enjoyment of common facilities.

- (ii) The Society/Company/Association of Apartment takers should appoint a member as Authorized Representative and a copy of resolution should be annexed.
- (iii) A statement that the Society / Company is in possession of a plot of land giving details including the name of the building and the wings it has.
- (iv) The fact of the members having entered into agreement for sale with the opponent (the promoter) as per Section 4 of MOFA all of which are duly stamped and registered and in which the opponent (Promoter) had agreed to convey the suit premises with the entire building constructed thereon to the Society/Company/association within the specified period or as provided in Rule 9. A copy of such agreement executed with one of the purchaser needs to be annexed.
- (v) List of present members with the details of Flat number, area, stamp duty paid etc in respect of each should be annexed.

- (vi) The fact of the opponent having failed to execute a conveyance for conveying the right, title and interest in the land and the building in favour of the applicants should be stated as also that the applicant is entitled to have a unilateral deemed conveyance in respect of the suit premises under Section 11 of the Act.
- (vii) This should be followed by a request to the Competent Authority to grant a certificate of entitlement to have an unilateral deemed conveyance of suit premises and to have it registered. Request can also be made for cost to be awarded and any other relief that may be found due to the applicant.
- (viii) The application should be signed and verified by the Authorised Representative
The application should bear a court fee stamp of Rs. Two Thousand.

10.12.3 The Government of Maharashtra, Housing Department vide their resolution No.MHS-2008/Pra.Ka.24/Part-2/DU Va Pu-2 dated 25th February, 2011 has provided that the applicant Society, if possible should attach the certified true copies of following documents along with application under Form VI and VII as per Rule 12 of Maharashtra Ownership Flats (Regulations of the Promotion of construction, sale management and transfer) Rules 1964:

- (i) The Registered Agreement for Sale between the Promoter/ Opponent.
- (ii) The extract of 7/12 and the Village Form No.6 (along with mutation entries)
- (iii) Property Card
- (iv) Non-agricultural Order
- (v) Commencement Certificate
- (vi) Completion Certificate
- (vii) Occupation Certificate

- (viii) List of Flat Purchasers
- (ix) Proof of payment of stamp duty
- (x) Proof of registration etc.
- (xi) The synopsis and documents relating to the land or building.
- (xii) The legal notice sent to the Promoter and the other concerned parties for execution of the conveyance or the Certificate in favour of the applicant under Maharashtra Veshma Act, 1970.

10.12.2 The Government of Maharashtra vide its Resolution bearing No. Sankirn/2016/Pra.Kra./Duvapu-2 dated 14th June, 2016 simplified the process of Deemed Conveyance and prescribed that the following documents to be mandatory along with the application for Deemed Conveyance:

1. Application in Form VII of MOFA.
2. Registration Certificate of Cooperative Housing Society / Company / Copy of Deed of Declaration.
3. The Latest 7/12 Extract / Property Register Card (not older than three months') with respect to land in the layout approved by the Developer.
4. The copies of the Agreements for Sale, Index-IIs or the proof of ownership of flats, such as Succession Certificate, Decree issued by the competent court, Will etc.
5. Legal notice issued to the Promoter as per the provisions of the Maharashtra Apartment Ownership Act, 1970;
6. List of the legal flat holders in the building of the Society.
7. Building Completion Certificate / Occupation Certificate duly certified by the Planning Authority.
8. Copy of the order issued by the Competent Authority for use of the land for non-agricultural purposes (if applicable)

Apart from the aforesaid documents, the following requirements

for filing of the Deemed Conveyance Application need to be observed. As reported the requirement of occupancy certificate may be dispensed with

1. The application should be duly notarised.
2. The Court fees of Rs.2000/- is payable along with the application.
3. The Synopsis of the events relating to the case.
4. The application along with the Annexures should be properly indexed.
5. Index to the Application.

Chapter - XI

COMPLAINTS TO AUTHORITY/ADJUDICATING OFFICER

11.0.0 The object of the Act being regulation and promotion of the real estate sector by establishing the Real Estate Regulatory Authority, the functions of the Authority inter alia, is to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder. The Authority is also to ensure compliance of the regulations or orders or directions made in the exercise of its powers under the Act.

11.0.1 Section 31 of the Act lays down that any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules or regulations made thereunder against any promoter, allottee or real estate agent, as the case may be. Person for this purpose include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

11.0.2 The jurisdiction of the Authority and the Adjudicating Officer to entertain complaints is not over-lapping as appears from the provisions of Section 71. The Adjudicating Officer has to

adjudge compensation provided under sections 12, 14, 18 and 19 of the Act and complaints relating to violation and contradiction of all other provisions and matters under the Act is to be entertained by the Authority.

COMPLAINTS BEFORE THE AUTHORITY

11.1.0 Sub- section (2) of Section 31 provides that the form, manner and fees for filing complaints shall be such as may be prescribed. Acting within their powers to make rules, the Governments of various States have prescribed such matters. The rules in generality of cases, require complaint to be made in the form prescribed under the respective Rules in triplicate accompanied by a fee of rupees one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favour of the Authority and payable at the branch of that bank at the station where the seat of that Authority is situated or, through online payment. Complaint to Authority in Maharashtra is to be filed in Form A in triplicate which needs to be accompanied by a fee of Rs.5000/- through NEFT or RTGS system or any other digital transaction mode. The provision to make the complaint in the prescribed form in triplicate will be in force until the application procedure is made web based. The Government of Tamil Nadu has, however, left the amount of fees to be determined by the Authority.

PROCEDURE FOR ENQUIRY

11.2.0 The procedure prescribed for making enquiries in respect of the complaint is a summary procedure. In generality of cases the summary procedure prescribed is mentioned below;

- (a) upon receipt of the complaint, the Authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;
- (b) the respondent against whom such notice is issued under clause (a) of sub-rule (2), may file his reply in respect of the complaint within the period as specified in the notice;

- (c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
- (d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,-
 - (i) pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;
 - (ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;
- (e) in case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;
- (f) in case the Authority is satisfied on the basis of the submissions made that there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by it;

In case it is decided that there is need for further hearing into the complaint, the regulatory authority shall-

- (i) on the date so fixed, if the Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that,-
 - (i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such orders including imposition of penalty as per the provisions of the Act or the rules and regulations made thereunder;
 - (ii) the respondent is not in contravention of the

provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;

if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

11.2.1 The Authority shall have the power to carry out an enquiry, into the complaint on the basis of documents and submissions. The Authority shall also have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which may be useful for, or relevant to, the subject matter of the enquiry and in taking such evidence the Authority shall not be bound to observe the provisions of Indian Evidence Act.

COMPLAINT BEFORE THE ADJUDICATING OFFICER

11.3.0 An adjudicating Officer is an officer appointed under sub-section (1) of section 71. Section 71 provides that for the purposes of adjudging compensation under section 12, 14, 18 and 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge, to be an Adjudicating Officer for holding an enquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

11.3.1 The jurisdiction of the Adjudicating Officer shall therefore, be limited to the enquiry in respect of compensation payable under section 12, 14, 18 and 19. Briefly stated, these sections provide for compensation in following situations-

- (i) Compensation by the promoter for any loss or damage suffered by any person who makes an advance or deposit on the basis of the information contained in the notice,

advertisement or prospectus, or on the basis of any model apartment, plot or building and sustains any loss or damage by reason of any incorrect or false statement included therein. (Sec. 12)

- (ii) Compensation for failure of the promoter to rectify within thirty days any structural defect or any other defect in workmanship, quality or provision of services or any other obligation of the promoter as per the agreement for sale which is brought to his notice within a period of five years from the date of handing over of possession by the allottee. (Sec. 14)
- (iii) Compensation for failure of the promoter to complete the project or his inability to give possession of the apartment, plot or building in accordance with the terms of agreement for sale or, due to discontinuance of business on account of suspension or revocation of the registration or for any other reason. (Sec. 18)
- (iv) Compensation for failure of the promoter to comply or his inability to give possession in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration. (Sec. 19)

PROCEDURE FOR MAKING THE COMPLAINT

11.4.0 The rules, in generality of cases, provide for complaint to be filed to the Adjudicating officer for compensation in the form prescribed under the relevant rules in triplicate, until the application procedure is made web based. The application is to be accompanied by the fees as prescribed in the rules, which in generality of rules, is Rupees one thousand payable by demand draft or banker cheque drawn on a scheduled bank in favour of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated or through online payment. Under Maharashtra Rules, the complaint is to be filled in Form B accompanied by a fee of Rs.5000/- through NEFT or

RTGS systems or any other digital transaction mode. The Rules of the Tamil Nadu government prescribe rupees five thousand to be paid as fees.

PROCEDURE FOR MAKING ENQUIRY

11.5.0 A summary procedure is prescribed for making enquiry by the Adjudicating Officer which is-

- (a) Upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;
- (b) The respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his reply in respect of the complaint within the period as specified in the notice;
- (c) The notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
- (d) On the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent-
 - (i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule and such compensation as he thinks fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder;
 - (ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand an explanation from the respondent;
- (e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;

- (f) in case the adjudicating officer is satisfied on the basis of the submissions made that there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by him;

11.5.1 On the date fixed for hearing, if the Adjudicating Officer upon consideration of the evidence, records and submissions is satisfied that the promoter is –

- (i) liable to pay compensation, he may, by order in writing order payment of compensation as he thinks fit, in accordance with the provisions of the Act or the rules and regulations made thereunder.
- (ii) Not liable to pay compensation, he may by order in writing dismiss the complaint with reasons to be recorded in writing.

11.5.2 While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (I), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

11.5.3 While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

11.5.4 In case any complaint is pending before the Consumer Dispute Redressal Forum or the Consumer Dispute Redressal Commission or the National Consumer Redressal Commission, the complainant may, with the permission of the Forum or the Commission, withdraw the complaint and file the complaint before the Adjudicating Officer under this Act.

11.5.5 The application for adjudging compensation shall be dealt with by the adjudicating officer as expeditiously as possible and shall be disposed of within a period of sixty days from the receipt of the application.

ENFORCEMENT OF ORDERS

11.6.0 The orders of the Authority or the Adjudicating Officer or the Tribunal shall be enforced in such manner as may be prescribed. In the rules in general, such orders shall be enforced in the same manner as if it were a decree or order made by the Civil Court in a suit pending therein. It shall be lawful for the Authority, Adjudicating Officer or the Tribunal, in the event of inability to execute the orders, to send such orders to the civil court for execution either within the local limits of the real estate project or in the principal civil court having jurisdiction over the person against whom the order is being issued. The recovery of the amount directed to be paid shall be in the same manner as prescribed for the arrears of the land revenue.

Chapter - XII

REAL ESTATE APPELLATE TRIBUNAL

12.0.0 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 constituting 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 governments 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.

12.0.1 The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

CONSTITUTION

12.1.0 The Real Estate Appellate Tribunal will function in benches and each bench will consist of a Chairperson and atleast 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.

12.1.1 The chairperson will be a retired or serving 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 atleast 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.

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

12.1.3 As per the rules of most of the States, as and when vacancies of a member in the Appellate Tribunal exist or arise, or are likely to arise, the Government may make a reference to the Selection Committee in respect of the vacancies to be filled.

12.1.4 The Selection Committee may, for the purpose of selection of the member of the Appellate Tribunal, follow such procedure as deemed fit including the appointment of a Search Committee consisting of such persons as the selection committee considers appropriate to suggest a panel of names possessing the requisite qualification and experience and suitable for being considered for appointment as member of the Appellate Tribunal.

12.1.5 The Selection Committee shall select two persons for each vacancy and recommend the same to the Government.

12.1.6 The Selection Committee shall make its recommendation to the Government within a period of sixty days from the date of reference made under sub-rule (1).

The Government shall within thirty days from the date of the recommendation by the Selection Committee, appoint one of the two persons recommended by the Selection Committee for the vacancy of the Member.

12.1.7 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

12.2.0 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.

12.2.1 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

12.3.0 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.

12.3.1 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 –

- (i) denying registration of the project [Section 5(1)(b)]
- (ii) denying extension of registration [Sec. 6]
- (iii) revoking registration of the project and debarring the promoter from accessing to website [Section 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/s 12, 14, 18 and 19 [Sec. 71]

PROCEDURE FOR FILING APPEAL

12.4.0 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 fees prescribed by most of the States is Rs. 1,000/- payable by the demand draft on a nationalize bank. The Maharashtra Real Estate (Regulation and Development)(Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeals Etc.) Rules 2017 provide for a fee of Rs. 5000 through NEFT or RTGS system or any other digital transaction mode. The REAT has the discretion to admit the appeal even after 60 days on satisfaction about existence of sufficient cause for the delay.

12.4.1 Every appeal shall be filed along with the following documents:-

- (a) An attested true copy of the order against which the appeal is filed;
- (b) Copies of the documents relied upon by the appellant and referred to in the appeal;
- (c) An index of the documents.

In Maharashtra, appeal is to be filed in Form Ç in triplicate accompanied by the prescribed documents and fees.

12.4.2 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.

12.4.3 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

12.5.0 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.

12.5.1 Additional powers of the Appellate Tribunal.- The Appellate Tribunal may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, town planning, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any inquiry or proceedings before it.

12.5.2 All proceedings before the REAT shall be deemed to be judicial proceedings within the meaning of Sec. 193, 219 and 228 for purposes of Sec. 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

12.6.0 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

12.7.0 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

12.8.0 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. However, the Consumer Forum (National, State or District) have not been barred from the ambit of the Act. Since the laws of the country do not permit forum shopping, the Ministry of Housing has clarified that an aggrieved can only approach one of the two for disputes over the same matter.

12.8.1 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.

Chapter - XIII

OFFENCES AND PENALTIES

13.0.0 The Act lays down obligations on the promoters, allottees and real estate agents and also provides for consequences for defaults by way of penalty, fine and imprisonment for contravening those provisions by them. Chapter VIII of the Act containing sections 59 to 70 deals with such provisions.

A - PENAL CONSEQUENCES OF DEFAULTS BY THE PROMOTERS

(i) CONTRAVENTION OF SECTION-3 DEALING WITH REGISTRATION OF THE PROJECT (SEC. 59)

13.1.0 Section 3 requires the promoters of real estate projects to get their projects registered with the RERA and prohibits them from advertising, marketing, booking, selling, offering for sale or inviting people in any other manner for purchasing the buildings, apartments or plots in the project without getting the project registered. In case the promoter contravenes the provision and does any such publicity without registration, he can be made liable to pay penalty which can be of an amount upto 10% of the estimated cost of the project.

13.1.1 In case the promoter continues to default even after the order imposing penalty mentioned above is passed, he can be punished either with imprisonment upto three years or with fine upto 10% of the estimated cost of the project or with imprisonment as well as fine.

13.1.2 The amount of penalty and the estimated cost of the project is to be determined by the Authority.

(ii) CONTRAVENTION OF SECTION-4 OBLIGATING THE PROMOTER TO MAKE APPLICATION FOR REGISTRATION & FURNISH INFORMATION (SEC. 60)

13.2.0 In order to get the project registered, the promoter is to make an application u/s. 4 to the Authority within the prescribed time. The application is to be accompanied by the documents containing information prescribed in sub-section (2) of section 4 and declarations to the effect mentioned in (A) to (D) of Clause (1) to section 4(2).

13.2.1 If the promoter does not act as per the provision or submits information or, makes declaration which is false, he can be made liable to penalty upto the maximum amount equal to 5% of the estimated cost of the project as may be determined by the Authority.

(iii) CONTRAVENTION OF OTHER PROVISIONS OF THE ACT (SEC. 61)

13.3.0 Punishment for contravening any provision of the Act or rules or regulations thereunder, except provisions of Section 3 and 4 in respect of which consequences are provided separately in terms of Section 61, is made punishable with penalty which can be upto an amount equal to 5% of the estimated cost of the project as determined by the Authority.

13.3.1 The provision takes within its ambit contravention of all the provisions (except Sec. 3 and 4) without specifying individual defaults which can be made punishable. Going through the provisions of the Act, the penal consequence provided in the

section may, inter alia, be for contravention of following provisions:-

- i. failure to enter details on website [Sec.11(1)]
- ii. failure to quote website address in advertisement for sale [Sec.11(2)]
- iii. failure to make prescribed information available at the time of booking and issue of allotment letter [Sec. 11(3)]
- iv. failure to obtain completion/ occupancy certificate and make it available to allottee [Sec.11(4)(b)]
- v. failure to obtain lease certificate where the development is on leasehold land [Sec.11(4)(c)]
- vi. failure to provide and maintain essential services [Sec.11(4)(d)]
- vii. failure to enable formation of a society or any other association of buyers [Sec.11(4)(e)]
- viii. failure to execute conveyance deed in favour of allottee and association of allottees [Sec.11(4)(f) and Sec. 17]
- ix. failure to pay outgoings until transfer of possession [Sec.11(4)(g)]
- x. Mortgaging or creating a charge on property after executing agreement for sale [Sec.11(4)(h)]
- xi. failure to prepare and maintain details as may be specified by the Authority. [Sec.11(6)]
- xii. Accepting more than 10% of the cost without executing and registering agreement for sale [Sec.13]
- xiii. Not adhering to sanctioned plan and project specifications [Sec.14(1)]
- xiv. Not rectifying defects brought to notice within five years [Sec.14(3)]
- xv. Transferring or assigning majority rights without obtaining prior consent of two-third allottees [Sec.15]

- xvi. failure to get notified insurances [Sec.16]
- xvii. failure to complete the project in time and give possession as per agreed terms [Sec.18]

13.3.2 The penal provision is common for all these defaults and other contraventions/defaults. A view is possible that the amount of maximum penalty specified as upto five percent of estimated cost is for all the defaults taken together. This appears to be a contentious view. Considering that the specified amount if applied to individual defaults might involve unintended harsh punishment particularly in cases where one default necessarily follow the other, the Authority in such cases is likely to take a reasonable view taking the nature of default into consideration.

(iv) FAILURE TO COMPLY WITH THE ORDERS OF THE AUTHORITY (SEC. 63)

13.4.0 A promoter who fails to comply with or contravenes any of the orders or directions of the Authority is made punishable by penalty calculated at the determined amount per day for the period during which the default continues subject to the maximum imposable penalty of amount equal to 5% of the estimated cost of the project as may be determined by the authority.

(v) FAILURE TO COMPLY WITH ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 64)

13.5.0 Failure by the promotor to comply with the orders, decisions or directions of the Real Estate Appellate Tribunal is made punishable with imprisonment for a term upto three years or with fine for every day of default or, with both. The fine to be imposed can be of an amount upto 10% of the estimated cost of the real estate project.

B – DEFAULTS COMMITTED BY THE ALLOTTEES**(I) FAILURE TO COMPLY WITH THE ORDER OF THE AUTHORITY (SEC. 67)**

13.6.0 The allottee contravening or failing to comply with any order, decision or direction of the Regulatory Authority will be liable for penalty as may be determined by the Authority for the period during which such default continues. The total penalty so imposed can be upto an amount equal to 5% of the cost of building, apartment or plot as determined by the authority.

(II) FAILURE TO COMPLY WITH THE ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 68)

13.7.0 If any allottee fails to comply with or contravenes any of the orders or directions of the Real Estate Appellate Tribunal, he can be made punishable with imprisonment for a term upto one year or with fine for every day during which such default continues or with both. The fine so determined as payable can be upto an amount equal to 10% of the cost of building, apartment or plot in respect of which the defaulter is an allottee.

C – PENAL CONSEQUENCES FOR DEFAULT BY AGENTS**(I) FAILURE TO FACILITATE SALE/PURCHASE WITHOUT REGISTRATION (SEC. 62)**

13.8.0 Section 9(1) of the Act prohibits a real estate agent from facilitating the sale or purchase of a building, apartment or plot in a registered real estate project or acting on behalf of any person for such facilitation without obtaining registration as a real estate agent.

13.8.1 Any violation of the provision makes him liable to a penalty which will be Rs. 10,000/- per day of default. The total amount of penalty shall be subject to maximum amount equal to 5% of the cost of building, apartment or plot, sale or purchase of which was facilitated by him.

(II) FAILURE TO PERFORM THE FUNCTIONS UNDER THE ACT (SEC. 62)

13.9.0 Section 10 of the Act lays down the functions of the real estate agent which he is required to perform under the Act. Failure to perform such functions in the way laid down in the Act can be made punishable with penalty computed at Rs. 10,000/- for every day of the default which can cumulatively go upto 5% of the cost of building, apartment or plot of which he facilitated the sale or purchase.

(III) FAILURE TO COMPLY WITH ORDERS OF THE AUTHORITY (SEC. 65)

13.10.0 If any real estate agent, fails to comply with, or contravenes any orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated by him and as determined by the Authority.

(IV) FAILURE TO COMPLY WITH ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 66)

13.11.0 If any real estate agent, fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated, or with both.

NATURE OF PRESCRIBED PUNISHMENT

13.12.0 The Act gives the title “Offences Penalties and Adjudication” to Chapter VIII which prescribes the consequences for various defaults. For most of the defaults

barring (i) continued default by the promoters u/s 3 and (ii) contravention of the orders, decisions or directions of Appellate Tribunal by the promoter, the agent or the allottee, the punishment is by way of penalty which is to be computed with reference to the estimated cost of the project or the cost of the building, apartment or plot in question. The question arises as to whether the penalties prescribed are civil penalties or penalties on conviction for an offence which is taken as illegal act or crime inviting prosecution. In case the defaults mentioned in Chapter VIII are considered as offences being acts which are illegal, the consequences will involve prosecution to be dealt with in accordance with the procedure laid down for such complaints.

13.12.1 The Act does not specify whether the penalties are civil penalties or penalties for contraventions considered as offence. The title of the chapter mentions 'offence' as well as 'penalties' which seem to indicate that while some of the punishments are for default considered as offence and involve prosecution, the others are of the nature of civil penalties to be imposed by the Authority. The distinction is material because of the different principles of jurisprudence applicable to them. While a civil penalty mainly considers the fact of defaults simply, conviction requires establishing the intention of the defaulter, his guilty mind, motive and other factors pointing to the state of mind which play a decisive role.

13.12.2 Wherever penalty is provided, the maximum amount of penalty is to be determined with reference to the estimated cost of the real estate project or of building, apartment or plot in question as determined by the Authority. These penalties appear to be of the nature of civil penalties and can be imposed by the Regulatory Authority on the establishment of default within the maximum amount laid down under the Act without a decisive consideration of the motive or mental state of the offender. These are the penalties prescribed under –

Section 59(1) – default u/s 3

Section 60 – default u/s 4

- Section 61 – default by promoter under other section
- Section 62 – default by agent u/s 9(1)
- Section 63 – contravention by promoter of the orders of RERA
- Section 65 – contravention by the agent of the orders of RERA
- Section 67 – Contravention by allottee of the orders of RERA

The proceeding in respect of these penalties will be initiated and carried out by the Regulatory Authority.

13.12.3 Consequences provided under the following provisions prescribe punishment with imprisonment or fine or both:-

- Section 59 (2) – Continue default by the promoter u/s 3
- Section 64 – Contravention by promoter of the directions of REAT
- Section 66 – Contravention by agent of the directions of REAT
- Section 68 – Contravention by allottee of the directions of REAT

These are provisions in respect of default by the promoter and contravention of orders of the Appellate Tribunal by the promoter, allottee and the real estate agent. These provisions prescribe prosecution for defaults considered as offence proceedings in respect of which are not before the Regulatory Authority. These are provisions for prosecution as is indicated by prescription of 'fine' and 'imprisonment' instead of penalty and the absence of expression 'as determined by the Authority' used in other sections.

13.12.4 For offences described under 59(2), 64, 66, and 68, the penal action by way of prosecution will be on a complaint by the Authority. Reference in this connection may be made to the provision contained in Section 80 under which no court shall take

cognizance of any offence punishable under the Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for the purpose.

OFFENCES BY COMPANIES

13.13.0 If the offence punishable under the Act is committed by a company, every person who, at the time of the offence, was in charge of the conduct of the business of the company or was responsible for its conduct as well as the Company will be deemed to be the person committing the offence and shall be proceeded against in accordance with the provisions of the Act. This will, however, not apply if the person in charge of or responsible for the conduct of business proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

13.13.1 It is not only the person in charge or responsible for the conduct of business who can be punishable but also the director, manager, secretary or any other officer of the company who can be charged for the offence if it can be proved that the offence was committed with his consent or connivance or was attributable to any neglect on his part.

COMPOUNDING OF OFFENCES

13.14.0 If any person is punishable for an offence under the Act, he can either before or after the initiation of proceedings, seek compounding of the offences by the court and the Act permits such compounding subject to the terms and conditions and on payment of fees as may be prescribed in the rules to be framed. It is also provided that the amount to be charged on compounding will not exceed the maximum amount of fine imposable under the Act for that offence.

13.14.1 The compounding fees prescribed by most of the states as per the rules is as under;

Offence	Money to be paid for compounding the offence.
Imprisonment under sub section (2) of section 59.	10 % of the estimated cost of the real estate project.
Imprisonment under section 64.	10% of the estimated cost of the real estate project.
Imprisonment under section 66.	10% of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.
Imprisonment under section 68.	10% of the estimated cost of the plot, apartment or building, as the case may be.

As per Maharashtra Rules the compounding fees is 5% under all the sections subject to the maximum of 10% of the estimated cost or the cost of plot/ apartment/ building, as the case may be.

On payment of the sum of money in accordance with the table any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such person in any court.

The acceptance of the sum of money for compounding an offence in accordance with the table above, by the Court shall be deemed to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)

The promoter, allottee or real estate agent, as the case may be, shall comply with the orders of the Authority or the Appellate Tribunal, within the period specified by the court, which shall not be more than 30 days from the date of compounding of the offence.

Chapter - XIV

RULES AND REGULATIONS

RULE MAKING POWER

14.0.0 The Real Estate (Regulation & Development) Act, 2016 although a central legislation, deals with matters relating to real estate project in respect of which each State/Union Territory has its own laws, practices and procedures. In order to make it work smoothly throughout the Union of India, the Act while laying down the law, leaves its implementation to the Appropriate Governments namely the Government of respective States and Union Territories vesting in them the power to frame the rules for giving effect to those provisions. Thus, while the substantive legislation is that of the Union laying down the broad parameters of regulatory provisions, the subordinate legislative power by way of framing the rules is delegated to the respective State/Union Territory. Such delegation is likely to help the States in adjusting the working of the Act to the needs and circumstances of the particular State.

14.0.1 Section 84 of the Act provides for making rules by the Appropriate Government for carrying out the provisions of the Act within a period of six months of its commencement. The Act

will commence from the date to be notified. The entire Act may not commence on a single date as it empowers the Government of India to notify different dates for coming into force of different provisions. It also provides that in case different dates are notified for coming into force of different provisions, commencement of the Act in relation to that particular provision will be the date when that provision has been notified to come into effect. Vide notification issued on 26th April, 2016 certain provisions have been made applicable with effect from 1st May, 2016 and accordingly, rules in respect thereof will have to be framed by 31st October, 2016. These will be rules relating to matters mentioned at items (l) to (q), (t) to (za), (zc) to (ze) and (zf) of section 84 which relate to provisions brought into force by the above notification. The rules/notifications to be framed/issued by the State Government or the Union Territory Government shall be laid, as soon as possible before the State Legislature or the Union Territory Legislature where the State/Union Territory consists of two Houses or where such legislature consists of one House only, before that House. In case of Union Territory without Legislature, rules are to be framed by the Central Government and, in case of Union Territory of Delhi, by the Central Ministry of Urban Development.

14.1.0 In general, rules are to be framed in respect of matters left to be prescribed under the Act. Without prejudice to the generality of the power, the rules may provide for all or any of the following matters mentioned in sub-section (2) of Section 84-

- (a) information and documents for application to Authority for registration under clause (m) of sub-section (2) of section 4;
- (b) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;
- (c) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;

- (d) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;
- (e) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;
- (f) the discharge of other functions by the real estate agent under clause (e) of section 10;
- (g) the rate of interest payable under section 12;
- (h) the form and particulars of agreement for sale under sub-section (2) of section 13;
- (i) the rate of interest payable under clause (b) of sub-section (1) of section 18;
- (j) the rate of interest payable under sub-section (4) of section 19;
- (k) the rate of interest payable under sub-section (7) of section 19;
- (l) the manner of selection of Chairperson and Members of Authority under section 22;
- (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;
- (n) the administrative powers of the Chairpersons under section 25;
- (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 28;
- (p) the details to be published on the website as under clause (b) and under clause (d) of section 34;
- (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 35;

- (r) the manner of recovery of interest, penalty and compensation under sub-section (1) of section 40;
- (s) the manner of implementation of the order, direction, or decisions of the adjudicating officer, the Authority or the Appellate Tribunal under sub-section (2) of section 40;
- (t) recommendations received from the Central Advisory Council under sub-section (2) of section 42;
- (u) the form and manner and fee for filling of appeal under sub-section (2) of section 44;
- (v) the manner of selection of Members of the Tribunal under sub-section (3) of section 46;
- (w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 48;
- (x) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 49;
- (y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 51;
- (z) any other powers of the Tribunal under clause (h) of sub-section (4) of section 53;
- (za) the powers of the Chairperson of the Appellate Tribunal under section 54;
- (zb) the terms and conditions and the payment of such sum for compounding of the offences under section 70;
- (zc) the manner of inquiry under sub-section (1) of section 71;
- (zd) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 77;

- (ze) the form in which and time at which the Authority shall prepare an annual report under sub-section(1) of section 78;
- (zf) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

REGULATIONS BY THE REGULATORY AUTHORITY

14.2.0 The Appropriate Governments are required to set up the Real Estate Regulatory Authority within one year from the commencement of the Act. The Act, in so far as it relates to the setting up and other matters relating to such Authority contained in sections 20 to 39 has been brought into force by the notification issued by the Government of India on 26th April, 2016. The Authorities will, therefore, have to be constituted by each State/Union Territory either singly or jointly with other(s) by April 30, 2017. Under the provisions of section 85 of the Act, the Authority shall, within a period of three months of its establishment by notification, make regulations consistent with the Act and the rules.

14.2.1 In particular, the Authority shall make regulations providing for all or any of the following matters mentioned in sub-section (2) of Section 85.

- (a) the form and manner of making application and fee payable herewith under sub-section (1) of section 4;
- (b) the form of application and the fees for extension of registration under section 6;
- (c) such other information and documents required under clause (f) of sub-section (1) of section 11;
- (d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;
- (e) preparation and maintenance of other details under sub-section (6) of section 11;

- (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;
- (g) the form, manner and fees for filing a complaint under sub-section (2) of section 31;
- (h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;
- (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

NOTIFICATIONS BY THE CENTRAL GOVERNMENT

14.3.0 Any notification issued by the Central Government including notification for the commencement of the Act or any rule framed by it shall be laid, as soon as may be, before each House of Parliament for a total period of 30 days which may comprise of one session or two or more successive sessions. In case both the Houses agree on some modification or, on not making the notification or the rule, the notification or the rule shall have effect only in the modified form or in the latter case will not have effect at all.

14.3.1 Every regulation made by the authority under the Union Territory of Delhi or the Union Territory without Legislature will also go through the same procedure of laying down before both the Houses of Parliament.

Chapter - XV

CENTRAL ADVISORY COUNCIL

ADVISORY FUNCTIONS

15.0.0 The Real Estate Regulatory Authority, apart from its regulatory functions, is to be a think tank for the development of real estate sector. The Authority shall, in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive market, make recommendations to the appropriate Government or the competent Authority. Section 32 empowers the Authority to make recommendations in respect of 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;
- (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.

15.1.0 The Appropriate Government can also, for purposes of formulating a policy or making laws relating to real estate sector, make a reference to the Authority for its opinion on the possible effects of such policy or the law. On receipt of such reference, the Authority, shall give its opinion within a period of sixty days and the Appropriate Government will then take such action as it considers fit. However, opinion given by the Authority shall not be binding upon the appropriate government in formulating such policy or rules.

15.1.1 The Authority shall also take suitable measures for the promotion of advocacy creating awareness and imparting training about laws relating to real estate sector and policies.

CENTRAL ADVISORY COUNCIL

15.2.0 The Act also provides for establishing a council to be known as Central Advisory Council to be headed by the Minister to the Government of India in charge of Central Ministry dealing with housing, who shall also be the ex-officio chairperson of the council.

15.2.1 The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified. The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

FUNCTIONS OF THE COUNCIL

15.3.0 The functions of the Central Advisory Council shall be to advise and recommend the Central Government, —

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

Chapter - XVI

CONSUMER FORUM

GRIEVANCE REDRESSAL FORUM

16.0.0 “Consumer is the king”, a concept that was alien to the average Indian consumer, got some legal recognition with the passing of Consumer Protection Act in 1986. Getting justice against defects and deficiency in goods and services provided by manufacturers and service providers from the courts remained a myth because of costly and time consuming litigation process. The Consumer Protection Act 1986 came to the rescue of a common man by providing forum for inexpensive and speedy justice to the consumers. The preamble to the Act reads.

“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith”

16.1.0 The Supreme Court in Lucknow Development Authority Vs M K Gupta 1994 SCC (1) 243 after considering the purpose of the Act, objectives it seeks to achieve, the nature of social purpose

it seeks to promote and the definitions of 'consumer' and 'service' under the Act observed that the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law, for various reasons, has become illusory. The court observed that various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The Act attempts to remove the helplessness of a consumer which he faces against powerful business, described as 'a network of rackets' or a society in which producers have secured power 'to rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility, but for extraneous consideration leaving the common man helpless, bewildered and shocked.

16.1.1 To achieve the objectives, a three-tier structure for redressal of grievances viz the District Consumer Commission, the State level commissions and the National Commission for Redressal of Consumer Grievances has been set up which have over a period of 25 years, redressed variety of consumer grievances emanating from unfair trade practices, defective goods and deficient services

WHAT CAN A COMPLAINT RELATE TO -

16.2.0 A complaint to be made to the District Forum, or State Commission or the National Commission can be made when -

- i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
- iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

- iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint, a price in excess of the price
 - (a) fixed by or under any law for the time being in force
 - (b) displayed on the goods or any package containing such goods ;
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
 - (d) agreed between the parties;
- (v) goods which will be hazardous to life and safety when used are being offered for sale to the public, --
 - in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - if the trader could have known with due diligence that the goods so offered are unsafe to the public;
- (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

WHO CAN COMPLAIN

16.3.0 A complainant under sec. 2(b) of the Act can be any of the following persons to whom goods are sold or delivered or any service is provided or agreed to be provided.

- i) a consumer ;or
- ii) any voluntary consumer association registered under the companies Act or under any other law; or
- iii) the Central Govt. or any State Govt; or
- iv) one or more consumers, where there are numerous consumers those having the same interest; or
- v) in case of death of a consumer, his legal heir or representative.

In a recent case filed by a welfare association Lotus Panache Welfare Association vs. Granite Gate Properties Pvt. Ltd. which came before the National Commission, the grievance of the complainant society was that the opposite party after receiving 90% of the total consideration discontinued construction and diverted funds to other projects. Various reliefs were sought from the commission. The complaint was challenged by the builder on the ground that the society had no privity of contract with them. It was also argued that in case the complaint is entertained, even those member will be benefitted from the outcome who are not consumers on account of having made speculative investment. The objections were overruled and the commission held the complaint entertainable. It held that even an individual case of deficiency in service can be taken up by the recognized consumer association before a consumer forum.

HOW TO MAKE COMPLAINT

16.4.0 Every complaint is to be filed in original alongwith two spare copies and additional copies for effective service upon the opposite parties. Only those complaints are to be entertained which are accompanied by the prescribed fees. It is provided that the admissibility of the complaint shall ordinarily be decided within 21 days from the date it is received.

Where a complaint is admitted it shall not be transferred to any other court or tribunal or any authority set up or under any other law for the time being in force.

JURISDICTION OF VARIOUS CONSUMER DISPUTE REDRESSAL FORUM

A. DISTRICT COMMISSION

16.5.0 District Forum is having jurisdiction over complaints where the value of goods or services and the compensation claim does not exceed Rs.20 Lakh. The jurisdiction is determined by the local limit of the place where the opposite party actually resides or operates.

The person aggrieved by the order of the District Forum has a right of appeal against the order to the State Commission within 12 days of the date of order.

B. STATE COMMISSION

16.5.1 If the value of goods or services and the compensation claim is more than Rs.20 lakhs but not more than Rs. One crore, the complaint can be filed before the State Commission having jurisdiction. The State Commission can hear appeal against the orders of the District forums within that State. It can also pass appropriate orders where it appears that the District forum has exercised jurisdiction not vested in it.

Appeal against the orders of the State Commission can be preferred before the National Commission of Redressal of Consumer Grievances.

NATIONAL CONSUMER DISPUTE RESOLUTION COMMISSION

16.5.2 The original jurisdiction of the National Commission to entertain and decide complaint is where the cost of goods or services and compensation claim is more than Rs. One Crore.

In its appellate jurisdiction, the National Commission decides appeals against the orders of any State Commission passed on a complaint or in appeal against the orders of the District forum. It also has the power of revision against the orders of the State Commission and to review its own orders when there is an error apparent on the face of the record.

TEAMING UP OF BUYERS OF FLATS FOR COMPLAINT TO NATIONAL COMMISSION

16.5.3 The Supreme Court in a recent decision upheld a decision by the National Consumer Dispute Redressal Commission allowing the flat buyers to jointly approach it in case of dispute with a builder. The decision allowed the buyers to leapfrog lower courts and approach the apex consumer body.

This was a case of individuals who got together by forming an association Amrapali Sapphire Flat Buyers Welfare Association for moving the National Commission against the Real Estate Developer seeking possession of flats, interest for the delay and other reliefs. The National Commission allowed multiple individuals to club their cases and cross the rupees one crore ceiling. The decision was challenged before the Supreme Court which upheld the order of the National Commission.

The ruling opens the doors for others with complaint of delayed flats to approach the apex panel in a similar manner and remove the handicap of monetary ceiling for approaching to the apex body of consumer protection.

16.5.4 In another landmark decision the National Commission ruled that a tenant or group of tenants seeking compensation of Rs. one crore or more against the builder redeveloping their building can now directly approach national consumer forum for redress under the Act. They no longer have to go through the overburdened judicial system and don't even have to approach the district and state commissions first.

FORM OF RELIEF TO THE CONSUMERS

16.6.0 The Consumer Fora- District, State or National-on satisfaction that the goods or services complained against suffer from any defect/deficiency specified in the complaint, issues order to the opposite party directing him to do one or more of the following –

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury

suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
 - (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
 - (hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

- (hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (i) to provide for adequate costs to parties.

The Consumer fora have vast powers and can be proactive in protecting consumers. As observed by the National Commission in *Karnataka State Electricity Board vs. Escon Pvt. Ltd.* the intention of the Consumer Protection Act is to protect the

legitimate interest of consumers against traders, suppliers etc. The consumer fora must interpret the legal implication of the facts and even if a consumer does not ask for a specific relief, it is open to it to grant appropriate relief as held by the National Commission in the case of *Dist. Manager, Telephones Patna vs. Dr. TarunBharthuar*.

In *Anjan Mujumdar vs. KMDA Developer Kolkata* where West International City Pvt. Ltd. which was developing land taken on 999 years lease from Kolkata Metropolitan Development Authority (KDMA), failed to execute conveyance and hand over possession, the buyers sought a direction, in complaint before State Commission to the developer to execute the Conveyance Deed. The complaint was dismissed by the State Commission as the land not being freehold, conveyance could not have been executed.

The National Commission, however, while agreeing with the State Commission on the issue of conveyance of leasehold land, held that it was not correct to dismiss the complaint for such hyper technical reason. The State Commission ought to have moulded and granted suitable relief by directing the developer to execute a Sub-lease in favour of the purchasers and accordingly set aside the order of the State Commission rejecting the complaint for adjudication on merit.

APPEALS

APPEALS AGAINST ORDERS OF DISTRICT FORUM TO STATE COMMISSION

16.7.0 As mentioned, the aggrieved party against the order of District Commission may prefer an appeal to the State Commission within 30 days from the date of the order. The delay in filing the appeal can be condoned if the State Commission is satisfied that there is sufficient cause for not filing the appeal within the prescribed time.

In order that the appeal can be entertained by the State Commission, the opposite party against whom order is passed by

the District Forum, should make payment of atleast 50% of such amount or Rs.25000, whichever is less. The appeal shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose it of within 90 days from the date of admission.

APPEAL AGAINST ORDERS OF STATE COMMISSION TO NATIONAL COMMISSION

16.7.1 Appeal from orders passed by the State Commission, whether in exercise of original jurisdiction in respect of complaints of the value of more than Rs.20 lakh upto a crore of rupees or, in exercise of appellate jurisdiction in respect of orders passed by District forum needs to be filed before the National Commission within 30 days from the date of the order. The National Commission can condone the delay on satisfaction about the existence of reasonable cause for the delay. It is provided that the appeal shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose it of within 90 days of its admission.

APPEAL AGAINST ORDERS OF NATIONAL COMMISSION TO SUPREME COURT

16.7.2 Person aggrieved by the order of the National Commission passed in exercise of its original jurisdiction i.e., in respect of complaints of above Rs. One crore may prefer an appeal to the Supreme Court within 30 days from the date of its order. The delay may be condoned in the discretion of the Supreme Court.

Appeal to the Supreme Court can be entertained only when payment of atleast 50% directed to be paid by the National Commission or Rs.50000 whichever is less is made by the person who is directed to pay.

SPECIAL LEAVE PETITION

Special Leave to Appeal (SLP) under Article 136 of the Constitution can be filed before the Supreme Court against the

orders of the National Commission passed in appeal revision or review by the Commission.

CONSUMER PROTECTION ACT AND REAL ESTATE

16.8.0 Even though certain States, even prior to the enactment of Real Estate (Regulation and Development) Act, had laws regulating the activities of the promoters, their effectiveness was seriously affected by the problems in going through a civil suit against the mighty builders as it would not only be a prolonged legal battle but would also involve heavy cost in carrying it out. In such a situation consumer forum proved to be the ultimate answer where one was to simply present his case, show the agreement and other documents and argue the case himself, if he so likes, with no significant cost.

16.8.1 The usefulness of consumer forums increased further ever since housing activities have been taken up by the Government through public corporations and development authorities which, in course of time, also became insensitive and unresponsive to buyer's grievances. Grievance redressal through consumer forums became a convenient way in such cases making these institutions popular.

16.8.2 The jurisdiction of consumer forum to building or construction activities carried on by the statutory authority or private builder or contractor and even by bodies whose ancillary function is to allot a plot or construct a flat, came for consideration of the Apex Court in Lucknow Development Authority vs MK Gupta (supra) in appeal against the order of the National Consumer Disputes Redressal commission, New Delhi. It was argued that the applicability of the Act having been confined to moveable goods only, a complaint filed for any defect in relation to immovable goods such as a house or building or allotment of site could not have been entertained by the commission. The Apex Court examined the import of the word 'service' and pointed out that the words 'any' and 'potential users' in the main part of the definition makes it of wild amplitude. The entire purpose of widening the definition is to include in it not only day

to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature, yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration of service as defined in the Act, any deficiency in such service bring it within the purview of the Act.

16.8.3 The Hon'ble court also considered the question as to whether the public authorities under different enactments are also amenable to jurisdiction under the Act, and held that in the absence of any indication, express or implied, there is no reason to hold that authorities created by the statute are beyond the purview of the Act. The test is not whether a person against whom a complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility within the meaning of the Act.

16.8.4 The RERA provides for enforcement of obligations cast upon the promoters through the Real Estate Regulatory Authority which also is likely to be a speedy and convenient way of grievance redressal. The approach to consumer forums may, however, continue to be a preferred way of getting justice against the abuse of power by the builders.

16.8.5 Various judicial pronouncements from the consumer fora, especially landmark judgements given by the Supreme Court and the National Commission have streamlined the issues involved in the disputes in the real estate sector. These are to provide relief to the buyers of buildings, flats or plots against defects and deficiency in service, failure to perform and abuse of dominant position. It will be proper to make a mention of certain decisions relating to deficiency in service and abuse of position pronounced by these Authorities.

I) DEFICIENCY IN SERVICE

16.9.0 Refund with interest to unsuccessful applicants on ground of equity and hardship even without stipulation to that effect:-

One Bhupinder Singh having paid earnest money to the Authority, was unsuccessful in the draw of lots. The money was not refunded nor was there a request for withdrawal from him. Even though as per the rules and the advertisement, no interest was payable to unsuccessful candidates, the District forum ordered payment of interest at 18% and the decision was confirmed by the State and the National commission. The Apex Court, however, taking account of lapse on the part of applicant also, reduced the rate from 18% to 10% and set aside the cost awarded by the consumer forums [*Punjab Urban Planning and Development Authority Vs Bhupinder Singh, 2008 CIJ 926 (SC), Civil Appeal No. 7727 of 2002*]

The Apex Court held a period of 9 months to a year as justifiable period for returning the application fees without interest. Where the delay was unreasonable, the courts have awarded interests notwithstanding the fact that the advertisement clearly provided that no interest will be payable.

In case the name of the applicant was not considered in the draw where the applicant had fulfilled all the requirements, it was held to be a case of 'deficiency in service' for which a just and reasonable compensation is required to be fixed.

II) DELAY IN CONSTRUCTION

16.9.1 One Puneet Malhotra and a few others booked residential flats in 'ParsvnathPalacia' in Greater Noida. An agreement was executed on 28.12.2007, all payments were made except the last installment of 5% which was to be paid on offer of possession. Construction was to be completed within 3 years i.e, by December 2010 but the developer stopped construction in 2008.

The applicant had taken a loan from the bank in respect of which an EMI of Rs.50000 was being paid. The developers agreed to

reimburse a part of EMI till handing over of possession, but defaulted after some instalments. Refund of amount paid to the developer was, therefore, sought with interest, damages and cost. The commission held that unjust delay in giving possession after taking almost entire payment is deficiency in service and after considering all relevant facts, ordered refund with 18% interest comprising of 10% interest and 8% for appreciation of cost. [*Puneet Malhotra vs Parsvath Developers Ltd* CC No. 232 of 2014 decided on 29.01.2015]

Note- The RERA now specifies that the rate of interest payable by the promoter will be the same as chargeable by him from the allottees in case of delayed payments.

16.9.2 A landmark case of compensation for delaying construction decided by the National Consumer Dispute Resolution Commission in appeal against the order of State Commission was decided on 08.06.2015 in consumer cases No. 427, 428, 430 and 432 Satish Kumar Pandey and others vs. Unitech. 24 buyers of flats in Unitech Vistas, Gurgaon booked flats in 2009 and as per the builder- buyer agreement possession was to be handed over within 36 months by February 2013. The builder later revised the date for handing over possession between February 2016 and February 2018. On complaint filed by the buyers, the National Commission directed payments of compensation equal to 12% of the amount paid from the date originally promised with direction to pay compensation of 18% if the revised date is also not adhered to. The commission directed further payment to meet excess of service tax liability on account of increase in tax rates and also Rs. 5000/- each to meet the legal cost.

While ordering 12% compensation, the commission over-ruled the provision in builder-buyer agreement under which interest payable was only 1.8%. It took note of the fact that whereas the builder was to pay 1.8% only, the interest chargeable from the buyer was placed at 18%. Such a difference was held to be an unfair and inequitable practice.

In appeal the Supreme Court confirmed the order of the National Commission holding the agreement to be wholly one-sided, unfair and unreasonable.

The decision is bound to be a pace-setter in such cases. Several cases pending disposal related to failure of the builders in completing construction and handing over possession within the stipulated time and even thereafter for an unreasonably long time.

III) NON-PERFORMANCE OF CONDITION

16.9.3 Govt. of Haryana allotted Plot to one Bishamber Dayal Goyal on depositing 25% of the price. Further payments were to be made as specified. The allottee did not pay instalments on the ground of alleged failure of the Government to provide basic amenities including its notification as sub-yard. HSAMB asked the allottee to make the balance payment with interest and penalty.

The District Forum held that the allottee and others were deprived of doing the grain business on account of the fact that the area was not notified as sub-yard which is deficiency in service and awarded interest at 12% on the entire deposited amount after two years from the date of issuance of allotment letter till the development and notification is done. The allottee was also directed to deposit the balance account. HSAMB was directed not to charge interest or penalty and to develop the area within a month.

Not being satisfied with the order, both the parties appealed to the State commission which were dismissed. Revision petition to National Commission was also unsuccessful. HSAMB then approached the Supreme Court.

The Supreme Court held it a case of deficiency in service as the HSAMB did not provide requisite facilities after more than a decade, It, therefore, confirmed the order directing payment of interest at 12% and dismissed the appeal filed by the Board. [*Haryana State Agricultural Marketing Board (HSAMB) vs*

BishamberDayal Goyal II (2014) CPJ 11 (SC) CA No. 3122 of 2006 (decided on 26.03.2014)

(IV) CHANGE IN PLAN AFTER ALLOTMENT

16.9.4 The applicant was allotted a plot by Bikaner Urban Improvement Trust, paid its price and took possession. Later, without giving notice to him, the trust laid a road in the said plot which was not in the layout plan disclosed to the allottee. District Forum directed refund of money with interest at 9% p.a. The State commission on appeal directed allotment of an alternative plot along with Rs. 5,000/- compensation. The petition filed by the Trust was dismissed by the National Commission and the order was affirmed by the Supreme Court with scathing remarks against the Trust and with direction to sensitivise its officers to serve the public rather than justify their dictatorial acts and also to avoid such unnecessary litigation. [*Bikaner Urban Improvement Trust vs Mohanlal (2009) CPJ 42 (SC)*]

(V) UNFAIR PRACTICE / ABUSE OF DOMINANT POSITION

I. INEQUITABLE AGREEMENT

16.9.5 The agreement with the builder provided that if the builder abandons the whole or a part of the scheme, the builder's liability is limited only to the refund of the amount paid by the allottee without interest or compensation, whatsoever. On the other hand, if the allottee has delayed paying the instalments, he is liable to pay 20% interest and all amounts due.

The National Commission held the agreement inequitable. In this case the builder withheld and enjoyed allottee's money for 10 long years. He was fully aware that allottee had borrowed part of the money from bank at 17% interest. Accordingly, the commission directed interest to be paid by the builder at 17% p.a. within six weeks along with a cost of Rs. 30,000/-.[*Tarun Kumar Ghai vs Malibu Estate Pvt. Ltd. (2008) CPJ 309 (NC)*]

II. MISLEADING BROCHURE

16.9.6 The advertisement contained a specific statement which said that all prices are escalation free so the price one books at, is the price he pays. Despite such clause in the agreement the builder demanded an additional amount for escalation charges. The advertisement also promised delivery of possession within the stipulated time. Subsequently on failure, it turned around and contended that governmental permissions were not given causing delay in construction which should not be a ground for complaint.

The commission held that it was the duty of the builder to plan in advance, obtain necessary permissions and thereafter promise to deliver the possession within the stipulated time. The time normally taken in getting the permission could have been contemplated by the builder before issuing the brochure. It would be unfair trade practice if the builder, without any planning and without obtaining the requisite permissions, invites or offers and collects money from the purchaser. In such cases, the builder would be liable to bear the escalation cost and not the buyer. If the statutory clearances take two and a half years to three years, then it is for the builder to include this time factor on its own and not pass the cost on to the purchaser. [*Kunal Sood vs DLF Universal Ltd. (2007) CPJ 7 (NC)*]

(VI) ESCALATION EFFECT

16.9.7 In an interesting case, Mrs. Veena Khanna claimed refund of money with interest for failure of the builder to hand over possession in time. On refusal she approached the State Commission which directed refund of money with interest at 13% or in the alternative, to hand over possession of the flat.

In the meantime, during the pendency of the case, there was escalation in prices. The builder took advantage of the situation and exercising first option made payment as per the direction of the State Commission.

Mrs. Khanna then filed appeal to the National Commission

seeking direction for delivery of possession with adequate compensation or, in the alternative, adequate compensation so that she can purchase another flat of the size, as agreed upon. The same was opposed by the builder on the ground that she has already received refund of the amount with interest and cannot resile from concluded contract.

The commission observed that because of the delay in construction and also the delay in deciding the matter, it is practically impossible for a retired government employee to purchase a flat at the present market price. Adequate compensation needs to be given so that she could purchase a new flat of the same size at the prevailing market rate. Allowing the appeal, the commission directed the builder to pay a sum of Rs. 7,50,000/- as compensation to her. In case the amount is considered excessive by the builder, they were given the choice to provide an alternative flat of the size and price agreed upon in the same locality or near about for which allotment letter to be issued within the period of eight weeks. [*Veena Khanna vs Ansal Properties and Industries Ltd.* (2007) CPJ 185 (NC)]

APPLICABILITY OF CONSUMER PROTECTION ACT TO REDEVELOPMENT AGREEMENTS

16.10.0 With the land being scarce and availability of higher permissible constructable area, referred to as FSI, redevelopment of existing buildings has become a common practice in modern real estate sector. Under a typical redevelopment arrangement the owner of land or an existing building (hereinafter referred to as landowner) places at the disposal of the builder, vacant possession of the land or premises and authorize the builder to secure necessary sanctions, permissions and approvals for demolition and construction of the new building. On completion of the new structure, the land owner becomes entitled to a part of the constructed area and in some cases, certain amount of money also. The remaining part of the building belongs to the builder in consideration of having incurred the cost of construction of entire building and all other services in connection with construction.

The builder becomes entitled to retain or sell its share in the constructed area as well as undivided and undivisible share in the land proportionate to his right in the building.

16.10.1 With broadly similar terms in the agreement in *Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd.* [Civil Appeal No. 3302 of 2005] the Hon'ble Supreme Court in appeal against the order of the National Consumer Disputes Redressal Commission was seized of the question as to whether a complaint under the Consumer Protection Act, 1986 is maintainable in regard to agreement between the parties. In this case complaint was filed by the landowner against the builder who made several unauthorised deviations which were not rectified by him leading to non-issue of completion certificate and C&D forms by the Municipal Corporation of Delhi.

16.10.2 The District Forum dismissed the complaint as not maintainable holding that the complainant was not a 'consumer' as defined in the Act and the agreement cannot be construed as contract for hiring/availing a service for consideration by a consumer. In appeal, the State commission confirmed the order of the District Forum holding that the agreement was in the nature of a joint venture or agreement to collaborate which did not have any element of hiring any service and, therefore, the appellant was not a 'consumer' and the builder was not a 'service-provider'.

16.10.3 In the revision petition filed before the National Commission, the finding of the lower authorities was challenged. The National Commission upheld the decision of the State Commission and dismissed the revision petition.

16.10.4 In special leave petition, the Apex Court quoted extensively from their decision in *Lucknow Development Authority vs MK Gupta* [1994 (1) SCC 243] to explain the purpose and objective of the Act. Explaining the basic features of a 'joint venture' agreement the court observed-

“In a true joint venture agreement between the land-owner and another (whether a recognized builder or fund provider), the

landowner is a true partner or co-adventurer in the venture where the landowner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profit/loss of the venture. In such a case, the land owner is not a consumer nor is the other co- adventurer in the joint venture, a service provider. The land owner himself is responsible for the construction as a co-adventurer in the venture."

Differentiating the facts of the case with that in a joint venture agreement the court observed-

"The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a 'collaboration agreement' or a 'joint-venture agreement', is not however a 'joint-venture'. There is a contract for construction of an apartment or house for the appellant, in accordance with the specifications and in terms of the contract. There is a consideration for such construction flowing from the landowner to the builder (in the form of sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is also payment of cash consideration by the builder. But the important aspect is the availment of services of the builder by the land-owner for a house construction (construction of owner's share of the building) for a consideration. To that extent, the land-owner is a consumer, the builder is a service-provider and if there is deficiency in service in regard to construction, the dispute raised by the land owner will be a consumer dispute."

16.10.5 In the total view of the law as applicable to the facts of the case, the court held that if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages. On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court. Or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service- provider. Section 3 of the Act makes it clear that the remedy available under the Act is in addition to the normal remedy or other remedy that may be available to the complainant.

Chapter - XVII

COMPETITION COMMISSION OF INDIA

OBJECTS OF THE COMMISSION

17.0.0 Apart from the consumer forums established under the Consumer Protection Act, there is another institution established to protect the interest of consumers which is the Competition Commission of India (CCI) established under the Competition Act, 2002 with the difference that whereas, the consumer fora redresses individual consumer's grievances and is remedial in nature, the Competition Commission also takes preventive and other measures to ensure that consumer's interest are protected and not adversely affected by the producers/service providers acquiring dominant position resulting in adverse effect on competition and abuse of such dominant position to the detriment of consumers.

17.1.0 The Competition Act, 2002 which came into operation by repealing the erstwhile legislation namely Monopoly and Restrictive Trade Practices Act, in its preamble states: -

“An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on

competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto”.

17.1.1 The objects of the Commission interalia entail –

1. Prevention of practices which cause or are likely to cause appreciable adverse effect on competition within India.
2. Protect the interest of the consumers by preventing the abuse of dominant position.
3. Regulation of combinations: Combination takes place with the acquisition of one or more enterprises by one or more persons or with merger or amalgamation of enterprises where the acquisition merger or amalgamation will result in joint ownership of the assets of specific values.

WHO IS CONSUMER?

17.1.2 'Consumer', for purposes of this Act means a person –

1. who buys any goods for consideration paid or payable and includes any user of such goods when such use is made with the approval of such person provided the user is a person who does not buy such goods for consideration paid or payable. It is immaterial whether such purchase of goods is for resale or for any commercial purpose or for personal use.
2. who hires or avails of any service for consideration paid or payable and includes any beneficiary when such services are availed of with the approval of the buyer provided the permitted beneficiary does not hire or avail of the services for consideration paid or payable. It is immaterial whether such hiring or availing of services is for the commercial purpose or for personal use.

WHAT IS SERVICE?

17.1.3 The term 'Service' is defined under the Act as under: -

“service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising”.

WHEN DOES DOMINANT POSITION EXIST?

17.1.4 The term “dominant position” for purposes of the Act has been defined to mean a position of strength, enjoyed by an enterprise, in the relevant market in India, which enables it to –

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour. For determining whether a market constitutes a 'relevant market' the commission shall have due regard to the 'relevant geographic market' and 'relevant product market'.

17.1.5 There is abuse of dominant position: if an enterprise or group –

- (a) directly or indirectly, imposes unfair or discriminatory –
 - (i) condition in purchase or sale of goods or service; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.
- (b) limits or restricts –
 - (i) production of goods or provision of services or market therefor; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

- (c) indulges in practice or practices resulting in denial of market access in any manner; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect other relevant market.

COMPETITION COMMISSION OF INDIA

17.2.0 The Act provides for setting up of a Commission referred to as Competition Commission of India.

17.2.1 The commission is a body corporate having perpetual succession and a common seal with powers to acquire, hold and dispose of property, both moveable and immoveable, and to contract, sue and be sued. It consist of whole time chairperson and not less than two and not more than six other members who are also whole time members to be appointed by the Central Government.

17.2.2 The chair person and other members hold office for a term of five years and are eligible for re-appointment. They cannot hold office after attaining the age of sixty-five years. After ceasing to hold office they cannot accept any employment in, or connected with the management or administration of any enterprise which has been a party to a processing before the commission under this Act.

17.2.3 The Central Government is also empowered to appoint a Director General for the purpose of assisting the commission in conducting inquiry into contravention of any provision of the Act. He is assisted by Additional, Joint, Deputy or Associate Directors General who exercise their powers subject to general control, supervision and direction of the Director General.

DUTIES OF COMMISSION:

17.3.0 To eliminate practices having adverse effect on competition and for this purpose-

- (i) promote and sustain competition, protect the interests of consumers and
- (ii) ensure freedom of trade carried on by other participants

17.3.1 The Commission may inquire into any alleged contravention relating to provisions concerning competitive agreements and abuse of dominant position as mentioned in para 17.1.5 either on its own motion or on receipt of any information from any person, consumer or their association or on a reference made to it by the central or state government or a statutory authority.

In case the commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made. If no prima facie case exists, it shall close the matter and pass such orders as it deems fit.

Where after enquiry, the commission finds that any anti-competition agreement or action of an enterprise in a dominant position is in contravention of the provisions of the Act, it may pass any of the following orders:-

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten percent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section

3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher.

- (c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (e) pass such other order or issue such directions as it may deem fit provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

17.3.2 In case of abuse of dominant position the commission may direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, viz:-

- (a) the transfer or vesting of property, rights, liabilities or obligations;
- (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (d) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles

of association or any other instruments regulating the business of any enterprise;

- (e) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- (f) any other matter which may be necessary to give effect to the division of the enterprise.

EXECUTION OF ORDERS OF COMMISSION:

17.4.0 If a person fails to pay any monetary penalty imposed on him under the Act, the commission can proceed to recover such penalty in the manner specified in the regulations. In case it considers that the penalty should be recovered in accordance with the provisions of Income Tax Act, it may make a representation to that effect to the concerned income tax authority in which case the income tax authority shall recover the penalty by treating the person upon whom the penalty is imposed as an “assesse in default”.

COMPETITION COMMISSION & REAL ESTATE SECTOR

17.5.0 In their jurisdiction to deal with abuse of dominant power and prevent anti-competitive practices, the commission considered cases of unequal power equation between builders and home buyers. The question of valid assumption of power in respect of agreements between builders exercising dominant position in the market and the home buyers, came for consideration in the landmark DLF case where allottees of highend residential accommodation in Belaire project in Gurgaon filed case against the builder for beguiling and entrapping them by blatantly unfair, even exploitative agreements which contained one-sided clauses to the disadvantage of its customers in that and two other projects. Apart from focusing on unbridled decision making power with the builders, this was the first case of unfair trade practices and abuse of dominant position considered by the commission. The

facts of the case, in so far as the assailed terms and conditions of “Allottee Builder Agreements (ABA)”, in that case are concerned, being more or less the standard terms and conditions as per the prevailing practice in the industry, the case can be taken to represent the commission's approach towards such unequal agreements. As observed by the supreme court it is also a lesson to big real estate companies that they cannot take their allottees or purchasers for granted.

17.5.1 In the facts of that case, apart from the allegation that the builder started work without all permissions being in place and delaying completion thereby denying possession to the buyers, the builder unilaterally decided to increase the size from 19 floors to 29 floors. Some of the abusive clauses in the agreement pointed out to the commission were –

- i) unilateral right to increase/ decrease super area at builder's sole discretion without consulting the allottees who nevertheless were bound to pay additional amount or accept reduction in area.
- ii) right to make changes unilaterally without buyers consent. Even right to change layout plan and also inter-se areas for different uses like residential, commercial etc. without informing anyone.
- iii) Enjoyment of full rights on community buildings, sites, recreational and sporting activities, including maintenance, without the buyers having any right in this regard.
- iv) The proportion of the land the buyer gets as his share to be decided by the builder
- v) Sole discretion of the builder to link one project to another with consequent impact on ambiance and quality of living with buyer's having no right to object.
- vi) Preferential location charges to be paid for upfront to be refunded/adjusted at the time of last instalment without any interest in case of not providing such location.

- vii) No exit option to allottees except whom the builder fails to deliver possession within agreed time but even in such a case the money to be refunded without interest and that too only after the apartment is sold.
- viii) Full discretion of exit to the builder including the right to abandon the project without any penalty
- ix) Right to create third party rights without buyer's consent, to the detriment of his interest
- x) Punitive penalties on buyer's default but not on default by the builder
- xi) Payment to be made by the allottee as per builders demand not necessary on progress of construction

17.5.2 The commission ordered an investigation by its Director General who found that the builder was the industry leader in this segment of the market and all these clauses were indeed standard, though arbitrary. The CCI terming these clauses as 'blatantly unfair, even exploitative observed: - "The impunity with which these (unfair) clauses have been imposed, the brutal disregard to consumer's rights that has been displayed in its action of cancelling allotments and forfeiting deposits and the deliberate strategy of obfuscating the terms and keeping buyers in the dark about the eventual shape, size, location etc of the apartment cannot be termed as fair. The course the progress of the project has taken again indicate that DLF Ltd beguiled and entrapped buyers through false solicitations and promises

17.5.3 The commission directed the builder to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers. It also directed them to suitably modify unfair conditions within three months of the receipt of order. It observed that the conduct of the builder in abusing its dominant position requires to be taken very seriously and requires adoption of deterrent approach so that recurrence of such conduct is stopped. Keeping in view the totality of the facts and circumstances of the case, apart from its order desisting from

imposing unfair conditions, it considered it appropriate to impose penalty at the rate of 7% of the average of the turnover for the three preceding financial years which came to Rs.630 crores.

APPEAL TO COMPETITION APPELLATE TRIBUNAL (COMPAT)

17.6.0 During appellate proceedings, the Tribunal asked CCI to pass order specifying the extent and the manner in which terms and conditions of the agreements are to be modified. The CCI disallowed the provision relating to additional construction beyond the approved building plan and the sole ownership of open spaces clause was suggested to be replaced by joint ownership mechanism. 'Time being essence' clause was made to hedge owners from legal issues due to builder's default and payment was to be based on construction mile stone and not on demand. It ordered removal of other clauses considered one sided to the detriment of allottee.

17.6.1 Following issues raised by the appellant were considered and decided as under:

- i) Jurisdiction of CCI to decide cases of real estate sector: -

The Tribunal confirmed the validity of the CCI assuming jurisdiction over the case. To arrive at their decision, the COMPAT considered provision of section 4 with the definition of 'Service' u/s 2(u) of the Act which has direct reference to the nature of services being provided by DLF i.e. real estate and construction.

- ii) Whether the Act has retrospective application

From the side of the appellant it was argued that most of the agreements were entered into in or around 2006, much before the Act came into force in May 2009. The Act does not have retrospective application and therefore, acts done in pursuance of those agreements cannot be questioned.

The Tribunal considered the application of kingfisher judgement to decide the issue and held the Act to be not

retrospective. It noted that ABAs were entered into mostly in 2006-07 voluntarily without any coercion and therefore it cannot be said that unfair conditions were imposed. No retrospective application would mean that all the acts done in pursuance of the ABA before the Act came into force were valid and cannot be assailed under the Act. However, acts done in pursuance of the ABA which are now prohibited were held to be illegal.

The COMPAT rejected CCI's approach in examining clauses of ABA and considered only actions of the party taken after the Act came into force. According to it, the CCI could have taken exception to acts done in pursuance of clauses which were contrary to Act and not to the clauses themselves. Continuance of agreement after May 2009 would not also attract the mischief of the Act unless there was some act in pursuance of the clauses considered against the Act or in pursuance of clauses not contemplated which would amount to imposition of condition. The COMPAT did not consider ABAs executed after 20.05.2009 and restricted its enquiry to agreements executed in 2006-07 only about which information was provided and focussed on decisions taken after 20.05.2009. Tribunal, therefore, disapproved the CCI's directions to modify the ABA and held that there is no provision in the Act for issue of such directions

iii) Relevant Market

The concept of market under the Act is not of geographical market. It was held that the abstract market definition adopted by CCI was correct i.e., services of developers/builders in respect of high-end residential accommodation in Gurgaon. Residential housing is not connected with investment. Ordinarily, for a common man, basic need is food, other amenities of life and a property to reside as that creates a sense of security in his mind. If that is so, it will be futile to examine the question only from the angle of investors.

iv) Position of dominance

The CCI's reliance on the report of CMIE Pvt Ltd for assessing the market share of the appellant at 55% was held to be correct which was more than double of its next biggest competitor. The appellant being the market leader enjoys unique position as it lays down the rules of the game, which power it exercises in its favour to the potential detriment of its competitors and consumer's interest. It was held to be the position of dominance attracting the provisions of law

v) Abuse of dominant position

Concentrating on the acts done in pursuance of the agreements after the coming into force of the Competition Act i.e., 20th May 2009, the following, interalia, were held to be abuse of dominant position: -

- i) additional construction by adding floors without intimation to the allottees and obtaining their consent.
- ii) offer to the original allottees to move to higher floors which was held to be discriminatory and against the provisions of Article 14 of the constitution and section 4(2)(a)(i) of the Act
- iii) unilateral increase in super area and holding charges leaving no choice to the allottees except to exit which was too harsh

Dismissing the appeal, the COMPAT upheld the CCIs finding about the impugned clause of ABA being blatantly unfair, exploitative and in abuse of dominant position enjoyed by the party. It confirmed imposition of penalty of Rs. 630 crore computed at 7% of the average turnover of preceding three years.

APPEAL TO SUPREME COURT

17.7.0 The matter is in appeal before the S.C. The applicant's request for stay of penalty demand was not acceded to.

Chapter - XVIII

GOODS AND SERVICES TAX ACT

INTRODUCTION

18.0.0. Among several measures adopted in recent past to accelerate economic growth by introducing integrity and transparency in the economy and facilitating doing business, introduction of Goods and Services Tax deserves a special mention. The Act is an answer to the problem of multiplicity of indirect taxes at the Central and State levels resulting in complex tax structure, high incidence of taxes, high cost of compliances and largescale evasion. Goods and Services Tax which subsumes the indirect taxes like Excise duties, Service Tax and Central Sales Tax levied by the Centre and VAT, Octroi and other taxes like luxury tax, entertainment tax etc. levied by the State is a comprehensive unified tax on Dual tax model which is levied on supply of goods and services across the country. It is based on dual tax model in the sense that it is legislated, levied and administered concurrently by both the levels of Government on a common base. It thus comprises of Central GST (CGST) as well as State GST (SGST), both levels of government retaining their sovereignty by legislating the respective Acts and both having power to administer the single unified tax.

18.0.1. The problem of multiplicity of taxes was the outcome of the federal structure under which the responsibilities of the Union and the States are clearly defined in the constitution and their power to raise resources by way of taxes and levies are also defined. Broadly speaking while power to tax manufacturing and services under such demarcation vested in Union, taxes on trading are within the domain of states. There is also a concurrent list of areas in respect of which both, Union and States can exercise jurisdiction subject to the precedence given to the laws of the Union. Consequent to such demarcation whereas excise duty and service tax were levied by the Union, VAT, Octroi and other indirect taxes were levied by the States in their respective jurisdiction.

CONSTITUTIONAL POSITION

18.1.0. The need to merge all these taxes into one single tax concurrently levied by the two level of the government regardless of the respective area of jurisdiction was felt but was faced with constitutional constraint due to absence of such enabling power of concurrent levy of tax. Article 246A was accordingly inserted by 101st Constitutional Amendment Act titled “Special provision with respect to Goods and Services Tax” enabling the parliament and legislature of every State to make laws with respect to Goods and Services Tax imposed by the Union or by such States. The Article bestowed exclusive power in Centre to make laws with respect to Goods and Services where the supply of goods or of services or both takes place in the course of interstate trade or commerce. In other words, whereas intra state transactions were within the domain of Centre as well as States, Centre has exclusive jurisdiction over interstate supply of goods or services or both.

GST ACTS

18.2.0. In order to give effect to GST based on dual taxation by Centre and States in respect of intra-state supplies and Central taxation in respect of inter-state supplies, the Central Govt.

presented 4 Bills before the Parliament which were passed by both houses. These are-

I	Central Goods & Services Tax Act	for tax on intra-state supply of goods and services levied by the Centre
II	Union Territory Goods & Services Tax Act	for tax on supply of goods and services in Union Territories other than Pondicherry and Delhi which have legislature.
III	Integrated Goods & Services Tax Act	For Levy of tax on Inter-state supply of goods & services by Centre and shared with States.
IV	GST Compensation Act	An Act to provide for compensation to the States for loss of revenue post implementation of GST.

The State Governments have passed similar State Goods and Service Tax Acts in their respective States. The tax came into force from 1st July 2017 with its launch in the middle of night in the Central Hall of the Parliament heralding an era of 'One Nation One Tax'. Initially the same was not applicable to the state of Jammu & Kashmir but subsequently the Jammu & Kashmir legislature also approved it and passed the legislation to make the tax effective in that State also.

COVERAGE OF GST

18.3.0. The GST Acts cover all Goods or Services or both except those which are exempted, which are outside its purview and in respect of which supplier is not taxable being below the threshold limit. The threshold is Turnover of Rs.20 Lakh. For supplier from any special category State as specified in Article 279A(4)(g) of the constitution i.e Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand the threshold is Rs.10 lakhs.

18.3.1. Goods and Services Tax as per Article 366(12A) means any tax on supply of Goods or Services or both except taxes on the

supply of the alcoholic liquor for human consumption. Alcoholic liquor for human consumption has, therefore, been kept outside the purview of GST. So are securities which are specifically excluded from the definition of goods and services.

18.3.2. So far as levy of tax on petroleum crude, high speed diesel, motor spirit (Commonly known as petrol), natural gas and aviation turbine fuel is concerned, although they are within the purview of the GST, tax on these commodities will be levied from the date as recommended by the Goods and Services Tax Council. Presently these have been kept zero rated.

Electricity has also been kept outside GST. Tobacco and tobacco products are subject to GST. However, the Centre would in addition, have the power to levy Central Excise Duty on these products.

BASIC FEATURES OF GST

1) GST WILL SUBSUME EXISTING INDIRECT TAXES

18.4.0. The basic purpose of GST being replacement of multiplicity of indirect taxes by one comprehensive tax, the GST has subsumed the following existing indirect taxes:

- (i) taxes currently levied and collected by the Centre:
 - a. Central Excise duty
 - b. Duties of Excise (Medicinal and Toilet Preparations)
 - c. Additional Duties of Excise (Goods of Special Importance)
 - d. Additional Duties of Excise (Textiles and Textile Products)
 - e. Additional Duties of Customs (commonly known as CVD)
 - f. Special Additional Duty of Customs (SAD)
 - g. Service Tax
 - h. Central Surcharges and Cesses so far as they relate to supply of goods and services

(ii) State taxes that would be subsumed under the GST are:

- a. State VAT
- b. Central Sales Tax
- c. Luxury Tax
- d. Entry Tax (all forms)
- e. Entertainment and Amusement Tax (except when levied by the local bodies)
- f. Taxes on advertisements
- g. Purchase Tax
- h. Taxes on lotteries, betting and gambling
- i. State Surcharges and Cesses so far as they relate to supply of goods and services

As stated tax on Alcoholic liquor for human consumption has been kept outside the GST and application on petroleum, gas and aviation turbine fuel will be from the date determined and notified by GST council. It will continue to be taxed as at present

2) UNIFORM TAX BASED ON DUAL TAXATION

18.5.0. As stated GST is an uniform tax on supply of goods or services levied at the same rate all over the country. All goods and services are made taxable at the specified rate which can be any of the five prescribed rates i.e. 0%, 5%, 12%, 18% or 28% apportioned equally between the Centre and States. In respect of certain luxury goods a further tax of the nature of sin tax may be charged in addition to tax at 28%. The rate which will apply to a particular goods or service has been decided and notified on the recommendation of the Goods and Services Council. By and large the rates have been kept at 0%, 5%, 12%, 18% or 28% for individual commodities and services. Exceptions have been made in respect of a few commodities e.g. Gold and jewellery for which the rate prescribed is 3%. There will be one assessment in which the tax of the share of Centre and State will be determined and credited to respective Government. The determination of rate will be nearest to the existing aggregate rate of taxation of Centre and State.

18.5.1. Although the rates of taxation for Centre and State taken together have been prescribed separately within any of the five standard rates, they will be equally allocated. The base for levying GST for Centre as well as State will be the same.

3) GST IS DESTINATION BASED TAX

18.6.0. Of the two options of levying tax on production and consumption, it is the consumption basis which has been adopted for GST and tax is levied by the State where the goods are consumed or services are utilized. Consumption is determined by the place of supply of goods or services and accordingly, it is the State where goods are supplied or service is provided which has jurisdiction to levy tax. The destination based tax being less favourable to manufacturing States, the union has agreed to compensate the losing States for loss of revenue for a period of 5 years.

4) GST ON INTER-STATE SUPPLIES IS WITHIN THE EXCLUSIVE JURISDICTION OF THE CENTRE

18.7.0. GST differentiates between intra-state and inter-state supply of goods and services. Where the supplier as well as the receiver is in the same State, the tax is levied by the Centre and the concerned State but, where the supplier and the receiver of goods and services are in different States, the tax is levied by the Centre and apportioned between the Centre and the States in accordance with the formula to be determined by the Parliament by law on the recommendation of GST Council. Tax on such inter-state supplies will be governed by Integrated Goods and Services Tax Act (IGST) which is a separate Act passed by the Parliament. Inter State supplies also include inter State transfers between branches of the same enterprise.

18.7.1. The import of goods and services will be treated as interstate supplies and GST will be levied on import of goods and services into the country. Tax revenue of State will accrue to the States where the imported goods and services are consumed.

18.7.2. The GST Act in respect of intra-state trade, applies to

Union Territories having legislature i.e. Territory of Pondicherry and Delhi in the same manner as any State. In respect of other Union territories, a separate Act has been passed by the parliament known as Union Territories Goods and Services Tax Act (UTGST) which provides for manner and distribution of tax among Centre and such territories.

5) GST IS PAYABLE BY THE SUPPLIER OF GOODS OR PROVIDER OF SERVICES

18.8.0. The obligation to pay tax in accordance with relevant GST Act is on the supplier of goods or provider of services which tax he can pass on to the receiver of goods or availer of services. The taxable event is supply of goods and services. Goods and services are defined. Goods are defined as every kind of movable property other than money and securities but include actionable claim, growing crops, grass and things which are agreed to be severed from land before supply. Services are defined as anything other than goods excluding money and securities. Generally, transactions carried out for consideration and in the course of business are subject to GST. These include sending goods to Agents and vice versa and also gifts to employees of the value above Rs. 50,000/- in a year. The law provides basic threshold beyond which, a supplier or service provider becomes liable for GST. The prescribed threshold of turnover is Rs.20 lakh all over the country including supplies as principal or agent. For all the States except the States in special category as defined in Article 279A which are mentioned in Para 18.3.0 the threshold is Rs.10 Lakh only. For determining the taxability, it is the value of supplies all over the country including inter-state supplies and exempted goods which has to be taken into account and not the Turnover/Value of service in a particular State only. The aggregate turnover for this purpose includes all taxable supplies, all exempt supplies, export of goods/services and all inter-state supplies of a person having the same PAN.

18.8.1. For the tax payers GST law has introduced system of registration. In case supplies are from different states, one is

required to obtain registration from all such States even when supplies or services in a particular State is below the threshold limit. A person who does not get registered can neither collect GST from his customers nor can claim any input credit of GST paid by him. Certain categories of suppliers are liable to take registration even if their aggregate turnover is below the said threshold of Rs.20 Lakhs or Rs.10 Lakhs. Multiple registration can be obtained for different business verticals.

18.8.2. Where, however, supply is made by an unregistered dealer, to a registered dealer or of notified commodities, tax is leviable under '**Reverse Charge**' according to which the liability to pay tax is not on the supplier but on the receiver of goods or services who is a registered dealer.

6) COMPOSITION SCHEME

18.9.0. The GST law provides for a composition scheme of tax payment for those who are not in a position to comply with all procedural requirements of the law and cannot maintain accounts in a manner to be able to claim input credit. The scheme is not available to service providers except for those serving of food or any other article of human consumption. The tax rate for manufacturers under the scheme will not be less than 1% of the value of supply and for others the rate under composition scheme will not be less than 0.5%. For service providers who are qualified under the scheme i.e those serving food or articles of human consumption, the tax rate under the scheme is 2.5%. Taking into account the same rate for the State, the actual burden of composition scheme will be 2%, 1% and 5% on the persons qualifying under the scheme.

18.9.1. The scheme is available for those whose supplies in the preceding financial year did not exceed Rs. 75 Lakh. Further in the relevant year also the eligibility stops with the supplies reaching the limit of Rs. 75 lakh. The person availing the composition scheme does not get the benefit of setoff of input credit and is not able to pass on the burden of such levy to his customers.

7) GST HAS COMPREHENSIVE AND CONTINUOUS CHAIN OF SET-OFF BENEFITS

18.10.0. The most important aspect of GST is the permissibility of set off of GST paid out of GST payable on supply of goods or services. In the absence of such a provision under the existing indirect tax structure, the system suffered from the ill effect of cascading. Under the present indirect tax regime, there is no credit for VAT and SAD available to service providers. Traders are not entitled to service tax credit. There being no credit of excise duty, VAT liability is computed on excise duty element also resulting in tax on tax. With amalgamation of large number of Central and State taxes, it would be possible to do away with the effect of cascading as the GST paid by a taxpayer will be allowed to be set off against the GST payable by him by allowing input tax credit. In other words, it will result in taxation of value addition only.

18.10.1. Input tax means the CGST, SGST, IGST and UTGST which was charged on supply of goods or services made to a registered dealer. It also includes tax paid on reverse charge basis. When such registered dealer makes supply in turn of goods / services, the tax paid by him on supply is allowed to be reduced from tax payable on supply made by him. This avoids the effect of tax on tax and rationalizes the tax structure. Credit can be claimed in full for capital goods also. No credit can, however, be claimed on purchase of office building, factory, godown etc. for business purposes or for renting and also no credit can be claimed for goods used for construction of these accommodations.

18.10.2. Input credit can be availed in respect of supply of goods or services or both in the course of or in furtherance of business. It is subject to the condition that the supplier has uploaded the invoice details in the GSTR, the recipient is in possession of tax invoice or debit note or any other prescribed document; has received the goods or services or both; has actually paid the consideration and has furnished the return. In case, consideration is not paid within six months, credit is required to be reversed with interest which can be reclaimed when paid.

18.10.3. Input credit of tax paid under CGST will be available against tax under CGST only. In the same way for SGST the supplier can utilize the credit of SGST only. In other words, CGST credit cannot in general, be used for payment of SGST. Nor can SGST credit be used for CGST. Excess credit after set off can be used for set off against IGST. Excess IGST credit is to be first adjusted against IGST. Overflow can be adjusted against CGST and then against SGST.

18.10.4. Earlier, in case of multiple taxes one was required to create multiple buckets to arrive at the net tax under each bucket. A single bucket for GST paid by a dealer on supply to him and that paid by him on supplies made by him will now be sufficiently enabling all input credits of CGST against CGST paid and SGST against SGST.

18.10.5. For purpose of proper distribution of the credit of Central, States, UTs and Inter-state GST, the law provides for appointment of Input Service Distributor (ISD) which will be an office of the supplier receiving tax invoices and issuing prescribed document for purpose of distributing the credit to a supplier having same PAN as that of ISD.

8) GST TO BE ADMINISTERED JOINTLY

18.11.0. GST is legislated, levied and administered both by the Centre as well as States. Being a single tax based on dual system, its administration, process of assessment, recovery of tax and other related matters are handled by both by allocation of the cases on the basis of volume of turnover or services. While 90% of cases of existing assessee with turnover upto 1.5 crores and 50% above this limit are to be handled by officers of the State Govt., the remaining are to be handled by the Centre. In case of new assesses, the cases are to be handled equally by the Centre and the State.

18.11.1. There is to be common portal for filing the tax returns, uploading invoices and other documents making payment and for other requirements under the Act.

9) LAW CONTAINS ANTI-PROFITEERING MEASURES

18.12.0. It is expected that the benefit of any reduction in rate of tax on supply of goods and services or the benefit of input tax credit will be passed on to the recipient of goods and services by way of commensurate reduction in price. The Act provides for constitution of an authority to examine whether input tax credit availed of by any registered person or reduction in the tax rate have actually been passed on and resulted in commensurate reduction in prices.

10) CONSTITUTION OF GOODS AND SERVICE TAX COUNCIL

18.13.0. GST being the result of amalgamation of taxes within the jurisdiction of Centre as well as the States, all decisions relating to such taxes cannot be only by Centre and each State acting separately. A system of an institution of federal nature has therefore, been devised which involve constitution of GST Council with the Finance Minister as Chairman, Minister of State (Revenue) and Finance/Taxation Ministers of each State to make recommendations, on the basis of which the respective legislatures will legislate.

18.13.1. The council will make recommendation on the taxes to be subsumed; exemptions; date from which tax on petrol and petroleum products will come into force; apportionment of IGST; principles governing place of supply; threshold limits; rates applicable; special provisions for special category States and any other matter relating to GST. It is provided that any decision in GST Council will be taken by majority of not less than $\frac{3}{4}$ th of the weighted votes in which the votes of the State Governments will have a weightage of $\frac{2}{3}$ and that of Centre $\frac{1}{3}$

GST AND REAL ESTATE SECTOR

18.14.0. Under the pre-GST indirect tax regime, in the residential segment, completed properties do not attract service tax. In case of under construction properties, consumers under Pre-GST

regime were paying service tax and cesses adding upto 15%. Since however, an abatement of 75% in case of properties costing upto Rs.1 crore or with carpet area upto 2000 Sq.ft. and abatement of 70% on other properties was allowed, the effective rate of service tax worked out to 3.75% and 4.5% respectively.

VAT was a State specific charge. In Maharashtra one had the option to pay 1% on agreement value without benefit of input credit.

18.14.1. Under GST, land and completed properties i.e., properties after issue of occupation Certificate or after first occupation, whichever is earlier, remain outside its purview. In case of under construction properties in respect of which occupation certificate has not been issued and which have not been occupied, GST is chargeable at 12%, (which takes into account 33% abatement for land) with benefit of full input tax credit in respect of material, manpower supply and other services. This is by treating it as supply of services as per schedule II under which construction of a complex, building, civil structure or part thereof is supply of service except where the entire consideration has been received after issuance of completion certificates or after its first occupation, whichever is earlier. GST on key input in respect of which input tax credit can be claimed is :-

Cement, Tiles, Fittings, Paint, Granite & Marble	28%
Iron & Steel	18%
Sand Bricks	12%
Gravels	5%
Manpower Supply	18%
Works Contract Services (Fabrication, Completion, Fitting out etc.)	18%
Other Services	18%

18.14.2. From developers point of view, with the provision of input tax credit in respect of materials like iron and cement, the incidence of tax is likely to be lower resulting in cost reduction

and if, as provided in GST law, the benefit is passed on to the flat buyers, it will be a further gain to them by way of lower price.

Works Contracts under schedule II of the Model GST Law are to be treated as service for purpose of GST and is taxable at 18%. Credit is available for taxes charged by the contractor.

18.14.3. Sale of land/ plot/ flats post completion certificates is not liable to GST. There is no specific exemption for TDR. Advances from customers are taxable. Credit will, however, be available only when invoice is received. In case payment is not received within 180 days, credit is reversed to be reclaimed when payment is made. Delayed payment interest is taxable.

LEASING OF PROPERTY

18.15.0 As per schedule II of CGST any lease, tenancy, easement, license to occupy land is supply of services. Also, any lease or letting out of the building including a commercial, industrial or residential complex for purposes of commerce, either wholly or partly, is supply of services. However, residential leasing has been exempted from the purview of GST as of now. Being service, GST will be chargeable at 18% in place of existing 15%.

18.15.1 The input tax credit in respect of goods or services used for construction of leasing properties get blocked thereby significantly increasing the cost of such properties. However, credit is available in respect of expenses incurred towards repair to building/immovable property if the same have not been capitalized in the books of account. There will be no GST on supply of electricity.

JOINT DEVELOPMENT AGREEMENTS

18.16.0 In certain Joint Development Agreements the landowner is allotted free units out of constructed space to landowner in lieu of land consideration. This is to be treated as a barter transaction between the landowner and the developer. As per the definition of supply, all forms of supply such as sale, transfer, barter, exchange etc. are included in supply. Thus, free units provided to the landowner shall be taxed under GST regime as construction

services provided by the developer to the landowner which will be in line with the current position under the service tax law.

18.16.1 Complication is involved as to the point of taxation and the valuation. Since the payment under barter transaction i.e. development rights are transferred on the day of the contract between the developer and the landowner, the time of supply shall be the date on which an agreement is executed between the landowner and the developer. Under the current regime, however, tax is to be paid when possession/rights in flats is transferred to the land owner i.e. on allotment.

18.16.2 The value of such units shall be as per the Determination of value of supply rules as per which where the supply of goods or services is for a consideration not wholly in money, the value shall be the open market value of such supply. Under the current regime also, the value to be adopted is the value of similar flats. Further, if open market value is not available, the value shall be the sum total of consideration in money if such amount is known at the time of supply. If value of consideration is not available, it shall be the value of supply of services of like kind or quality.

Chapter - XIX

COMPARATIVE STUDY OF RULES

19.0.0 RERA empowered the Appropriate Governments viz. the Governments of the States and the Union Territories to frame rules for giving effect to its provisions within six months from the date of commencement of the Act. The Act, in so far as the authority to make rules is concerned, came into effect from 1st. May, 2016. Acting within their power to make rules different appropriate governments have notified Rules which are almost uniform in some respect and at variance in some others. Based on the study of the rules of some of the States, an attempt is made to analyse the rules to find out the common features and variations, wherever they exist, in order to have a broad idea of the way RERA will operate in various regional jurisdictions.

A ADDITIONAL INFORMATION TO BE FURNISHED FOR REGISTRATION OF THE PROJECT

19.1.0 Sub- section (2) of Section 4 lists out the information to be furnished along with the application for registration. Clause (m) enables additional details to be prescribed. Every State has in their Rule 3 prescribed such additional details. Broadly the following details have been prescribed by almost all the States :-

- a. Authenticated copy of PAN Card of the promoter
- b. Name, photograph, address etc of the promoter, if an individual or, of the chairman, partners, directors, in case of entities.
- c. Copy of legal title report with authentication by a practicing advocate.
- d. Copy of collaboration agreement, if any, reflecting land owners consent and authenticated copy of his title over the land.
- e. Information relating to encumbrances, if any.

19.1.1 Section 4 requires furnishing of sanctioned plan, layout plan and specifications of the project. Additional details in respect of design and drawings for structural stability, electrical wirings, plumbing, sewage etc. are prescribed as additional details. Maharashtra, however, provides for furnishing of information also about the proposed plan, layout plan and floor space index to be consumed, in case the sanctioned plan is different from the proposed plan in terms of buildings/wings/and floors, with the condition that when the additional number of buildings/wings/floors are sanctioned, the same will be uploaded on the website of the Authority by the promoter from time to time. Maharashtra rules also require information about the organization of allottees to be constituted.

19.1.2 Certain States like Tamil Nadu, Uttar Pradesh, Rajasthan, Madhya Pradesh and Karnataka have prescribed furnishing of audited balance sheet of the preceding financial year along with Auditor's report. In addition, States like UP and MP also require Income Tax returns of the preceding three years of the promoter(s).

19.1.3 There are variations about additional information relating to parking areas. Maharashtra prescribes information about the number of covered parkings; TN, Karnataka, MP and Gujarat about all parking slots- open as well as covered, as per the approved plan; UP, about open parking only and Rajasthan, about each type of parking such as open, basement, stilt and

mechanical parking. Such information is in addition to the information about the number and areas of garages for sale as required in section 4(2) of the Act and, therefore, the information as per the additional requirement will not include the number etc. of garages.

B. REGISTRATION FEES

19.2.0 Every application for registration is to be accompanied by the fees prescribed in the Rules. In most of the cases, such fees is determined by the nature of the project and the land area to be developed under the project. It is determined by whether the project is the plotted development one or, residential project or commercial project or, a mixed project. Fees for each depends on whether the land area to be developed does or does not exceed 1000 sq. meters. The fee is worked out by applying the prescribed rate for each type of project on the land area to be developed. Some of the States following this method of determination of fees are UP., Rajasthan, Gujarat and Karnataka. Madhya Pradesh has determined the applicable rate on per sq. meter of FAR in respect of non-residential projects and carpet area in respect of residential projects.

19.2.1 Maharashtra has not made any distinction between various type of projects and has prescribed an uniform rate of Rs. 10 per square meter of the area of land proposed to be developed, subject to minimum of Rs. 50000 and maximum of Rs. 10 lakhs. Tamil Nadu State has left the registration fees to be determined by the Regulatory Authority from time to time.

C. WITHDRAWAL OF REGISTRATION APPLICATION

19.3.0 All the States provide for withdrawal of Application after it is made. Most of the States provide for withdrawal of application before the expiry of 30 days from the date of submission of the application for registration. Madhya Pradesh permits withdrawal after the application has begun to be processed but prior to final decision.

19.3.1 Most of the Rules provide for retention of certain amount

by way of processing charges in such cases. This is by way of certain percentage of the fee paid for registration (generally 5% to 10%) subject to the minimum of a specified amount (generally Rs. 25,000/- or Rs. 50,000/-). Maharashtra has left such retention amount to be specified by the Regulatory Authority. MP has the unique feature of providing for refund even in case of rejection of registration after retention of processing fee.

D. EXTENTION OF REGISTRATION PERIOD

19.4.0 Under RERA registration granted shall be valid for a period declared by the promoter for completion of the project or phase thereof, as the case may be. The Act permits extension of registration by the Authority in reasonable circumstances, when there is no default on the part of the promoter, for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

19.4.1 Under the Karnataka Rules the extension shall not be beyond the period specified under concerned State Acts for completion of the project. Similar rules are prescribed in Rajasthan, UP and other State rules providing for extension to be not beyond the period provided as per local laws for completion of the project or phase thereof. MP provides for the period of one year which is the maximum period prescribed under the Act.

19.4.2 Rules of most of the States, prescribe that the application for extension should be made not less than three months prior to the expiry of original registration. Under TN Rules, the Authority may condone the delay on payment of late fee of 10% of the registration fees. MP prescribes application to be made not more than six months after and not less than three months prior to the expiry of the date of registration with provision for condonation of delay on payment of late fee equal to half of the original registration fees.

19.4.3 The application for extension must be accompanied by fee as may be prescribed. In certain States including the States of Karnataka, Gujarat, Rajasthan and the Union Territory of

Andaman and Nicobar Islands the fee payable is half the amount of fee payable with registration application whereas, in some other States like Maharashtra and MP the fee prescribed is equal to the registration fee. UP has prescribed twice the registration fees whereas TN has left it to be determined by the Authority.

E. REGISTRATION OF ONGOING PROJECTS

19.5.0 Under RERA, ongoing projects are required to be registered within a period of three months from the commencement of the Act. The term 'ongoing project' has not been defined in the Act as well as in most of the Rules and its meaning shall be a matter of views to be taken by different Authorities. The State of UP has defined this term to mean a project where development is going on and for which completion certificate has not been issued. The Rules of the State however, specifically exclude the projects which fulfill any of the following criteria on the date of notification of the Rules :-

- (i) Where services have been handed over to the Local Authority for maintenance.
- (ii) Where common areas and facilities have been handed over to the Association or the Residents' Welfare Association for maintenance.
- (iii) Where all development work have been completed and sale/lease deeds of 60% of the apartments/ houses/plots have been executed.
- (iv) Where all development works have been completed and application has been filed with the Competent Authority for issue of completion certificate.

19.5.1 The State of Karnataka has made similar exclusions with the additional criterion that is, where Partial Occupancy Certificate is obtained registration will not be required to the extent of the portion for which the Partial Occupancy Certificate is obtained.

19.5.2 The State of Tamil Nadu has excluded projects which on the date of coming into force of the Act:-

- (i) Where, in layout projects, land is developed into plots and the roads and open spaces are gifted to the local body concerned.
- (ii) Projects in Chennai Metropolitan Area for which application for completion certificate has been filed with the Authority, subject to furnishing of certificate from the Architect/ licensed surveyor/ structural engineer associated with the project, to the effect that all the buildings in the project have been structurally completed i.e., all the columns, beams and slab have been erected. If, however, the completion certificate is rejected for violation of norms, such projects will be intimated to the RERA Authority and will be bound for registration with the Authority.
- (iii) Similar condition is prescribed for projects outside Chennai Metropolitan Area where no procedure is prescribed for issue of completion certificate. If construction is structurally completed and certified by Architect/ engineer/ surveyor, the project will be intimated to the concerned Planning Authority with a copy to the Director of Town and Country Planning who will make public the list of all such projects in his official website besides publication of the same in the website of RERA Authority.

19.5.3 The State of MP excludes such projects from registration requirement for which an application or intimation has been submitted with the Competent Authority for obtaining completion/occupancy certificate with respect to any one or more of the towers or portions that could be deemed to be a phase in the said project. In such a case the completed tower/portion shall be deemed to be a completed phase of the project for which no registration shall be required. The Promoter will have to make an application only with respect to the remaining incomplete part of the project.

19.5.4 The rules mentioned above leads to inference that certain States have attempted to reduce the rigor of the provision to seek

registration of ongoing projects, by diluting the requirements either by way of exclusions from the meaning of ongoing projects or, by way of relaxing the condition of issue of completion certificate. The event of issue of certificate has been replaced by the event of making application for the issue of certificate even when the project has not reached to the norms prescribed under the local laws for issue of completion/occupancy certificate. Many States have not provided any provision as to what will or will not constitute an ongoing project subject to registration requirement, which will be governed by the provisions of RERA.

F. ADVERTISEMENTS ETC. DURING THE PERMITTED PERIOD OF THREE MONTHS

19.6.0 Section 3 of RERA prohibits a promoter from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase any plot apartment or building, without registering the real estate project with the Regulatory Authority. The ongoing projects are required to be registered within a period of three months from the commencement of the Act.

19.6.1 Maharashtra Rules, however, provide that the prohibition to advertise etc. before registration will not be applicable within the prescribed period of upto three months for registration in case of the ongoing projects. It provides that at the end of ninety days from the date of notification of section 3, the promoter shall not advertise unless he registers such independent phase as a separate real estate project which means that advertisement within the period of ninety days even before registration will not be violative of the provision of section 3.

G. DISCLOSURE OF DETAILS IN CASE OF ONGOING PROJECTS.

19.7.0 All the details as required to be furnished under section 4(2) as well as those required as additional details under Rule 3 in case of a new project are required to be furnished in case of ongoing projects as well. Maharashtra Rules prescribe following further details for ongoing projects:-

- (i) Extent of development carried out till the application for registration as per the last approved plan
- (ii) Extent of development of common areas and amenities etc.
- (iii) Expected period of completion
- (iv) Original time period, the delay and the new time period of completion
- (v) Certificate from professional Architect regarding percentage completion, from the Engineer regarding the estimated balance cost and from the Chartered Accountant regarding estimated balance cost and balance amount of recovery from apartments sold/allotted and unsold.
- (vi) Number of apartments etc sold
- (vii) Size of apartments based on carpet area even if sold on any other basis
- (viii) In case of plotted development projects, the area of plots sold.

Tamil Nadu Rules require additional information as per (ii) (vii) and (viii) above. Similar requirements are found in the Rules of other States with minor variations.

H. DEPOSIT IN SEPARATE BANK ACCOUNT IN CASE OF ONGOING PROJECTS

19.8.0 The Act requires 70% of the amount realized from the allottees to be deposited in a separate bank account. There are different provisions in certain Rules regarding computation of the base amount for working out the 70% amount to be deposited in case of ongoing projects. Where no specific provision is made, the provisions of RERA should be applicable and total amount realized should form the base for such computation.

19.8.1 Maharashtra Rules provide for amount to be realized from the allottees to be the base for computation of 70%. which will mean that the amount already realized from the sold/allotted apartments will be excluded. Rules of Andaman and Nicobar Island provide for deposit of 70% of the amount

already realized from the allottees which have not been utilized for construction of the project or the land cost. Similar provisions exist in Karnataka Rules.

Maharashtra and Karnataka Rules have gone further by providing that in cases where the estimated receivable of the ongoing project is less than the estimated cost of completion of the project, 100% of the amount to be realized from the allottees shall be deposited in the separate bank account.

I. WITHDRAWAL FROM THE SEPARATE BANK ACCOUNT IN CASE OF NEW PROJECT

19.9.0 As per RERA the deposit in the separate account is to cover the cost of construction and the land cost and shall be used only for that purpose. The withdrawal from such bank account will be to cover the cost of the project in proportion to the percentage of completion of the project and will be supported by the certificate of the engineer, an architect and a chartered accountant in practice to the effect that the withdrawal is in proportion to the percentage of the completion of the project.

19.9.1 Some of the States have provided for the manner of determining the amount that can be withdrawn. Maharashtra, for instance, has provided that the proportion of the completion of the project for this purpose, will be the proportion of cost incurred on construction and land cost to the total estimated cost of the project. Such proportion will have to be certified by the Chartered Accountant. The proportion so determined will then be applied to the total estimated cost of the project to determine the maximum amount that can be withdrawn by the promoter. In effect, such working results in withdrawal of the total amount of cost of construction and the land cost incurred till that date. Most of other States have not made any specific provision in their Rules in the matter.

19.9.2 Separate Rules are generally not made for withdrawal in cases of ongoing projects. MahaRERA has, however, clarified that the provisions in this regard relating to new projects will *mutatis mutandis* apply to ongoing projects also.

J. DETERMINATION OF LAND COST

19.10.0 Rules framed by most of the States provide that the land cost shall be the cost incurred by the promoter, whether as outright purchase or lease charges. Certain Rules, including of Maharashtra, have specified other related payments forming part of land cost, thereby extending the scope of such cost. Outgoings like charges incurred to obtain approval of the Competent Authority, premium payable to obtain development or redevelopment rights, amount paid for acquisition of TDR, premium for grant of FSI, consideration payable to outgoing developer, amount payable to State Government or Competent Authority and ASR linked premium payable for obtaining development rights over the land owned by public authorities are specifically included within the land cost. Most of other States have made no such specific inclusion.

19.10.1 Tamil Nadu has made a departure from the concept of cost by defining the land cost as the market value of the land including the cost incurred towards the stamp duty and registration charges. Karnataka has also done so by taking higher of the land cost incurred by the promoter or the Guidance Value in accordance with the Karnataka Stamp Act 1957 on the date of registration, increased by the amount paid for TDRs, amount paid for approvals, stamp duty, registration charges, taxes and other statutory payments. MahaRERA, by his order has departed from the concept of actual cost by permitting the indexed cost to be taken for purposes of withdrawal in the same manner as under the Income Tax Act for computing the capital gains.

19.10.2 As to whether 'cost incurred' used in the Rules will mean only those cost for which payment has been made, the MahaRERA has clarified that it will include all cost for which a debt has been created which will take within its fold costs which are payable. Some of the States, however, are specific on the point. For example, the State of Gujarat has used the expression 'incurred and paid'. Rajasthan has used the expression 'amount paid to the landowner'. In other cases it is left to be interpreted.

K. CONSTRUCTION COST

19.11.0 Almost all the Rules provide that the construction cost shall be the cost incurred by the promoter towards the onsite expenditure for the physical development of the project. It includes fees, charges etc for obtaining necessary clearances and also finance charges. The Maharashtra and Karnataka Rules, however, take into account the onsite as well as offsite expenditure. Maharashtra Rules include within such cost, the amount of interest paid on borrowing from the specified authorities for purposes of construction, but specifically excludes interest on borrowings for purposes of acquiring land.

L. RATE OF INTEREST

19.12.0 RERA provides that the rate of interest chargeable from the allottee by the promoter in case of default by the allottee shall be equal to the rate of interest which the promoter shall be liable to pay to the allottee in case of default by him. In exercise of the rule making power the States have prescribed the rate of interest that can be charged and paid by the promoter. Gujarat makes it explicit that the rate will be the contractual rate as may be mutually agreed to between the promoter and the allottee and the prescribed rate will apply only in the absence of any such agreement.

19.12.1 Most of the States have prescribed the uniform rate equal to the highest marginal cost of lending rate (MCLR) of the State Bank of India plus 2% as the rate of interest to be charged and paid by the promoter. In case the MCLR is not in use, it would be replaced by such benchmark lending rate which the SBI may fix, from time to time, for lending to the general public.

M. TIMELINE FOR REFUND

19.13.0 The Rules lay down the timeline within which any refund of money along with the applicable interest and compensation, if any, payable by the promoter shall be made. Such timeline differs from State to State. For instance, it is 45 days from the date it becomes due in UP, Rajasthan and Gujarat; 60 days in Karnataka and MP and 30 days only in Maharashtra.

N. FORMATION OF ASSOCIATION OF PERSONS

19.14.0 Under RERA, the promoter has to enable the formation of an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. In the absence of local laws, such association shall be formed within a period of three months of the majority of allottees having booked their plot, apartment or building in the project.

19.14.1 Maharashtra is among very few States which have laid down their own time limit for formation of such associations. The State has prescribed a period of three months from the date of issue of occupation certificate in respect of building or wing or, when a minimum of 51 % of total allottees in such building or wing have booked their apartments, whichever is earlier. For formation of Apex Body, the association should be constituted within a period of three months from the receipt of OC of the last building in the layout.

19.14.2 TN envisages the association to take over the maintenance of the project, including the common areas and amenities, within three months from the date of intimation by the promoter of completion of the project.

O. EXECUTION OF CONVEYANCE OF TITLE

19.15.0 RERA obligates the promoter to execute a registered conveyance deed of the plot, apartment or building in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority. The physical possession is to be handed over to the respective allottee and that of common area to their association. In the absence of any local laws, such conveyance deed should be executed within three months from the date of issue of occupancy certificate.

19.15.1 Maharashtra has made a significant departure from the position as stated above. The rules provide for conveying the title

of the building as well as of land and common area and amenities to such association only. As to the timeline, in case of single building, it should be done within three months from the issue of occupation certificate or from the date when 51% of the total number of allottees have paid full consideration to the promoter, whichever is earlier. In case of layout, the structure should be conveyed to the association within one month from the date of registration of the association of allottees or within three months from the issue of OC, whichever is earlier. The undivided or inseperable land, in case of layout, should be conveyed within three months from the date on which the Apex body or federation is registered or within three months from the date of issue of OC, whichever is earlier.

19.15.2 TN has also departed from the position as per RERA by providing for conveyance of undivided share in land and common area also, directly to the respective allottee.

19.15.3 Most of the other States have not made any provision in their rules dealing with conveyance. The departure from the statutory provision by the Rules, made by certain States may open up an area of challenge.

P. COMPOUNDING OF OFFENCES

19.16.0 The Act prescribes punishment with imprisonment for certain defaults treated as offence and also enables the defaulters to get such punishment compounded by paying the compounding fees. The offences punishable are (i) non-compliance of orders of the Authority or continued default of section 3; (ii) non-compliance of the orders of the Appellate Tribunal by the promoter; (iii) non-compliance of the orders of the Tribunal by the Real Estate Agent and (iv) non-compliance of the orders of the Tribunal by the allottees.

States have provided for compounding fees in their respective Rules. In majority of cases, the compounding fee is upto 10% of the estimated cost of the real estate project in offences mentioned

at (i) and (ii) above and 10% of the cost of the plot, apartment or building in case of offences at (iii) and (iv). Certain other States including Gujarat and Rajasthan have limited the fees to 5% in both category of offences.

Chapter - XX

ROLE OF CHARTERED ACCOUNTANTS IN RERA

INTRODUCTION

20.0.0 In the scheme of regulatory functions of the Real Estate Regulatory Authority acting under RERA, the institution of Chartered Accountant has a significant role to play as the Act depends heavily on this profession for authenticating various informations and details to be submitted by the promoter in matters of registration of the project, withdrawal of money deposited in the separate bank account and ensuring that the promoter has abided by the terms of the contract in all matters relating to finance. The Act assigns role to the statutory Chartered Accountant of the enterprise in certain matters and to an independent Chartered Accountant in practice in certain others to ensure complete and unbiased information made available to the Regulator as well as the public enabling the potential buyers to take an informed decision of buying the plot, the building or the apartment as the case may be.

PROVISIONS OF RERA

20.1.0 The following provisions of RERA involve the statutory

Chartered Accountants or the Chartered Accountants in practice in the prescribed matters:-

- I. Second Proviso to Section 4(2)(l)(D)- The chartered accountant in practice to certify that the withdrawal applied for by the promoter out of the separate bank account opened in accordance with law, is in proportion to the percentage of completion of the project.
- II. Third Proviso to Section 4(2)(l)(D)- The Promoter to 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. The CA is to verify during audit that the amount collected for a particular project have been utilized for the project and the withdrawal has been made in compliance with the proportion of the percentage of completion of the project.

PROVISIONS OF MAHARASHTRA RULES

20.2.0 Under the Maharashtra Rule 5(1)(i), the promoter is required to submit, inter alia, a certificate from a practicing chartered accountant, for the cost incurred on construction and the land cost. The practicing CA has also to certify the proportion of the cost incurred on construction and the land cost to the total estimated cost of the project which proportion when applied to the total estimated cost of the project, determine the maximum amount which can be withdrawn by the promoter from the separate account.

REGULATIONS OF MAHARERA

20.3.0 In order to comply with the above requirements of RERA and the Maharashtra Rules, the Regulatory Authority in Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 has in Reg. 4(a) has prescribed that the Promoter shall additionally upload on the webpage of the Authority, the annual report on statement of accounts, in Form 5 (issued in accordance with the third proviso to section 4(2)(l) of the

Act) duly certified and signed by the Chartered Accountant who is the statutory Auditor of the promoters enterprise. The Regulation prescribes Form 5 for the purpose which is to be on the letter head of the Chartered Accountant.

20.3.1 Regulation 3 is in respect of compliance under section 4(2)(l)(D) of the Act and Rule 5(1)(i) of Maharashtra Rules, referred to above, and prescribes Form 1, 2 and 3 for the purpose. Form 1 is for Architect's certificate, Form 2 for Engineer's certificate and Form 3 is for the certificate of the chartered Accountant in practice.

FORMS TO BE FILLED BY THE CA

20.3.2 A chartered Accountant has, therefore, to prepare and submit the following forms in compliance to their duties under RERA:-

- i. Form 5 - to be prepared by the statutory auditor of the promoter's enterprise
- ii. Form 3 - to be prepared by the chartered Accountant in practice, other than the statutory auditor of the enterprise.

Regulation 4 in Explanation 1 makes it explicitly clear that the chartered accountant certifying the progress of the real estate project for the purpose of withdrawal of amounts from the separate account should be different entity than the chartered accountant who is statutory auditor of the promoter's enterprise so that if the Form 5 issued by the statutory auditor reveals that any certificate by the project architect, engineer or the chartered accountant has false and incorrect information and the amounts collected for a particular project have not been utilized for the project and the withdrawal has not been in compliance with the proportion to the percentage of completion of the project, the Authority, in addition to taking penal actions as contemplated under the Act and the Rules, shall also take up the matter with the concerned regulatory body of the said professionals for necessary penal actions against them.

CLARIFICATIONS BY RERA

20.4.0 The Forms prescribed contain information which needed clarifications as to what is intended to be informed. MahaRERA has, therefore, issued circular 5/2017 dated 28.06.2017 and circular 7/2017 dated 04.07.2017 by way of clarification as to what is required to be informed in the relevant columns. These circulars are Appendix-F of the book.

20.4.1 CIRCULAR 5/2017

Briefly, it has been clarified that

- i. All cost items should be mutually exclusive. There should be no double counting.
- ii. The development cost/ cost of construction should not include marketing and brokerage expenses. Such expenses are not to be borne from the amount withdrawn from the separate bank account.
- iii. In field 1(ii)(c), interest payable only to financial institutions, scheduled banks, NBFC or money lenders on construction funding should be added to total cost of construction. The principal sum should just be mentioned for information purpose.

20.4.2 CIRCULAR 7/2017

The circular clarifies:-

- i. The expression 'incurred' in relation to cost would mean amount of product or services received creating a debt in favour of the seller or supplier and also include the product and services received against payment.
- ii. The acquisition cost of land or development rights or lease rights shall be the indexed cost of acquisition with the ASR value as on 1st. April, 2001 as the base. The indexation will be by taking the index as the Central Government may by notification in the official gazette, specify in this behalf under section 48 of the Income-tax Act. It shall also include the amount of interest on borrowing for purchase of land or acquiring development rights or lease rights.

- iii. Cost under rehabilitation scheme shall include cost incurred for construction of area which is to be handed over to the slum dwellers under Slum Rehabilitation Scheme or, to tenants under redevelopment of tenanted properties or, apartment owners who are to be provided with alternative accommodation or, Government or concessionaire in PPP projects or, Appropriate Authority under schemes of Development regulations.
- iv. All amount payable to slum dwellers etc which are not refundable and are incurred as cost shall be allowed as part of land cost. Such amounts are maintenance deposits, corpus amount, concession premium or fees, shifting charges etc. Interest on borrowing for construction of rehabilitation component shall be included in land cost.
- v. The increase in construction cost due to execution of extra/ additional items as certified by the engineer shall be allowed as on-site expenditure.
- vi. While uploading the project cost on the website under 'principal sum and interest payable, only interest amount shall be uploaded. The CA in Form 3 will show the principal sum in brackets for information only.
- vii. The expression ' amount withdrawn till the date of certificate as per books of account and bank statement ' shall mean amount withdrawn from separate bank account.
- viii. The pass through charges should not be deposited in separate bank account. They should preferably be deposited in a designated bank account opened only for this purpose. So is the case with indirect taxes collected by the promoter such as GST.
- ix. Income-tax paid by the promoter shall not be treated as cost.
- x. Separate bank account shall be a no lien account. The excess money lying in this account can be put in fixed deposit with the bank against which no loan can be taken.

- xi. Although there is no end use prescribed for the amount withdrawn from the separate bank account, the Authority recommends that such amount should preferably be utilized for purpose of construction of that project only.
- xii. Cancellation amount paid by the promoter should be treated as cost incurred for the project and can be withdrawn to the extent of 70% of the amount paid. However, compensation/ interest can be treated as cost and entire amount can be withdrawn from the separate bank account.
- xiii. Clause 4 of Form 3 which refers to percentage completion as per architect's certificate should be filled only in the final certificate when 100% work is complete.
- xiv. With respect to ongoing projects 'the estimated land cost and development cost/ cost of construction' in Form 3 shall be the cost since the inception of the project. In the certificate issued by the CA at the time of registration as well as first withdrawal 'the amount withdrawn till the date of this certificate' shall be either 100% of the amount received towards consideration till the date of registration or the amount of project cost incurred as reflected at clause 3 of CA's certificate in Form 3, whichever is lower.
- xv. Form 5 is only in respect of the amount to be deposited and withdrawn from the separate bank account. The CA has, therefore, to certify that promoter has utilized 70% of the amount collected for the project only and not for the entire amount so collected.
- xvi. In case of joint- development projects, the agreement between them shall clearly lay down the entity which is principally and primarily responsible for completion of the project. In case of shared responsibility, the agreement shall clearly lay down the responsibilities assumed by each. The copy of the agreement is required to be uploaded.

APPENDIX – A

भारत का राजपत्र
The Gazette of India

EXTRAORDINARY

PART II – Section 1

PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, MARCH 26, 2016/
CHAITRA 6, 1938 (SAKA)

Separate paging is given to this Part in order that it
may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 26th March, 2016/Chaitra 6, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2016, and is hereby published for general information :

**THE REAL ESTATE
(REGULATION AND DEVELOPMENT) ACT, 2016
NO. 16 OF 2016**

[25th *March*, 2016.]

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows: —

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Real Estate (Regulation and Development) Act, 2016.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires, —

(a) "adjudicating officer" means the adjudicating officer appointed under sub-section (1) of section 71;

(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(e) "apartment" whether called block, chamber, dwelling

unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(f) "Appellate Tribunal " means the Real Estate Appellate Tribunal established under section 43;

(g) "appropriate Government" means in respect of matters relating to,— (i) the Union territory without Legislature, the Central Government; (ii) the Union territory of Puducherry, the Union territory Government; (iii) the Union territory of Delhi, the Central Ministry of Urban Development; (iv) the State, the State Government;

(h) "architect" means a person registered as an architect under the provisions of the Architects Act, 1972;

(i) "Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;

(j) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;

(k) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation. — For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor

area of an apartment, meant for the exclusive use of the allottee;

(l) "Chairperson" means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;

(m) "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

(n) "common areas" mean –

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

(o) "company" means a company incorporated and registered under the Companies Act, 2013 and includes, –

(i) a corporation established by or under any Central

Act or State Act; (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

(p) "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

(r) "day" means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;

(s) "development" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

(t) "development works" means the external development works and internal development works on immovable property;

(u) "engineer" means a person who possesses a bachelor's degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;

(v) "estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;

(w) "external development works" includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste

management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

(x) "family" includes husband, wife, minor son and unmarried daughter wholly dependent on a person;

(y) "garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

(z) "immovable property" includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation – For the purpose of this clause –

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

(zb) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per

sanctioned plans;

(zc) "local authority" means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(zd) "Member" means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;

(ze) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

(zg) "Person" includes, —

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

(zh) "planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as

such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

(zi) "prescribed" means prescribed by rules made under this Act;

(zj) "project" means the real estate project as defined in clause(zn);

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder,

coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation. – For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(zl) "prospectus" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale or any real estate project or inviting any person to make advances or deposits for such purposes;

(zm) "real estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures

thereon, and all easement, rights and appurtenances belonging thereto;

(zo) "regulations" means the regulations made by the Authority under this Act;

(zp) "rule" means the rules made under this Act by the appropriate Government;

(zq) "sanctioned plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

CHAPTER II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act;

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act;

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required –

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation. – For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be [prescribed] [] as substituted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016 for *specified by the regulations made by the Authority.*

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of 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, as the case may be, 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 works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting 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 apartment with the apartment, 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) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

(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:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that 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:

Provided also that 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 and 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.

Explanation. — For the purpose of this clause, the term "schedule bank" means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934;

(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; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

5. (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

6. Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be [prescribed] [] as substituted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016 for *specified by the regulations made by the Authority*.

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation. — For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

7. (1) The Authority may, on receipt of a complaint or *suo-motu* in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation. — For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: —

(A) the practice of making any statement, whether in writing or by visible representation which, —

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter

not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration, —

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project back account, specified under sub- clause (D) of clause (I) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

8. Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

9. (1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

(2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

(3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfillment of such conditions, as may be prescribed —

(a) grant a single registration to the real estate agent for the entire State or Union territory, as the case may be;

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(4) Whereon the completion of the period specified under subsection (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

(5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.

(6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

(7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

10. Every real estate agent registered under section 9 shall —

(a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;

(b) maintain and preserve such books of account, records and documents as may prescribed;

(c) not involve himself in any unfair trade practices, namely: —

(i) the practice of making any statement, whether orally or in writing or by visible representation which —

(A) falsely represents that the services are of a particular standard or grade;

(B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;

(C) makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement

whether in any newspaper or otherwise of services that are not intended to be offered.

(d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;

(e) discharge such other functions as may be prescribed.

CHAPTER III

FUNCTIONS AND DUTIES OF PROMOTER

11. (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including –

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and (f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of

allotment letter shall be responsible to make available to the allottee, the following information, namely: —

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall —

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or

create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be

in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make –

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation. – For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a

wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation. – For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

15. (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation. – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

16. (1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of –

(i) title of the land and building as a part of the real estate project; and

(ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees,

as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate. [] as substituted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016 for *occupancy*.

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

CHAPTER IV

RIGHTS AND DUTIES OF ALLOTTEES

19. (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations

made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

CHAPTER V

THE REAL ESTATE REGULATORY AUTHORITY

20. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

21. The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

22. The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

23. (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.

(2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

24. (1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 23, the Chairperson or a Member, as the case may be, may, —

(a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 26 of this Act.

(3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of three months from the date on which such vacancy occurs.

25. The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

26. (1) The appropriate Government may, in accordance with the procedure notified, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be, —

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Member shall not be removed from his office on the ground specified under clause (d) or clause (e) of subsection (1) except by an order made by the appropriate Government after an inquiry made by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

27. (1) The Chairperson or a Member, ceasing to hold office as such, shall not —

(a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined under clause (45) of section 2 of the Companies Act, 2013, which is not a promoter as per the provisions of this Act;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority;

(c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;

(d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such. (2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

28. (1) The appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

29. (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.

(2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

30. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.— For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed]. [] as substituted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016 for *specified by the regulations..*

32. The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on,—

(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;

(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.

33. (1) The appropriate Government may, while formulating a policy on real estate sector (including review of laws related to real estate sector) or any other matter, make a reference to the Authority for its opinion on possible effect, of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a period of sixty days of making such reference, give its opinion to the appropriate Government which may thereafter take further action as it deems fit.

(2) The opinion given by the Authority under sub-section (1) shall not be binding upon the appropriate Government in formulating such policy or laws.

(3) The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.

34. The functions of the Authority shall include —

(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, including information provided in the application for 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.

35. (1) 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, 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.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely: –

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

36. 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, where the Authority deems it necessary.

37. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

38. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that –

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may *suomotu*, make reference in respect of such issue to the Competition Commission of India.

39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

40. (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

CHAPTER VI

CENTRAL ADVISORY COUNCIL

41. (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.

(2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the *ex officio* Chairperson of the Central Advisory Council.

(3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, NitiAayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

42. (1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government, —

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

CHAPTER VII

THE REAL ESTATE APPELLATE TRIBUNAL

43. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate

Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation. – For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

44. (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

45. The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation. — For the purposes of this Chapter, —

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;

ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

46. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he, —

(a) in the case of Chairperson, is or has been a Judge of a High Court; and

(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been

a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government, or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

(3) The judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

47. (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment :

Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

(2) Before appointing any person as Chairperson or Member,

the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.

48. (1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 47, the Chairperson or a Member, as the case may be, may:—

(a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months;

(b) be removed from his office in accordance with the provisions of section 49.

(3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of three months from the date on which such vacancy occurs.

49. (1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any judicial Member or Technical or Administrative Member of the Appellate Tribunal, who—

(a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial member or Technical or Administrative Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or

Judicial member or Technical or Administrative Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The appropriate Government may suspend from the office of the Chairperson or Judicial member or Technical or Administrative Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

(4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

50. (1) The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not: —

(a) Accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company as defined under clause (45) of section 2 of the Companies Act, 2013, which is not a promoter as per the provisions of this Act;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had, before cessation of office, acted for or provided advice to, the Authority;

(c) give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public;

(d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson or Judicial Member or Technical or Administrative Member shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

51. (1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

52. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

53. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 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 documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examinations of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or directing it *ex parte*; and (g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

54. The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

55. No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of —

- (a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or
- (b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or
- (c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

56. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to

present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Explanation. – For the purposes of this section, –

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

57. (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.

58. (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation. – The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

CHAPTER VIII

OFFENCES, PENALTIES AND ADJUDICATION

59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

60. If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.

61. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

62. If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

63. If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.

64. If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

65. If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

66. If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

67. If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable

to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

68. If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.

69. (1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purpose of this section, –

(a) "company" means any body corporate and includes a firm, or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

70. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed:

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person

acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

72. While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

CHAPTER IX

FINANCE, ACCOUNTS, AUDITS AND REPORTS

73. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

74. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

75. (1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto, —

- (a) all Government grants received by the Authority;
- (b) the fees received under this Act;

(c) the interest accrued on the amounts referred to in clauses (a) to (b).

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to be officers and other employees of the Authority and the Appellate Tribunal;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

76. (1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.

(2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

77. (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Controller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before the House.

78. (1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government, —

(a) a description of all the activities of the Authority for the previous year; (b) the annual accounts for the previous year; and (c) the programmes of work for the coming year.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union Territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

CHAPTER X

MISCELLANEOUS

79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

80. (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

81. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary.

82. (1) If, at any time, the appropriate Government is of the opinion, —

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that 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) that circumstances exist which render it necessary in the public interest so to do,

the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority, —

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to

such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union Territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

83. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time :

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final.

(3) The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

84. (1) The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

[(a) the form, time and manner of making application and fees payable therewith under sub-section (1) of section 4;

(ab) information and documents for application to the Authority for registration under clause (m) of sub-section (2) of section 4;

(ac) the form of application and the fees for extension of registration under section 6;]

[] as substituted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016 for . *(a) information and documents for application to Authority for registration under clause (m) of sub-section (2) of section 4;*

(b) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;

(c) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;

(d) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;

(e) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;

(f) the discharge of other functions by the real estate agent under clause (e) of section 10;

(g) the rate of interest payable under section 12;

(h) the form and particulars of agreement for sale under sub-section (2) of section 13;

(i) the rate of interest payable under clause (b) of sub-section (1) of section 18;

(j) the rate of interest payable under sub-section (4) of section 19;

(k) the rate of interest payable under sub-section (7) of section 19;

(l) the manner of selection of Chairperson and Members of Authority under section 22;

(m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;

(n) the administrative powers of the Chairpersons under section 25;

(o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 28;

[(oa) the form, manner and fees for filing of a complaint under sub-section (2), of section 31;] as inserted by Real Estate (Regulation and Development) Removal of Difficulties order, 2016

(p) the details to be published on the website as under clause (b) and under clause (d) of section 34;

(q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 35;

(r) the manner of recovery of interest, penalty and compensation under sub-section (1) of section 40;

(s) the manner of implementation of the order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal under sub-section (2) of section 40;

(t) recommendations received from the Central Advisory Council under sub-section (2) of section 42;

(u) the form and manner and fee for filling of appeal under sub-section (2) of section 44;

(v) the manner of selection of Members of the Tribunal under sub-section (3) of section 46;

(w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 48;

(x) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 49;

(y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 51;

(z) any other powers of the Tribunal under clause (h) of sub-section (4) of section 53;

(za) the powers of the Chairperson of the Appellate Tribunal under section 54;

- (zb) the terms and conditions and the payment of such sum for compounding of the offences under section 70;
- (zc) the manner of inquiry under sub-section (1) of section 71;
- (zd) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 77;
- (ze) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 78;
- (zf) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

85. (1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —

- (a) **omitted** by Real Estate (Regulation and Development) Removal of Difficulties order, 2016
- (b) (b)**omitted** by Real Estate (Regulation and Development) Removal of Difficulties order, 2016
- (c) such other information and documents required under clause (f) of sub-section (1) of section 11;
- (d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;
- (e) preparation and maintenance of other details under sub-section (6) of section 11;
- (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;

(g) **omitted** by Real Estate (Regulation and Development) Removal of Difficulties order, 2016

(h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;

(i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

86. (1) Every rule made by the Central Government, every regulation made by the Authority under the Union territory of Delhi and the Union territories without Legislature and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule of regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, every regulation made by the Authority under the State Government or the Union territory Government of Puducherry, as the case may be, and every notification issued by the State Government or the Union territory Government of Puducherry, as the case may be, under this Act, shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

87. The Chairperson, Members and other officers and employees of the Authority, and the Appellate Tribunal and the adjudicating officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

88. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

90. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

91. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. '

92. The Maharashtra Housing (Regulation and Development) Act, 2012 is hereby repealed.

APPENDIX - B

REGD. NO. D. L.-33004/99



EXTRAORDINARY
PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 990] NEW DELHI, WEDNESDAY, APRIL 27, 2016/ VAISAKHA 7, 1938

MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION

NOTIFICATION

New Delhi, the 26th April, 2016

S.O. 1544(E).- In exercise of the powers conferred by sub-section(3) of section 1 of the Real Estate (Regulation and Development Act, 2016 (16 of 2016), the Central Government hereby appoints the 1st day of May, 2016 as the date on which the following provisions of the said Act shall come into force, namely:-

Sl. No.	Section
1.	Section 2
2.	Sections 20 to 39
3.	Sections 41 to 58
4.	Sections 71 to 78
5.	Sections 81 to 92

[F. No. O-17034/18/2009 - H]

RAJIV RANJAN MISHRA, Jt. Secy.

APPENDIX - C

REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

EXTRAORDINARY
PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 1075]

NEW DELHI, WEDNESDAY, APRIL 19, 2017/CHAITRA 29, 1939

MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION
NOTIFICATION

New Delhi, the 19th April, 2017

S.O. 1216(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016), the Central Government hereby appoints the 1st day of May, 2017 as the date on which the following provisions of the said Act shall come into force, namely:—

Sl. No.	Section
1.	Section 3 to 19
2.	Section 40
3.	Section 59 to 70
4.	Section 79 to 80

[F. No. O-17034/275/2017-H]
RAJIV RANJAN MISHRA, Jt. Secy.

2616 GI/2017

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APPENDIX D-1

HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, Dated 20th April 2017.

NOTIFICATION

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

No. REA 2016/CR No.79/DVP-2 : In exercise of the powers conferred by clauses (a), (ab), (ac), (b) to (k), (oa), (p) and clause (zf) of sub-section (2) of section 84 of the Real Estate (Regulation and Development) Act 2016 (18 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, Part IV-A, Extraordinary No. 161, 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.* —

- (1) These rules may be called the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, **Registration of real estate agents, rates of interest and disclosures on website**) Rules, 2017.
- (2) They shall come into force on the date of their publication in the *Official Gazette*:

Provided that the relevant rules shall be effective from the date of notification of commencement of relevant provisions by the Central Government.

2. *Definition:-*

- (1) In these rules, unless the context otherwise requires,—
 - (a) “Act” means the Real Estate (Regulation and Development) Act, 2016 (Act No. 16 of 2016);
 - (b) “Annexure” means an annexure appended to these rules;
 - (c) “Apex Body” or “Federation” means an independent body formed by and consisting of all the Co-operative Societies registered under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), Companies registered under the Companies Act, 2013 or condominiums or any other legal entity, constituted of the allottee in various buildings with or without wings located within a layout, where each such co-operative society or company or condominium or any other legal entity, as the case may be, which cooperate in the maintenance and administration of common areas and amenities and facilities provided in the layout while independently retaining control of its own internal affairs and administration in respect of each of the buildings for which they are formed;

- (d) "Appellate Tribunal" means the Maharashtra Real Estate Appellate Tribunal established under the sub-section (1) of section 43 and shall include its benches;
- (e) "ASR" or "Annual Statement of Rates" means the the rate of land and building for different users and as notified under the provisions of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995;
- (f) "authenticated copy" shall mean a self-attested copy of any document required to be provided by any person under these rules;
- (g) "authorised representative" means a person duly authorised by a party to a proceeding to present Application or to appear or plead on his behalf before the Authority or Appellate Tribunal;
- (h) "Authority" means the Maharashtra Real Estate Regulatory Authority established under the sub-section (1) of section 20;
- (i) "Chairperson" means the Chairperson of the Authority appointed under section 21;
- (j) "Covered parking space" means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking;
- (k) "disclosure" means the information and documents to be uploaded by the Promoter on the website of the Authority as well as the information and documents, which he is liable to give or produce or cause to be given and produced to the person intending to take or invest in project under the Act to the public at large through print media, electronics media, property exhibitions and promotional events and shall also include the communications made to the Authority, either in

physical or electronic form and includes the information, documents, etc., being made available;

- (l) "Form" means the forms appended to these Rules; (m) "FSI "or" Floor Space Index" shall have the same meaning as assigned to it in the Building Rules or Building By-laws or Development Control Regulations made under any law for the time being in force;
 - (n) "Legal Practitioner" shall have the same meaning as is assigned to it in the Advocates Act, 1961 (25 of 1961);
 - (o) "Member" means a Member of the Authority appointed under section 21;
 - (p) "Phase of a Real Estate Project" may consist of a building or a wing of the building in case of building with multiple wings or defined number of floors in a multi-storeyed building/wing;
 - (q) "Redevelopment Scheme" means a scheme inter alia providing for allotment of apartments in respect of rehabilitation or redevelopment of slum areas, old or dilapidated buildings (whether cessed or not), or cluster of buildings, as may be approved by the relevant competent authority under the provisions of any State or Central law or orders of the State or Central Government;
 - (r) "regulations" means the regulations made by the Authority;
 - (s) "section" means a section of the Act;
 - (t) "statutory authority" means such authority who is invested with the powers under any law, rules or regulations of the State Government or Central Government; and
- (2) Words and expressions used but not defined herein shall have the same meaning respectively assigned to them in the Act.

CHAPTER II REAL ESTATE PROJECT

3. Information to be furnished by the promoter for the registration of real estate project.-

- (1) The promoter shall furnish to the Authority such information as is required under the Act and documents, specified under the sub-sections (1) and (2) of section 4 of the Act, for registration of the real estate project with the Authority.
- (2) Without prejudice to the provisions of sub-rule (1), the promoter shall also furnish the following information and documents:-
 - (a) Authenticated copy of the PAN card of the promoter;
 - (b) Name, photograph, contact details and address of the promoter if he is an individual or authorized representative; or the name, photograph, contact details and address of the chairman, partners, directors, as the case may be, and the authorized representative in case of other entities.
 - (c) A copy of the legal title report reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by practicing advocate;
 - (d) Where the promoter is not the owner of the land on which development is proposed, a copy of the collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be, entered into between the promoter and such owner, reflecting the consent of the owner of the land and authenticated copies of legal title report reflecting the title of such owner, on the land proposed to be developed;
 - (e) The information relating to the encumbrances in respect of the land where the real estate project is proposed to be undertaken and the details regarding the proceedings which are sub-judice (if any) in respect of such land;

- (f) (i) sanctioned plan where the project is being developed along with information relating to the FSI/ TDR and other entitlements which are proposed to be utilized in accordance with the relevant Development Control Regulations for the time being in force, for carrying out such sanctioned plan and the amenities and common facilities (including common areas, parking spaces) to be provided in accordance with the sanctioned plan;
- (ii) the Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter;
- (iii) proposed Floor Space Index to be consumed and sanctioned Floor Space Index. In case the sanctioned Floor Space Index is different than what is proposed to be consumed by the promoter, then the proposed Floor Space Index shall be disclosed at the time of registration and as and when the Floor Space Index is sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;
- (iv) proposed Number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s). In case the sanctioned number of building(s) or wing(s) is different than what is proposed to be constructed by the promoter, then the proposed number of building(s) or wing(s) shall be disclosed at the time of registration and as and when the additional number of building(s) or wing(s) are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;
- (v) proposed number of floors in respect of each of the building or wing to be constructed and sanctioned number of floors in respect of each of the building or wing. In case the sanctioned number of floors is different than what is proposed to be constructed by the promoter, then the proposed number of floors shall be disclosed at the time of registration and as and when the additional

number of floors are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;

(vi) Aggregate area in sq. meters of the recreation open space;

(vii) The number of covered parking spaces,

- (g) the particulars in respect of Architecture and Design Standards, Type of Construction Technology, Earthquake Resistant Measures and the like to be adopted for Buildings and for Common Areas and of amenities / facilities in the Layout Plan of the real estate project;
 - (h) the nature of the organisation of allottees to be constituted and to which the title of such land parcels is to be conveyed and the specific local laws to govern such organisation of allottees on completion of real estate project;
 - (i) the promoter shall also provide such other information and documents, as may be required by the Authority under these rules or the regulations.
- (3) The application for registration of a real estate project referred to in sub-section (1) of section 4 shall be made Form 'A' and in writing by the promoter or his authorised representative authorized by a letter of Authority or Board Resolution and shall be submitted in triplicate.
- (4) When the provision for submission of web-based applications for registration of projects has been made by the Authority under sub-section (3) of section 4, the provisions of sub-rule (3) shall not apply.
- (5) (i) At the time of application for registration, the promoter shall pay a registration fee, calculated on the area of the land proposed to be developed at the rate of, rupees ten per square meter, subject to a minimum of rupees fifty thousand only and a maximum of rupees ten lakhs;
- (ii) The fees for registration of real estate project shall be paid

through NEFT or RTGS System or any other digital transaction mode.

- (6) The declaration to be submitted under clause (l) of sub-section (2) of section 4 shall be in form "B".

Explanation.-The registration of a real estate project shall not be required,-

- (i) for the purpose of any renovations or repair or redevelopment which does not involve marketing, advertisement, selling or new allotment of any apartment, plot or building as the case may be under the real estate project;
 - (ii) where only structural repairs of existing buildings are being undertaken by or through any Public Authority or as per requirement under any law, rules or regulations of the State Government or directions of any Competent Authority.
- (7) The promoter may apply for withdrawal of application for registration of the real estate project before the expiry of the period of 30 days of its submission to Authority provided that under sub-section (1) of section 5. In such cases, the registration fee to the extent as specified by the regulations framed by the Authority, shall be retained as administrative charges towards processing of application by the Authority and the remaining amount shall be refunded to the promoter within such period as may be specified in such regulations.
- (8) The promoter shall disclose,-
- (a) land cost in the real estate project for the purposes of sub-clause (D) of clause (l) of sub-section (2) of section 4;
 - (b) cost of construction in real estate project for the purposes of sub-clause (D) of clause (l) of sub-section (2) of section 4;
 - (c) "estimated cost of the real estate project," within the meaning of clause (v) of section 2.

4. *Disclosure by promoter of ongoing real estate projects.-*

- (1) The promoter of an ongoing real estate project, in which all buildings as per sanctioned plan have not received occupancy certificate or completion certificate, as the case may be, as provided by clause (b) of subsection (2) of section 3, shall be required to submit application for registration for each such phase of the project, within a period of three months from the date of commencement of section 3.

Explanation. -For the purpose of this sub-rule, -

- (i) the expression "phase of the project" means the building or buildings in a project in respect of which occupancy or completion certificate has not been received;
 - (ii) the term "completion certificate" shall mean such building permission or certificate, by whatever name called, which is issued by the competent authority by or under the provisions of Maharashtra Regional Town Planning Act, 1966 or any other law for the time being in force, in accordance with which the permission for development has been granted.
- (2) The Promoter shall disclose all details of ongoing real estate project as required under Subsection (1) and (2) of section 4 and Rule 3 including the extent of development carried out till the date of application for registration under sub-rule (1), as per the last approved sanctioned plan of the project and the extent of development of common areas, amenities etc. completed in respect of buildings along with expected period of completion of the on-going real estate project. The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed. The Promoter shall submit a certificate from the practicing project Architect certifying the percentage of completion of construction work of each of the building/ wing of the project, a certificate from the Engineer

for the estimated balance cost to complete the construction work of each of the building/wing of the project, and a certificate from a practicing Chartered Accountant, for the estimated balance cost to complete the project. The promoter shall submit a certificate from a practicing Chartered Accountant, certifying the balance amount of receivables from the apartments / flats / premises sold or allotted and in respect of which agreement have been executed and estimated amount of receivables in respect of unsold apartments / flats / premises calculated at the prevailing ASR rate on the date of certificate.

- (3) (a) The Promoter shall disclose the number of the apartments sold or allotted to the allottees and further disclose the size of the apartment based on carpet area even if such apartments are sold earlier on any other basis, such as super area, super built up area etc.
- (b) In case of plotted development, the promoter shall disclose the area of the plots sold to the allottees including extent of share of common areas and amenities etc.
- (4) The Promoter shall construct and develop real estate project in accordance with the sanctioned plan, and layout plans and specifications as approved by the Competent Authorities:

Provided that, the promoter developing a real estate project will be entitled to aggregate any contiguous land parcel through acquisition of ownership and title or by receiving development permission, including for re-development project and thereupon may also obtain phase-wise approvals from the relevant competent authorities to sanctioned plan under applicable laws, rules and regulations:

Provided further that, at the end of ninety days from the date of notification of section 3 of the Act, the promoter shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building

respect of such land parcel unless he registers such independent phase as a separate real estate project within the meaning of clause (c) of the Explanation to section 3:

Provided also that, previous written consent of least two-third of the allottees may not be necessary for implementation of the proposed plans/ specifications as disclosed in agreement executed with the allottee prior to registration or for any alterations or additions or modifications in the sanctioned plans, layout plans and specifications of the buildings or common areas in the Real Estate Project which are required to be made by promoter in compliance of any direction or order, etc. issued by, the competent authority or statutory authority, under any law of the State or Central Government, for the time being in force.

5. *Withdrawal of amounts deposited in separate account.-*

(1) With regard to the withdrawal of amounts deposited under sub-clause (D) of clause (l) of sub-section (2) of section 4, the following provisions shall apply:-

(i) *For new projects which will be registered after commencement.*

(a) The promoter shall observe the provisions sub-clause (D) of clause (l) of sub-section (2) of section 4;

(b) For the purpose of amount to be withdrawn from time to time by the promoter from the separate account in respect of each real estate project to cover the cost of the project, the Promoter shall submit following three certificates to the scheduled bank operating the separate account:

First, from the project Architect certifying the percentage of completion of construction work of each of the building / wing of the project;

Second, a certificate from the Engineer for the actual cost incurred on the construction work of each of the building / wing of the project; and

Third, a certificate from a practicing Chartered Accountant, for the cost incurred on construction cost

and the land cost. The practicing Chartered Accountant shall also certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the separate account. The promoter shall be required to follow the aforesaid procedure at the time of every withdrawal from the separate account till occupancy certificate in respect of the project is obtained. On receipt of completion Certificate in respect of the project the entire balance amount lying in the separate account can be withdrawn by the promoter.

(ii) *For ongoing projects within the meaning of the first proviso to sub-section (1) of section 3 of the Act.* – For an ongoing real estate project in which all buildings or wings as per sanctioned plan have not received occupancy certificate or the completion certificate has not been issued; seventy percent. of the amount to be realized from the allottees shall be deposited in such separate account, in accordance with the provisions of sub-clause (D) of clause (I) of sub-section (2) of Section 4 of the Act:

Provided further that, in the event where the estimated receivables of the ongoing project is less than the estimated cost of completion of the project, then 100% of the amount to be realized from the allottees shall be deposited in the said separate account;

Explanation I.- – In ascertaining the cost of completion of percentage of the project, the land cost shall include,-

- (i) The costs incurred by the Promoter for acquisition of ownership and title of the land parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost;
- (ii) Premium payable to obtain development or redevelopment rights;

- (iii) Amount paid for acquisition of TDR;
- (iv) Premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- (v) Consideration payable to the outgoing developer to relinquish the ownership and title rights over such land parcels;
- (vi) Amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, transfer charges, registration fees etc.; and
- (vii) ASR linked premiums payable by any Promoter as per requirement of any Law, rules or regulations for obtaining right for redevelopment of lands owned by Public Authorities;

Explanation II. – Where the promoter, due to inheritance, gift or otherwise, is not required to incur any cost towards acquisition of ownership and title of the land parcels proposed for the real estate project, the cost of land shall be reckoned on basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project.

Explanation III. – The cost of construction for the purpose of sub-clause (D) of clause (I) of sub-section (2) of section 4, shall include all such costs, incurred by the Promoter, towards the on-site and off-site expenditure for the development of the Real Estate project including payment of Taxes, Fees, Charges, Premiums, Interest etc. to any Competent Authority or Statutory Authority of the Central or State Government under any laws or rules or regulations of the time being in force including Principal sum and interest, paid or payable to any financial institutions including scheduled banks or non-banking financial companies etc. or money-lenders (under the Maharashtra

Money-Lending Regulation Act, 2014) for the Real Estate Project, but shall not include the sum which the promoter has raised and incurred by way of loan obtained from such banks, non-banking finance companies or money-lenders, for the purpose of purchase of land for the project or for obtaining the development rights over such land.

Explanation IV. – In case of rehabilitation scheme undertaken under any specific local law of State Government or Central Government or rules or regulations made thereunder which requires onsite expenditures to be made before registration of real estate project, such as expenditure towards clearance of land of encumbrances for temporary transit accommodation, construction of rehabilitation buildings and any other overhead costs besides payment of ASR linked Premium, Fees and Charges, Security Deposits, etc. to any competent authority or statutory authority is so certified by an engineer or Architect and a Chartered Accountant in practice, then such incurred expenditure may be included in cost of land by the Promoter.

6. Grant or rejection of registration of the project.-

(a) Grant of Registration of the Project.-

Upon the registration of any real estate project as per section 5 read with rule 3, the Authority shall issue to the Promoter a Registration Certificate with a project registration number, in Form “C”. The period for which registration shall be valid shall exclude such period where actual work could not be carried by the promoter as per sanctioned plan due to specific stay or injunction orders relating to the real estate project from any Court of law, or Tribunal, competent authority, statutory authority, high power committee etc., or due to such mitigating circumstances as may be decided by the Authority:

Provided that, while deciding on such mitigating circumstances, the Authority shall give reasonable opportunity of hearing to the allottees and such other person, who in the opinion of the Authority, have interest in the project.

(b) *Rejection of registration of the project:*

Upon the rejection of an application as per section 5, by the Authority, shall be inform to the applicant in Form "D" as also to the concerned competent authority or statutory authorities:

Provided that, no application for registration of any real estate project shall be rejected unless the Promoter has been given adequate opportunity of being heard in the matter by the Authority.

7. *Extension of registration of the Real estate project. -*

(1) An application for extension of the real estate project shall be made to the Authority, in Form "E", along with an explanatory note setting out the grounds and reasons for delay in the completion of the real estate project and the need for extension, along with documents supporting such grounds and reasons:

Provided that, where extension of registration is due to *force majeure* the Authority may at its discretion waive the fee for such extension granted to any real estate project.

(2) The grant of extension of registration to a real estate project, shall be in Form "F". The Authority shall supply a copy thereto to the Promoter and in case of rejection of the application for extension of registration, the authority shall, after giving to the applicant an opportunity of being heard as provided in the second proviso of section 6, inform the promoter about the same, in Form "D". The intimation thereof shall also be given to the respective competent authority and statutory authorities.

(3) The application for extension of Real Estate Project shall be accompanied with fees calculated on the area of land proposed to be developed at the rate of rupees ten per square meter, subject to a minimum of rupees fifty thousand only and a maximum of rupees ten lakhs only.

8. *Revocation of Registration of the project. -*

(1) Upon revocation of registration of a project as per section 7, the Authority shall inform the promoter and the concerned competent authority about such revocation in Form "D".

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days' notice, in writing, stating the ground on which it proposes to revoke the registration, and has considered any cause shown by the promoter within the said period:

Provided that, prior to the revocation of registration of real estate project, the Authority shall also give notice to the concerned competent authority which has granted approval to the real estate project and association of allottees (if any). In case the association of allottees is not formed, the Authority may in its discretion, also give notice to the allottees, to submit their say in that behalf. The Authority while facilitating the remaining development works to be carried out in accordance with the provisions of section 8 shall also take such measures as may be required to protect the interest of other parties who through mortgage or other investments are interested in the real estate project, which are disclosed by the promoter on the Website of the Authority:

Provided further that, the Authority shall also give adequate opportunity of being heard to any party which through defined instrument of debt or equity have created third party interest in the real estate projects

Explanation. - For the purposes of the second proviso, the party shall include Scheduled Banks, Housing Finance Companies, Insurance Companies, Non-Banking Finance Companies operating as Asset Finance Companies, Investment Companies, Loan Companies, Investment Finance Companies, Infrastructure Debt Funds, Micro-finance Institutions, Foreign Direct Investors, Private Equity Funds and the Real Estate Investment Trust.

9. ***Formation of legal entity and transfer of title.*** -

(1) Promoter to enable formation of Legal Entity like Cooperative Society, Company, Association, Federation etc. under clause (e) of sub-section (4) of section 11 of the Act.-

(i) Where a Co-operative Housing Society or a Company or any other legal entity of allottees is to be constituted for a single building not being part of a Layout; or in case of layout of more than one building or a wing of one building in the layout, the Promoter shall submit the application in that behalf to the Registrar for registration of the Co-operative Housing Society under the Maharashtra Co-operative Societies Act, 1960 or a Company or any other legal entity, within three months from the date on which fifty one per cent. of the total number of allottees in such a building or a wing, have booked their apartment.

(ii) Where a Promoter is required to form an Apex Body either as a federation of separate and independent Co-operative Housing Societies or Companies or any other Legal Entities or as a Holding Company of separate and independent Co-operative Housing Societies or companies or any other Legal Entities, then the Promoter shall submit an application to the Registrar for registration of the co-operative society or the company to form and register an Apex Body in form of Federation or Holding entity consisting of all such entities in the Layout formed as per clause (i) of sub-rule (1) of rule 9 (1)(i) herein above. Such application shall be made within a period of three months from the date of the receipt of the occupancy certificate of the last of the building which was to be constructed in the Layout.

(iii) If the promoter fails to form the legal entity such as Cooperative Society or Company or Association or Federation, as the case may be, the Authority shall by an order direct the Promoter to apply for formation of such legal entity or may authorize the allottees to apply for formation of such legal entity.

(2) *Promoter to **convey title** under section 17 of the Act.-*

(i) Period for Conveyance of title, by Promoter, to allottees in case of plots: The promoter shall carry out conveyance within three months from the date the allottees in such plot have paid full consideration to the promoter.

(ii) Period for Conveyance of title, by Promoter, to legal entity of allottees in case of single building project. - If no period for conveying the title of the Promoter to the legal entity of the allottees is agreed upon, the Promoter shall (subject to his right to dispose of the remaining Apartments, if any) execute the conveyance within three months from the date of issue of occupancy certificate or fifty one per cent. of the total number of allottees in such a building or a wing, have paid the full consideration to the promoter, whichever is earlier.

(iii) Period for conveyance of title, by Promoter, to organization of allottees in case of Layout.-

(a) In the case of a building or a wing of a building in a Layout, if no period for conveying the title of the Promoter of that building or a wing of that building to the legal entity of the allottees is agreed upon, the Promoter shall (subject to his right to dispose of the remaining Apartments, if any) execute the conveyance of the structure of that building or wing of that building (excluding basements and podiums) within one month from the date on which the Co-operative society or the company is registered or, as the case may be, the association of the allottees is duly constituted or within three months from the date of issue of occupancy certificate, whichever is earlier.

(b) In the case of a layout, if no period for conveying the title of the Promoter in respect of the entire undivided or inseparable land underneath all buildings/ wings along with structures of basements and Podiums constructed in a Layout is agreed upon, the Promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly or otherwise within three months from the date on which the Apex Body or Federation or Holding Company is registered or, as the case may be, the association of the allottees is duly constituted or within three months from the date of issue of occupancy certificate to the last of the building or wing

in the layout, whichever is earlier .

- (3) If the promoter fails to convey the title in accordance with sub-rule (2) of rule 9, in favour of Cooperative Society or Company or Association or Federation, as the case may be, the Authority shall by an order direct the Promoter to convey the title in favour of such legal entity.
- (4) The said legal entity shall also be entitled to have a unilateral deemed conveyance executed in their favour and have it registered under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963:

Provided that, after conveying the title to the association of allottees under section 17, the promoter shall continue to have the rights and entitlement to advertise, market, book, sell or offer to sell or allot to person to purchase any apartment or building or plot which is still not sold or allotted and shall be allowed to do so by the association of allottees without any restriction or entry of the building and development of common areas:

Provided further that, in such case, the promoter shall be permitted the entry of premises of the building and common areas to also discharge his obligations under sub-section 3 of section 14:

Provided also that, in respect of the real estate project for which development or redevelopment permissions are subject to approvals under the provisions of specific local laws such as the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Maharashtra Housing and Area Development Authority Act, 1976, the Mumbai Metropolitan Region Development Authority Act, 1974, the Maharashtra Regional Planning Act, 1966, the Nagpur Improvement Trust Act, 1936 etc., the conveyance of title shall be made by the respective public authority, within such specific period as may be provided under the relevant law applicable to such authority or rules or regulations framed there under.

- (5) The promoter upon receiving the certificate of registration of the real estate project from the Authority, obtain insurance as provided by the Act and also in respect of such other matters as may be notified by the State Government under section 16 and handover relevant documents to the association, society, federation or body corporate, as the case may be, along with conveyance of title.

10. *Agreement for Sale.* -

- (1) For the purpose of sub-section (2) of section 13, the agreements for sale shall be in conformity with the provisions, rules and regulations made there under and shall be in accordance with the model form of agreement at Annexure 'A'. Nothing in this sub-rule shall be deemed to prevent the promoter to modify the model form of Agreement for Sale at Annexure 'A' provided that such agreement is in conformity with the provisions of sub-section (2) of section 13 of the Act and the rules and regulations made there under.
- (2) Any application letter, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale under the Act or the rules or the regulations made there under.

CHAPTER - III REAL ESTATE AGENT

11. *Application for Registration by the real estate agent.* -

- (1) Every real estate agent required to be registered as per sub-section (2) of section 9 shall make an application in writing, - in case of registered real estate projects, forthwith and in any case prior to engaging in any activity relating to marketing, advertising sale or purchase of any apartments.
- (2) The application shall be in Form 'G'. The following

documents shall also be submitted along with the application, namely:-F:\RERA Final English Agreement 20.4.2017.docx

(a) brief details of his enterprise including its name, registered address of place of business, type of enterprise (proprietorship firm, societies, partnership, company etc.); Registration numbers, PAN, Aadhar Card No, DIN, as the case may be, under which returns are required to be filed with statutory authority;

(b) particulars of registration obtained under other laws, and rules and regulations, as the case may be, along with the authenticated copy of partnership deeds, memorandum of association, articles of association, etc.;

(c) recent colour photographs of the real estate agent, if an individual and of all the partners, directors, trustees, etc. including persons in service or assigned work expected on a real estate agent, in case of other entities;

(d) income-tax returns for last three financial years preceding the application or in case the applicant was exempted from filing returns in any of the three year preceding the application, a declaration to such effect;

(e) authenticated copy of the proof of address of the principal place of business, number of branch offices if any along with contact details including Telephone Numbers, Fax Numbers and email address; and

(f) details (if any) of all real estate projects and their promoters on whose behalf he has acted as real estate agent in preceding five years;

(g) details of all civil or criminal cases pending against him if an individual or any of the partners, directors, trustees etc. in case of other entities;

(h) authenticated copies of all letter heads; rubber stamp images, acknowledgment receipts proposed to be used by the real estate agent;

(i) such other information and documents, as may be specified by regulations.

- (3) (i) A sum of rupees ten thousand, in case of applicant being an individual; and
(ii) rupees one lakh, in case of the applicant being other than an individual.
- (4) The fees for registration of real estate project shall be paid through NEFT or RTGS System or any other digital transaction mode.
- (5) The real estate agent upon being engaged by the promoter under clause (f) of sub-section (2) of section 4 for a real estate project shall maintain and preserve books of accounts, records and documents separately for each such real estate project.

12. Grant of registration to the real estate agent or rejection of registration.-

- (1) The Authority, may, within 30 days of receipt of application, satisfying itself of the fulfilment of such conditions, —
 - (a) accept the application and grant registration certificate to the real estate agent;
 - (b) upon the registration of a real estate agent as per section 9 read with sub-rule (1) of Rule 11, the Authority shall issue a registration certificate with a registration number in Form 'H'.
- (2) In case of rejection of the application as per section 9 or the rules or regulations made there under, the Authority shall, after recording the reasons in writing in form the applicant in Form 'I':

Provided that, no application for registration of a real estate agent shall be rejected unless the applicant has been given an opportunity of being heard in the matter by the Authority.

- (3) (a) On completion of period as indicated in sub-rule (1) above, the Authority shall, if the application is not rejected, provide registration number to the applicant within seven days;

(b) if the authority fails to issue any communication about the deficiencies in his application, the application shall be deemed to have been granted and the applicant shall be deemed to have been registered and the authority shall issue a registration number to such applicant accordingly.

- (4) The registration granted under this rule shall be valid for a period of five years:

Explanation. - The public authorities established under Special Local Laws which may sell Apartments or Buildings or Plot under any real estate project through Public Lottery as per their Rules or Regulations shall not be required to be registered as real estate agent, under these rules.

13. *Renewal of Registration of real estate agent -*

- (1) A real estate agent to whom registration has been granted under section 9 may, make an application for renewal of his registration, at least sixty days prior to the expiry of the registration. The application shall be in Form 'J' and shall be accompanied with the same fees as are applicable in case of new registration, under these rules.
- (2) The real estate agent shall also submit all the updated documents set out in clauses (a) to (i) of sub-rule (2) of rule 11 at the time of application for renewal. In case of renewal of registration, the authority shall inform the real estate agent about the same in Form 'K' and in case of rejection of the application for renewal of registration the authority, shall inform the real estate agent in Form 'T':

Provided that, no application for renewal of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

- (3) The renewal of registration of the real estate agent shall be granted provided that the real estate agent continues to comply with the provisions and the rules and regulations made there under.
- (4) The renewal granted of registrations to a real estate agent under this rule shall also be valid for a period of five years from the date of its renewal.

14. *Obligations of registered real estate agents. -*

- (1) Every registered real estate agent shall prominently display number of his Registration Certificate at the principal place of business and at its branch offices.
- (2) Every registered real estate agent shall quote his number of their registration all the documents relating to advertisement, marketing, selling or purchase issued by the real estate agent along with the number of registration certificate of the real estate project.

15. *Revocation of Registration of real estate agent.-*

- (1) Where any real estate agent who has been granted registration certificate number commits breach of any terms and conditions specified under these rules or regulations made there under, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under the Act, either suo-motu or on an application or complaint from the promoter or allottee or revoke the registration or suspend the same for such period as the Authority thinks fit and inform all the promoters:

Provided that, no such revocation or suspension of registration shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

- (2) Where the Authority revokes the registration it shall intimate about the same to the concerned real estate agent in Form 'I':

Provided that, on the revocation of the registration by the Authority of any real estate agent; fresh application for grant of registration cannot be made again within a period of six months by such real estate agent.

16. *Maintenance and preservation and production of books of accounts, records and documents.-*

Every registered real estate agent shall maintain and preserve such books of accounts, records and documents as he may be required in accordance with the provisions of the Income Tax Act, 1961 or the Companies Act, 2013 or under any other law applicable for the time being in force or rules and regulations framed there under and will be required to produce them for inspection if so needed for grant or renewal of the registration.

17. *Other functions of a real estate agent. -*

The real estate agent shall provide assistance to enable the allottee and promoter of each real estate project, to exercise their respective rights and fulfil their respective obligations at the time of marketing and selling, purchase and sale of any plot, apartment or building, as the case may be and not involve himself in any unfair trade practices, namely: –

- (i) making any statement, whether orally or in writing or by visible representation which –
 - (A) falsely or knowingly represents that services or amenities are of a particular standard or grade;
 - (B) represents that the Promoter or himself has approval or affiliation which such promoter or himself does not have;
 - (C) makes a false or misleading representation concerning the services which the promoter does not have;
- (ii) permitting the publication of any advertisement whether in any newspaper or other media, of services that are not intended to be offered by the promoter;
- (iii) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building or as the case may be;
- (iv) discharge such other functions as prescribed by the regulations of the Authority.

CHAPTER - IV
RATE OF INTEREST PAYABLE BY PROMOTER AND
ALLOTTEE AND TIME LINES FOR REFUND

18. *Rate of interest payable by the promoter and the allottee. -*

The rate of interest payable by the promoters to the allottees or by the allottees to the promoters, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. *Timelines for refund. -*

The refund of any amount which is payable by the promoters to allottees along with the applicable interest and compensation, if any, under the Act or the Rules and Regulations, shall be made by the Promoter to the allottee within thirty days from the date on which such refund along with applicable Interest and Compensation, becomes due and payable to the allottee:

Provided that, every instance thereof shall be reported by the concerned promoters within thirty days to the Authority.

CHAPTER V
DETAILS TO BE PUBLISHED ON THE
WEBSITE OF AUTHORITY

20. *Details to be published on the website regarding real estate projects.-*

- (1) For the purpose of clause (b) of section 34, the Authority shall ensure that all the disclosures made by the promoters to the authority with regard to the Real Estate project for which registration has been given, shall be made available on its website, except for the following:

- (i) Details provided under clauses (b), (e), (g), (h), (i) and (l) of sub-section (2) of Section 4;
 - (ii) Details provided under sub-rule (2) of rule 3 of these Rules.
- (2) The exceptions under sub-rule (1) shall not apply to promoters who shall, in accordance with sub-section (1) of section 11, enter all details of the proposed project as provided under sub-section (2) of section 4 of the Act and under sub-rule (2) of rule 3, in all the fields as provided, for public viewing in the web page created on the web site of the Authority. The authority may through Regulation specify further details of the registered Real Estate Projects to be made available on the Website. The authority shall ensure that such information is updated at the interval of every quarter.

21. Details to be published on the website regarding real estate agents.-

For the purpose of clause (d) of section 34, the Authority shall ensure that the following information shall be made available on its website in respect of each real estate agent registered with it or whose application for registration has been rejected or revoked:

- (a) For real estate agents registered with the Authority:
 - (i) registration number and the period of validity of the registration of the real estate agent with the regulatory authority;
 - (ii) brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies etc.);
 - (iii) particulars of registration including the bye-laws, memorandum of association, articles of association etc. as the case may be;
 - (iv) photograph of the real estate agent if it is and individual and the photograph of the partners, directors etc. in case of other persons;

- (v) authenticated copy of the address proof of the place of business and the contact address, contact numbers and email-ids of the real estate agent and other officials responsible.
- (b) In case of applicants whose application for registration as a real estate agent have been rejected or real estate agents whose registration has been revoked by the Authority:
 - (i) registration number and the period of validity of the registration of the real estate agent with the Authority;
 - (ii) brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies etc.);
 - (iii) photograph of the real estate agent if it is an individual and the photograph of the partners, directors etc. in case of other persons.
- (c) such other information or documents as the authority may, from time to time, require the promoter to submit in accordance with the regulations.

22. Obligation of the Authority to ensure cyber security of its website.-

The Authority shall ensure adequate measure to ensure cyber security of its Website a back-up, in digital form, of the contents of its Website in terms of this rule, and ensure that such back-up is updated on the last day of every month. The Authority shall maintain and update its Website and observe provisions of the Information Technology Act, 2002 and Right to Information Act, 2005.

CHAPTER VI MISCELLANEOUS

23. Application of other laws not barred: -

Nothing in these rules or the regulations of the Authority shall be construed to be in derogation of, provisions of any other laws or rules for the time being in force and rules and regulations made there under.

FORM 'A'
[See rule 3(3)]

APPLICATION FOR REGISTRATION OF PROJECT

To,

The Maharashtra Real Estate Regulatory Authority

Sir,

I/We hereby apply for the grant of registration of my/our project to be set up at _____ Tehsil / District / City situated in State of Maharashtra.

1. The requisite particulars are as under:-

(i) Status of the applicant, whether individual/company/ proprietorship firm/societies/partnership firm/competent authority;

(ii) In case of individual –

- (a) Name
- (b) Father's Name
- (c) Occupancy
- (d) Permanent address
- (e) Photograph
- (f) Contact Details (Phone number, mobile number, E-mail, Fax number etc.)

OR

In case of firm / societies / trust / companies / limited liability partnership / competent authority -

- (a) Name
- (b) Address
- (c) Copy of registration certificate
- (d) Main objects
- (e) Name, photograph and address of chairman of the governing body / partners / directors etc.

- (f) Contact Details (Phone number, mobile number, E-mail, Fax number etc.)
 - (iii) PAN No. _____;
 - (iv) Name and address of the bank or banker with which account in terms of section 4(2)(l)(D) of the Act will be maintained _____;
 - (v) Details of project land held by the applicant _____;
 - (vi) brief details of the projects launched by the promoter in the last five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delays in completion, details of cases pending, details of type of land and payments pending etc. _____
 - (vii) Agency to take up external development works _____ (Local Authority / Self Development);
 - (viii) Registration fee for an amount of Rs. _____/- calculated as per sub-rule (5) of rule 3;
 - (ix) Any other information the applicant may like to furnish.
2. I/we enclose the following documents in triplicate, namely:-
- (i) authenticated copy of the PAN card of the promoter and a letter of authority or Board Resolution, in case the promoter not being an individual;
 - (ii) estimated cost of Real Estate project as defined in Section 2 (v) of the Act;
 - (iii) copy of the legal title report reflecting the flow of title of the promoter to the land on which development is proposed to be developed with authentication of such title, if such land is owned by another person;
 - (iv) the details of encumbrances on the land on which development is proposed including any rights, title, interest, dues, litigation, details relating to mortgage/charge created for the project land for the facility taken by the applicant or any third party and name of any party in or over such land or no encumbrance certificate from an advocate having experience of ten years or from revenue authority not below the rank of Tehsildar, as the case may be;

- (v) where the promoter is not the owner of the land on which development is proposed, copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner, reflecting the consent of the owner of the land and authenticated copies of title report reflecting the title of such owner, on the land proposed to be developed;
- (vi) 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 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;
- (vii) 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;
- (viii) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire-fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (ix) the location details of the project, with clear demarcation of land dedicated for the said project along with its boundaries including the latitude and longitude of the end points of the project;
- (x) the proposed plan, proposed layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (xi) Proposed Floor Space Index to be consumed and sanctioned Floor Space Index. In case the sanctioned Floor Space Index is different than what is proposed to be consumed by the promoter from time to time, then the proposed Floor Space Index shall be disclosed at the time of registration and as and when the Floor Space Index is sanctioned, the same shall be uploaded on the website of the Authority by the Promoter from time to time.
- (xii) Proposed Number of building(s) or wing(s) to be constructed

and sanctioned number of the building(s) or wing(s). In case the sanctioned Number of building(s) or wing(s) is different than what is proposed to be constructed by the promoter, then the proposed Number building(s) or wig(s) shall be disclosed at the time of registration and as and when the Additional Number of building(s) or wing(s) are sanctioned, the same shall be uploaded on the website of the Authority by the Promoter from time to time.

- (xiii) Proposed Number of Floors in respect of each of the building or wing to be constructed and sanctioned Number of Floors in respect of each of the building or wing. In case the sanctioned Number of Floors is different than what is proposed to be constructed by the promoter, then the proposed Number of Floors shall be disclosed at the time of registration and as and when the Additional Number of Floors are sanctioned, the same shall be uploaded on the website of the Authority by the Promoter from time to time.
- (xiv) Aggregate area in square meters of the recreation open space
- (xv) the plan of proposed development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire-fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy, the particulars in respect of Architecture and Design Standards, Type of Construction Technology, Earthquake Resistant Measures and the like, to be adopted for Buildings and for Common Areas and of amenities / facilities in the Layout Plan of the real estate project;;
- (xvi) proforma of the allotment letter and agreement for sale, to be signed with the allottees and the conveyance deed proposed to be signed with the nature of organisation of allottees to be constituted namely societies / federation/ common organization of allottees/federation of common organization;
- (xvii) the number, type and the carpet area of apartments for sale in the proposed project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

- (xviii) the number and areas of garage for sale in the proposed project to be provided at basements, stilts podium or independent structure or parking provided by mechanised parking arrangement;
- (xix) the number of covered or open parking areas in the real estate project;
- (xx) the names and addresses of his real estate agents, if any, for the proposed project;
- (xxi) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (xxii) a declaration in Form 'B'.
- (xxiii) For ongoing project the Promoter shall submit a certificate from the project Architect certifying the percentage of completion of construction work of each of the building / wing of the project, a certificate from the Engineer for the estimated balance cost to complete the construction work of each of the building / wing of the project, and a certificate from a practicing Chartered Accountant, for the estimated balance cost to complete the project. The promoter shall submit a certificate from a practicing Chartered Accountant, certifying the balance amount of receivables from the apartments / flats / premises sold or allotted and in respect of which agreement have been executed and estimated amount of receivables in respect of unsold apartments / flats / premises calculated at the prevailing ASR rate on the date of certificate.
- (xxiv) The Promoter shall disclose all details of ongoing real estate project as required under sub-section (2) of section 4 and Rule 3 including the extent of development carried out till date as per the last approved sanctioned plan of the project and the extent of development of common areas, Amenities etc. completed in respect of Buildings along with expected period of completion of the on-going real estate project. The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending

project, which shall be commensurate with the extent of development already completed.

- (xxv) For ongoing projects, the Promoter shall disclose the number of the apartments sold or allotted to the allottees and further disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.
- (xxvi) In case the promoter has created third party interests in respect of the real estate project, the names and addresses of such persons in whose favour such interests have been created.
3. I/We solemnly affirm and declare that the particulars given in herein are correct to my/our knowledge and belief.

Dated:

Place:

Yours faithfully,
Signature and seal (if any)
of the applicant(s)

FORM 'B'**[See rule 3(6)]****DECLARATION, SUPPORTED BY AN AFFIDAVIT, WHICH
SHALL BE SIGNED BY THE PROMOTER OR ANY PERSON
AUTHORIZED BY THE PROMOTER**Affidavit cum Declaration

Affidavit cum Declaration of Mr./Ms. _____ promoter of the proposed project/duly authorized by the promoter of the proposed project, vide its/his/their authorization dated _____;

I, _____ promoter of the proposed project / duly authorized by the promoter of the proposed project do hereby solemnly declare, undertake and state as under:

1. That I / promoter have / has a legal title Report to the land on which the development of the project is proposed

OR

_____ have/has a legal title Report to the land on which the development of the proposed project is to be carried out

AND

a legally valid authentication of title of such land along with an authenticated copy of the agreement between such owner and promoter for development of the real estate project is enclosed herewith.

2. That the project land is free from all encumbrances.

OR

That details of encumbrances _____ including dues and litigation, details of any rights, title, interest or name of any party in or over such land, along with details.

3. That the time period within which the project shall be completed by me/promoter from the date of registration of project;

4. (a) For new projects :

That seventy per cent of the amounts realised by me/promoter 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.

(b) For ongoing project on the date of commencement of the Act

(i) That seventy per cent of the amounts to be realised hereinafter by me/promoter 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.

OR

(ii) That entire of the amounts to be realised hereinafter by me/promoter 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, since the estimated receivable of the project is less than the estimated cost of completion of the project.

5. That the amounts from the separate account shall be withdrawn in accordance with Rule 5
6. That I / the promoter shall get the accounts audited within six months after the end of every financial year by a practicing Chartered Accountant, and shall produce a statement of accounts duly certified and signed by such practicing Chartered Accountant, and 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.
7. That I /the promoter shall take all the pending approvals on time, from the competent authorities.
8. That I/ the promoter shall inform the Authority regarding all the changes that have occurred in the information furnished under

sub-section (2) of section 4 of the Act and under rule 3 of these rules, within seven days of the said changes occurring.

- 9. That I / the promoter have / has furnished such other documents as have been prescribed by the rules and regulations made under the Act.
- 10. That I/the promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

Deponent

Verification

The contents of my above Affidavit cum Declaration are true and correct and nothing material has been concealed by me therefrom.

Verified by me at _____ on this _____ day of _____.

Deponent

FORM 'C'**[See rule 6(a)]****REGISTRATION CERTIFICATE OF PROJECT**

This registration is granted under section 5 of the Act to the following project under project registration number _____:

(Specify Details of Project including the project address);

1. (in the case of an individual) Mr./Ms. _____ son of Mr./Ms. _____. Tehsil _____ District/City situated in _____ State of Maharashtra _____;

OR

(in the case of a firm / society / company / competent authority) firm / society / company / competent authority having its registered office / principal place of business at .

2. This registration is granted subject to the following conditions, namely:-

(i) The promoter shall enter into an agreement for sale with the allottees;

(ii) The promoter shall execute and register a conveyance deed in favour of the allottee or the association of the allottees, as the case may be, of the apartment or the common areas as per Rule 9;

(iii) The promoter shall deposit seventy percent of the amounts realised by the promoter in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost to be used only for that purpose as per sub- clause (D) of clause (I) of sub-section (2) of section 4 read with Rule 5;

OR

(iii) That entire of the amounts to be realised hereinafter by me/promoter 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, since the estimated receivable of the project is less than the estimated cost of completion of the project.

- (iv) The Registration shall be valid for a period of years commencing from and ending with unless renewed by the Maharashtra Real Estate Regulatory Authority in accordance with section 5 of the Act read with rule 6;
- (v) The promoter shall comply with the provisions of the Act and the rules and regulations made there under;
- (vi) That the promoter shall take all the pending approvals from the competent authorities

3. If the above mentioned conditions are not fulfilled by the promoter, the regulatory Authority may take necessary action against the promoter including revoking the registration granted herein, as per the Act and the rules and regulations made there under.

Dated:

Place:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

FORM 'D'
[See Rule 6(b), Rule 7(2); Rule 8(1)]

**INTIMATION OF
REJECTION OF APPLICATION FOR REGISTRATION OF
PROJECT / REJECTION OF APPLICATION FOR EXTENSION
OF REGISTRATION OF PROJECT / REVOCATION OF
REGISTRATION OF PROJECT**

From:

The Maharashtra Real Estate Regulatory Authority,

To

Application/Registration No.: _____

Dated: _____

You are hereby informed that your application for registration of your project is rejected.

OR

You are hereby informed that your application for extension of the registration of your project is rejected.

OR

You are hereby informed that the registration granted to your project is hereby revoked for the reasons set out below

(here state out the reasons)

Place:

Dated:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

FORM 'E'
[See rule 7(1)]

**APPLICATION FOR EXTENSION OF REGISTRATION OF
PROJECT**

From:

To

The Maharashtra Real Estate Regulatory Authority,

Sir,

I/We hereby apply for extension of registration of the following project: _____

registered with the regulatory authority vide project registration certificate bearing No. _____ which expires on _____.

As required I/we submit the following documents and information, namely:-

- (i) Rupees _____ as fees for extension as provided under sub-rule (3) of rule 7;
- (ii) Authenticated copy of proposed Plan of the project showing the stage of development works undertaken till date;
- (iii) Explanatory note regarding the state of development works in the project and reason for not completing the development works in the project within the period declared in the declaration submitted in Form 'B' at the time of making application for the registration of the project:-

(here state out the reasons);

- (iv) Authenticated copy of the permission/approval from the

competent authority which is valid for a period which is longer than the proposed term of extension of the registration sought from the regulatory authority;

- (i) The original project registration certificate; and
- (ii) Any other information as may be specified by regulations.

Place:

Dated:

Yours faithfully,
Signature and seal (if any)
of the applicant(s)

FORM 'F'

[See rule 7(2)]

CERTIFICATE FOR EXTENSION OF REGISTRATION OF PROJECT

This extension of registration is granted under section 7 of the Act, to the following project: _____ registered with the regulatory authority vide project registration certificate bearing No. _____ of _____

1. (in the case of an individual) Mr./Ms. _____ son of Mr. / Ms. _____ Tehsil _____ District _____ / City situated in State of Maharashtra ; OR (in the case of a firm / society / company / competent authority) firm / society / company / competent authority having its registered office/principal place of business at .
2. This renewal of registration is granted subject to the following conditions, namely:-
 - (i) The promoter shall execute and register a conveyance deed in favour of the allottee or the association of the allottees, as the case may be, of the apartment or the common areas as per sub-rule (2) of rule 9;

- (ii) The promoter shall deposit seventy percent of the amounts realised by the promoter in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost to be used only for that purpose as per sub-clause (D) of clause (I) of sub-section (2) of section 4 read with Rule 5;

OR

- (ii) That entire of the amounts to be realised hereinafter by me/promoter 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, since the estimated receivable of the project is less than the estimated cost of completion of the project.
- (iii) The registration shall be valid for a period of _____ years commencing from _____ and ending with _____ unless renewed by the Maharashtra Real Estate Regulatory Authority in accordance with section 6 read with rule 7 of the Act;
- (iv) The promoter shall comply with the provisions of the Act and the rules and regulations made there under;
- (v) That the promoter shall take all the pending approvals from the competent authorities
- (vi) If the above mentioned conditions are not fulfilled by the promoter, the regulatory authority may take necessary action against the promoter including revoking the registration granted herein, as per the Act and the rules and regulations made there under.

Dated:

Place:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

FORM 'G'**[See rule 11(2)]****APPLICATION FOR REGISTRATION OF REAL ESTATE
AGENT**

To

The Maharashtra Real Estate Regulatory Authority

Sir,

I/We apply for the grant of registration as a real estate agent to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in real estate projects registered in the _____ State of Maharashtra in terms and the rules and regulations made there under,

1. (in the case of an individual) Mr./Ms. _____ son of Mr./Ms. _____ Tehsil _____ District _____ State _____;

OR

(in the case of a firm/society/company) _____ firm/society/company _____ having its registered office / principal place of business at _____.

2. The requisite particulars are as under:-

(i) Status of the applicant, whether individual / company / proprietorship firm / societies / partnership firm / limited liability partnership;

(ii) In case of individual –

(a) Name

(b) Father's Name

(c) Occupancy

(d) Permanent address

(e) Photograph

OR

In case of firm / societies / companies -

- (a) Name
 - (b) Address
 - (c) Copy of registration certificate
 - (d) Major activities
 - (e) Name, photograph & address of partners/directors etc.
- (iii) particulars of registration including the bye-laws, memorandum of association, articles of association etc. as the case may be;
- (iv) authenticated copy of the address proof of the place of business, number of branch offices if any along with contact details including Telephone Numbers, Fax numbers and e-mail address;
- (v) Details of registration in any other State or Union territory;
- (vi) particulars of registration obtained under other laws, and rules and regulations, as the case may be, along with the authenticated copies of partnership deeds, memorandum of association, article of association etc.
- (vii) colour photographs of the real estate agent, if an individual and of all the partners, directors, trustees, etc including persons in service or assigned work expected on the real estate agent, in case of other entities;
- (viii) income tax returns for last three financial years preceding the application or in case the applicant was exempted from filing returns in any of the three year preceding the application, a declaration to such effect;
- (ix) details (if any) of all real estate projects and their promoters on whose behalf he has acted as real estate agent in preceding 5 years;
- (x) details of civil and criminal cases pending against him if an individual or any of the partners, directors, trustees etc. in case of other entities;

- (xi) self-certified copies of all letter heads, rubber stamp images, acknowledgement receipts proposed to be used by the real estate agent;
 - (xii) such other information as may be specified by through regulations of the Authority
 - (xiii) whether the registration of the applicant has, at any time been revoked or suspended by the Authority ? If so, the details thereof. In case the applicant was a director or manager of a body corporate- State whether the registration of such body corporate has been revoked or suspended at any time.
 - (xiv) any other information the applicant may like to furnish.
3. I/we enclose the following documents along with, namely:-
- (i) Rs. _____ as registration fee as per sub-rule (3) of rule 11;
 - (ii) authenticated copy of the PAN card of the real estate agent; and
 - (iii) authenticated copy of the registration as a real estate agent in any other State or Union territory, if applicable;
4. I/we solemnly affirm and declare that the particulars given in herein are correct to my /our knowledge and belief.

Dated:

Place:

Yours faithfully,
Signature and seal (if any) of the applicant(s)

FORM 'H'**[See rule 12(1)(b)]****REGISTRATION CERTIFICATE OF REAL ESTATE AGENT**

1. This registration is granted under section 9 with registration certificate bearing No. _____ to _____

(in the case of an individual) Mr./Ms. _____ son of
Mr./Ms. _____ Tehsil _____ District _____
State _____;

OR

(in the case of a firm / society / company) _____ firm /
society / company _____ having its registered office
/ principal place of business at _____. to act as a real estate
agent to facilitate the sale or purchase of any plot, apartment or
building, as the case may be, in real estate projects registered in the
_____ State of Maharashtra in terms and the rules and
regulations made there under,

2. This registration is granted subject to the following conditions,
namely:-

(i) The real estate agent shall not facilitate the sale or purchase
of any plot, apartment or building, as the case may be, in a real
estate project or part of it, being sold by the promoter which is
required but not registered with the regulatory authority;

(ii) The real estate agent shall maintain and preserve such books
of account, records and documents as provided under rule 16;

(iii) The real estate agent shall not involve himself in any unfair
trade practices as specified under clause (c) of section 10 read
with Rule 17;

(iv) The real estate agent shall provide assistance to enable the
allottee and promoter to exercise their respective rights and fulfil
their respective obligations at the time of booking and sale of any
plot, apartment or building, as the case may be.

(v) The real estate agent shall comply with the provisions and
the rules and regulations made there under;

- (vi) The real estate agent shall discharge such other functions as may be specified by the regulatory authority by regulations;
3. The registration is valid for a period of five years commencing from _____ and ending with _____ unless renewed by the regulatory authority in accordance with the provisions or the rules and regulations made there under.
4. If the above mentioned conditions are not fulfilled by the real estate agent, the regulatory authority may take necessary action against the real estate agent including revoking the registration granted herein, as per the Act and the rules and regulations made there under.

Dated:
Place:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

FORM 'I'
[See rule 12(2), 13(2), 15(2)]

**INTIMATION OF REJECTION OF APPLICATION FOR
REGISTRATION OF REAL ESTATE AGENT / REJECTION OF
APPLICATION FOR RENEWAL OF REGISTRATION OF
REAL ESTATE AGENT / REVOCATION OF REGISTRATION
OF REAL ESTATE AGENT**

From:
The Maharashtra Real Estate Regulatory Authority,

To

Application/Registration No.:_____ Dated: _____

You are hereby informed that your application for registration as real estate agent is rejected.

OR

You are hereby informed that your application for the renewal of the registration as real estate agent is rejected.

OR

You are hereby informed that the registration granted to you as real estate agent is hereby revoked for the reasons set out:-

Place:

Dated:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

FORM 'J'
[See rule 13(1)]

**APPLICATION FOR RENEWAL OF REGISTRATION OF
REAL ESTATE AGENT**

From:

To

The Maharashtra Real Estate Regulatory Authority,

Sir,

I/we apply for renewal my/our registration as a real estate agent under registration certificate bearing No._____, which expires on_____.

As required I/we submit the following documents and information, namely:-

- (i) Rupees_____as renewal fee;
- (ii) The original registration certificate; and
- (iii) Status of the applicant, whether individual / company / proprietorship firm / societies / partnership firm / limited liability partnership;
- (iv) In case of individual –
 - (a) Name
 - (b) Father's Name
 - (c) Occupancy
 - (d) Permanent address
 - (e) Photograph

OR

In case of firm / societies / companies -

- (a) Name
- (b) Address
- (c) Copy of registration certificate
- (d) Major activities
- (e) Name, photograph and address of partners / directors
- (v) income tax returns filed under the provisions of the Income Tax Act, 1961 for three financial years preceding the application or in case the applicant was exempted from filing returns under the provisions of the Income Tax Act, 1961 for any of the three year preceding the application, a declaration to such effect;
- (vi) particulars of registration including the bye-laws, memorandum of association, articles of association etc. as the case may be;
- (vii) authenticated copy of the address proof of the place of business;
- (viii) Details of registration in any other State or Union territory;
- (ix) Any other information as specified by regulations.

Dated:

Place:

Yours faithfully,

Signature and seal (if any) of the applicant(s)

FORM 'K'

[See rule 13(2)]

RENEWAL OF REGISTRATION OF REAL ESTATE AGENT

1. This renewal of registration is granted under section 9 to -

(in the case of an individual) Mr./Ms. _____ son of
Mr./Ms. _____ Tehsil _____ District _____
State _____;

OR

(in the case of a firm / society / company) _____ firm /
society / company _____ having its registered office /
principal place of business at _____. in continuation to
registration certificate bearing No. _____, of _____.

2. This renewal of registration is granted subject to the following conditions, namely:-

(i) The real estate agent shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter which is required but not registered with the regulatory authority;

(ii) The real estate agent shall maintain and preserve such books of account, records and documents as provided under rule 16;

(iii) The real estate agent shall not involve himself in any unfair trade practices as specified under clause (c) of section 10 read with Rule 17;

(iv) The real estate agent shall facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be.

(v) The real estate agent shall provide assistance to enable the

allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be.

(vi) The real estate agent shall comply with the provisions and the rules and regulations made there under;

3. The registration is valid for a period of five years commencing from _____ and ending with _____ unless renewed by the regulatory authority in accordance with the provisions or the rules and regulations made there under.

4. If the above mentioned conditions are not fulfilled by the real estate agent, the regulatory authority may take necessary action against the real estate agent including revoking the registration granted herein, as per the Act and the rules and regulations made there under.

Dated:

Place:

Signature and seal of the Authorized Officer
Maharashtra Real Estate Regulatory Authority

Annexure 'A'

Model Form of Agreement to be entered into between Promoter and Allottee(s)

(See rule 10(1))

EXPLANATORY NOTE

This is a model form of Agreement, which may be modified and adapted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are in accordance with the statute and mandatory according to the provisions of the Act shall be retained in each and every Agreement executed between the Promoter and Allottee. Any clause in this agreement found contrary to or inconsistent with any provisions of the Act, Rules and Regulations would be void *ab-initio*.

Model Form of Agreement

This Agreement made at.....this.....day of..... in the year Two Thousand and between having address at hereinafter referred to as "the Promoter of the One Part and (.....) having address at hereinafter referred to as " the Allottee" (.....) of the Other Part.

WHEREAS by an Agreement/Conveyance dated day of 20..... and executed between of the One Part (hereinafter referred to as " the Vendor") and the Promoter of the Other Part, the Vendor agreed with the Promoter for the absolute sale to the Promoter/sold absolutely to the Promoter an immovable property being piece or parcel of freehold land bearing Survey No. lying and being survey no. at in the Registration sub-District of admeasuring sq. mts. or thereabouts more particularly described in the First Schedule hereunder written (hereinafter referred to as "the project land").

OR

WHEREAS by and under a Lease / an Agreement for Lease dated the day of 20..... made between of the One Part (hereinafter referred to as " the Lessor") and the Promoter of the Other Part, the Lessor agreed to grant unto the Promoter a lease in perpetuity/for a term of years in respect of a piece or parcel of leasehold land bearing situate at , admeasuring.....sq.m. or thereabouts more particularly described in the First Schedule hereunder written (hereinafter referred to as " the project land") at a rent of Rs. per annum/ month and on the terms and conditions contained in the said Lease Deed/ Agreement for Lease.

AND WHEREAS the lease Deed/ Agreement for Lease, is with the benefit and right to construct any new building/s if so permitted by the concerned local authority.

OR

WHEREAS by an Agreement dated day of 20...../Power of Attorney dated executed between Shri..... (hereinafter referred to as "the Original Owner") of the One Part and the Promoter of the Other Part (hereinafter referred to as "the Development Agreement"), the Original Owner granted to the Promoter development rights to the piece or parcel of freehold land lying and being at in the Registration Sub-District of admeasuring sq. mts., or thereabouts more particularly described in the First Schedule therein as well as in the First Schedule hereunder written (hereinafter referred to as "the project land") and to construct thereon building/s in accordance with the terms and conditions contained in the Development Agreement/Power of Attorney;

OR

(Give Complete Recital of the Title of the Promoter to the plot on which promoter proposes to construct and sale the Apartment)

AND

(Also specify

- (i) Any covenants affecting the said property.
- (ii) Any impediments attached to the said property.
- (iii) Number and Area occupied by Tenants and how they are proposed to be settled so as to have clear possession of the said property.
- (iv) Details of illegal encroachment on the said property.
- (v) Any permission (if any) required from any Government or Authority which affects the title to the property and details of all such required permissions obtained.
- (vi) Details of mortgage or lien or charge on the said property.)

AND WHEREAS the Promoters are entitled and enjoined upon to construct buildings on the project land in accordance with the recitals hereinabove;

AND WHEREAS the Vendor/Lessor/Original Owner/ Promoter is in possession of the project land

AND WHEREAS the Promoter has proposed to construct on the project land (here specify number of buildings and wings thereof) _____ having _____ (here specify number of Basements,/podiums/stilt and upper floors)

AND WHEREAS the Allottee is offered an Apartment bearing number _____ on the _____ floor, (herein after referred to as the said "Apartment") in the _____ wing of the Building called _____ (herein after referred to as the said "Building") being constructed in the _____ phase of the said project, by the Promoter

AND WHEREAS the Promoter has entered into a standard Agreement with an Architect registered with the Council of Architects and such Agreement is as per the Agreement prescribed by the Council of Architects;

AND WHEREAS the Promoter has registered the Project under the provisions of the Act with the Real Estate Regulatory Authority at _____ no _____; authenticated copy is attached in Annexure 'F';

AND WHEREAS the Promoter has appointed a structural Engineer for the preparation of the structural design and drawings of the buildings and the Promoter accepts the professional supervision of the Architect and the structural Engineer till the completion of the building/buildings.

AND WHEREAS by virtue of the Development Agreement/Power of Attorney the Promoter has sole and exclusive right to sell the Apartments in the said building/s to be constructed by the Promoter on the project land and to enter into Agreement/s with the allottee(s)/s of the Apartments to receive the sale consideration in respect thereof;

AND WHEREAS on demand from the allottee, the Promoter has given inspection to the Allottee of all the documents of title relating to the project land and the plans, designs and specifications prepared by the Promoter's Architects Messrs..... and of such other documents as are specified under the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as

"the said Act") and the Rules and Regulations made thereunder;

AND WHEREAS the authenticated copies of Certificate of Title issued by the attorney at law or advocate of the Promoter, authenticated copies of Property card or extract of Village Forms VI and VII and XII or any other relevant revenue record showing the nature of the title of the Promoter to the project land on which the Apartments are constructed or are to be constructed have been annexed hereto and marked as Annexure 'A' and 'B', respectively.

AND WHEREAS the authenticated copies of the plans of the Layout as approved by the concerned Local Authority have been annexed hereto and marked as Annexure C-1.

AND WHEREAS the authenticated copies of the plans of the Layout as proposed by the Promoter and according to which the construction of the buildings and open spaces are proposed to be provided for on the said project have been annexed hereto and marked as Annexure C-2,

AND WHEREAS the authenticated copies of the plans and specifications of the Apartment agreed to be purchased by the Allottee, as sanctioned and approved by the local authority have been annexed and marked as Annexure D

AND WHEREAS the Promoter has got some of the approvals from the concerned local authority(s) to the plans, the specifications, elevations, sections and of the said building/s and shall obtain the balance approvals from various authorities from time to time, so as to obtain Building Completion Certificate or Occupancy Certificate of the said Building

AND WHEREAS while sanctioning the said plans concerned local authority and/or Government has laid down certain terms, conditions, stipulations and restrictions which are to be observed and performed by the Promoter while developing the project land and the said building and upon due observance and performance of which only the completion or occupancy certificate in respect of the said building/s shall be granted by the concerned local authority.

AND WHEREAS the Promoter has accordingly commenced construction of the said building/s in accordance with the said proposed plans.

AND WHEREAS the Allottee has applied to the Promoter for allotment of an Apartment No. on floor in wing ____ situated in the building No. being constructed in the _____ phase of the said Project,

AND WHEREAS the carpet area of the said Apartment is _____ square meters and "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony appurtenant to the said Apartment for exclusive use of the Allottee or verandah area and exclusive open terrace area appurtenant to the said Apartment for exclusive use of the Allottee, but includes the area covered by the internal partition walls of the apartment.

AND WHEREAS, the Parties relying on the confirmations, representations and assurances of each other to faithfully abide by all the terms, conditions and stipulations contained in this Agreement and all applicable laws, are now willing to enter into this Agreement on the terms and conditions appearing hereinafter;

AND WHEREAS, prior to the execution of these presents the Allottee has paid to the Promoter a sum of Rs..... (Rupees) only, being part payment of the sale consideration of the Apartment agreed to be sold by the Promoter to the Allottee as advance payment or Application Fee (the payment and receipt whereof the Promoter both hereby admit and acknowledge) and the Allottee has agreed to pay to the Promoter the balance of the sale consideration in the manner hereinafter appearing.

AND WHEREAS, the Promoter has registered the Project under the provisions of the Real Estate (Regulation & Redevelopment) Act, 2016 with the Real Estate Regulatory Authority at _____ no. _____ ;

AND WHEREAS, under section 13 of the said Act the Promoter is required to execute a written Agreement for sale of said Apartment with the Allottee, being in fact these presents and also to

register said Agreement under the Registration Act, 1908.

In accordance with the terms and conditions set out in this Agreement and as mutually agreed upon by and between the Parties, the Promoter hereby agrees to sell and the Allottee hereby agrees to purchase the (Apartment/Plot) and the garage/covered parking(if applicable)

NOW THEREFOR, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO ASFOLLOWS:-

1. The Promoter shall construct the said building/s consisting of basement and ground/ stilt, / podiums, and upper floors on the project land in accordance with the plans, designs and specifications as approved by the concerned local authority from time to time.

Provided that the Promoter shall have to obtain prior consent in writing of the Allottee in respect of variations or modifications which may adversely affect the Apartment of the Allottee except any alteration or addition required by any Government authorities or due to change in law.

- 1.a (i) The Allottee hereby agrees to purchase from the Promoter and the Promoter hereby agrees to sell to the Allottee Apartment No. of the type of carpet area admeasuring sq. metres on floor in the building _____/ wing (hereinafter referred to as "the Apartment") as shown in the Floor plan thereof hereto annexed and marked Annexures C-1 and C-2 for the consideration of Rs. including Rs. being the proportionate price of the common areas and facilities appurtenant to the premises, the nature, extent and description of the common areas and facilities which are more particularly described in the Second Schedule annexed herewith. (the price of the Apartment including the proportionate price of the common areas and facilities and parking spaces should be shown separately).

(ii) The Allottee hereby agrees to purchase from the Promoter and the Promoter hereby agrees to sell to the Allottee garage

bearing Nos ____ situated at _____ Basement and/or stilt and /or ____podium being constructed in the layout for the consideration of Rs. _____/-

(iii) The Allottee hereby agrees to purchase from the Promoter and the Promoter hereby agrees to sell to the Allottee covered parking spaces bearing Nos ____ situated at _____ Basement and/or stilt and /or ____podium being constructed in the layout for the consideration of Rs. _____/-.

1(b) The total aggregate consideration amount for the apartment including garages/covered parking spaces is thus Rs. _____/-

1(c) The Allottee has paid on or before execution of this agreement a sum of Rs _____ (Rupees _____ only) (not exceeding 10% of the total consideration) as advance payment or application fee and hereby agrees to pay to that Promoter the balance amount of Rs(Rupees) in the following manner :-

- i. Amount of Rs...../- (.....) (not exceeding 30% of the total consideration) to be paid to the Promoter after the execution of Agreement
- ii. Amount of Rs...../- (.....) (not exceeding 45% of the total consideration) to be paid to the Promoter on completion of the Plinth of the building or wing in which the said Apartment is located.
- iii. Amount of Rs...../- (.....) (not exceeding 70% of the total consideration) to be paid to the Promoter on completion of the slabs including podiums and stilts of the building or wing in which the said Apartment is located.
- iv. Amount of Rs...../- (.....) (not exceeding 75% of the total consideration) to be paid to the Promoter on completion of the walls, internal plaster, floorings doors and windows of the said Apartment.
- v. Amount of Rs...../- (.....) (not exceeding 80% of the total consideration) to be paid to the Promoter on completion of the Sanitary fittings, staircases, lift wells, lobbies upto the floor level of the said Apartment.

- vi. Amount of Rs...../- (.....) (not exceeding 85% of the total consideration) to be paid to the Promoter on completion of the external plumbing and external plaster, elevation, terraces with waterproofing, of the building or wing in which the said Apartment is located..
 - vii. Amount of Rs...../- (.....) (not exceeding 95% of the total consideration) to be paid to the Promoter on completion of the lifts, water pumps, electrical fittings, electro, mechanical and environment requirements, entrance lobby/s, plinth protection, paving of areas appertain and all other requirements as may be prescribed in the Agreement of sale of the building or wing in which the said Apartment is located.
 - viii. Balance Amount of Rs...../- (.....) against and at the time of handing over of the possession of the Apartment to the Allottee on or after receipt of occupancy certificate or completion certificate.
- 1(d) The Total Price above excludes Taxes (consisting of tax paid or payable by the Promoter by way of Value Added Tax, Service Tax, and Cess or any other similar taxes which may be levied, in connection with the construction of and carrying out the Project payable by the Promoter) up to the date of handing over the possession of the [Apartment/Plot].
- 1(e) The Total Price is escalation-free, save and except escalations/increases, due to increase on account of development charges payable to the competent authority and/or any other increase in charges which may be levied or imposed by the competent authority Local Bodies/Government from time to time. The Promoter undertakes and agrees that while raising a demand on the Allottee for increase in development charges, cost, or levies imposed by the competent authorities etc., the Promoter shall enclose the said notification/order/rule/regulation published/issued in that behalf to that effect along with the demand letter being issued to the Allottee, which shall only be applicable on subsequent payments.

- 1(f) The Promoter may allow, in its sole discretion, a rebate for early payments of equal instalments payable by the Allottee by discounting such early payments @ % per annum for the period by which the respective instalment has been preponed. The provision for allowing rebate and such rate of rebate shall not be subject to any revision/ withdrawal, once granted to an Allottee by the Promoter.
- 1(g) The Promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area, subject to a variation cap of three percent. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area within the defined limit then Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate specified in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area allotted to Allottee, the Promoter shall demand additional amount from the Allottee as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square meter as agreed in Clause 1(a) of this Agreement.
- 1(h) The Allottee authorizes the Promoter to adjust/ appropriate all payments made by him/her under any head(s) of dues against lawful outstanding, if any, in his/her name as the Promoter may in its sole discretion deem fit and the Allottee undertakes not to object/ demand/ direct the Promoter to adjust his payments in any manner.

Note: Each of the instalments mentioned in the sub clause (ii) and (iii) shall be further subdivided into multiple instalments linked to number of basements/ podiums / floors in case of multi-storied building / wing.

- 2.1 The Promoter hereby agrees to observe, perform and comply with all the terms, conditions, stipulations and restrictions if any, which may have been imposed by the concerned local authority

at the time of sanctioning the said plans or thereafter and shall, before handing over possession of the Apartment to the Allottee, obtain from the concerned local authority occupancy and/or completion certificates in respect of the Apartment.

- 2.2 Time is essence for the Promoter as well as the Allottee. The Promoter shall abide by the time schedule for completing the project and handing over the [Apartment/Plot] to the Allottee and the common areas to the association of the allottees after receiving the occupancy certificate or the completion certificate or both, as the case may be. Similarly, the Allottee shall make timely payments of the instalment and other dues payable by him/her and meeting the other obligations under the Agreement subject to the simultaneous completion of construction by the Promoter as provided in clause 1 (c) herein above. ("Payment Plan").
3. The Promoter hereby declares that the Floor Space Index available as on date in respect of the project land is square meters only and Promoter has planned to utilize Floor Space Index of by availing of TDR or FSI available on payment of premiums or FSI available as incentive FSI by implementing various scheme as mentioned in the Development Control Regulation or based on expectation of increased FSI which may be available in future on modification to Development Control Regulations, which are applicable to the said Project. The Promoter has disclosed the Floor Space Index of as proposed to be utilized by him on the project land in the said Project and Allottee has agreed to purchase the said Apartment based on the proposed construction and sale of apartments to be carried out by the Promoter by utilizing the proposed FSI and on the understanding that the declared proposed FSI shall belong to Promoter only.
- 4.1 If the Promoter fails to abide by the time schedule for completing the project and handing over the [Apartment/Plot] to the Allottee, the Promoter agrees to pay to the Allottee, who does not intend to withdraw from the project, interest as specified in the Rule, on all the amounts paid by the Allottee, for every

month of delay, till the handing over of the possession. The Allottee agrees to pay to the Promoter, interest as specified in the Rule, on all the delayed payment which become due and payable by the Allottee to the Promoter under the terms of this Agreement from the date the said amount is payable by the allottee(s) to the Promoter.

- 4.2 Without prejudice to the right of promoter to charge interest in terms of sub clause 4.1 above, on the Allottee committing default in payment on due date of any amount due and payable by the Allottee to the Promoter under this Agreement (including his/her proportionate share of taxes levied by concerned local authority and other outgoings) and on the allottee committing three defaults of payment of instalments, the Promoter shall at his own option, may terminate this Agreement:

Provided that, Promoter shall give notice of fifteen days in writing to the Allottee, by Registered Post AD at the address provided by the allottee and mail at the e-mail address provided by the Allottee, of his intention to terminate this Agreement and of the specific breach or breaches of terms and conditions in respect of which it is intended to terminate the Agreement. If the Allottee fails to rectify the breach or breaches mentioned by the Promoter within the period of notice then at the end of such notice period, promoter shall be entitled to terminate this Agreement.

Provided further that upon termination of this Agreement as aforesaid, the Promoter shall refund to the Allottee (subject to adjustment and recovery of any agreed liquidated damages or any other amount which may be payable to Promoter) within a period of thirty days of the termination, the instalments of sale consideration of the Apartment which may till then have been paid by the Allottee to the Promoter.

5. The fixtures and fittings with regard to the flooring and sanitary fittings and amenities like one or more lifts with particular brand, or price range (if unbranded) to be provided by the Promoter in the said building and the Apartment as are set out in Annexure 'E', annexed hereto.

6. The Promoter shall give possession of the Apartment to the Allottee on or before..... day of 20___. If the Promoter fails or neglects to give possession of the Apartment to the Allottee on account of reasons beyond his control and of his agents by the aforesaid date then the Promoter shall be liable on demand to refund to the Allottee the amounts already received by him in respect of the Apartment with interest at the same rate as may mentioned in the clause 4.1 herein above from the date the Promoter received the sum till the date the amounts and interest thereon is repaid.

Provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of Apartment on the aforesaid date, if the completion of building in which the Apartment is to be situated is delayed on account of -

- (i) war, civil commotion or act of God ;
- (ii) any notice, order, rule, notification of the Government and/or other public or competent authority/court.

7.1 Procedure for taking possession - The Promoter, upon obtaining the occupancy certificate from the competent authority and the payment made by the Allottee as per the agreement shall offer in writing the possession of the [Apartment/Plot], to the Allottee in terms of this Agreement to be taken within 3 (three months from the date of issue of such notice and the Promoter shall give possession of the [Apartment/Plot] to the Allottee. The Promoter agrees and undertakes to indemnify the Allottee in case of failure of fulfilment of any of the provisions, formalities, documentation on part of the Promoter. The Allottee agree(s) to pay the maintenance charges as determined by the Promoter or association of allottees, as the case may be. The Promoter on its behalf shall offer the possession to the Allottee in writing within 7 days of receiving the occupancy certificate of the Project.

7.2 The Allottee shall take possession of the Apartment within 15 days of the written notice from the promotor to the Allottee intimating that the said Apartments are ready for use and occupancy:

7.3 Failure of Allottee to take Possession of [Apartment/Plot]:

Upon receiving a written intimation from the Promoter as per clause 8.1, the Allottee shall take possession of the [Apartment/Plot] from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the [Apartment/Plot] to the allottee. In case the Allottee fails to take possession within the time provided in clause 8.1 such Allottee shall continue to be liable to pay maintenance charges as applicable.

7.4 If within a period of five years from the date of handing over the Apartment to the Allottee, the Allottee brings to the notice of the Promoter any structural defect in the Apartment or the building in which the Apartment are situated or any defects on account of workmanship, quality or provision of service, then, wherever possible such defects shall be rectified by the Promoter at his own cost and in case it is not possible to rectify such defects, then the Allottee shall be entitled to receive from the Promoter, compensation for such defect in the manner as provided under the Act.

8. The Allottee shall use the Apartment or any part thereof or permit the same to be used only for purpose of *residence/office/show-room/shop/godown for carrying on any industry or business.(*strike of which is not applicable) He shall use the garage or parking space only for purpose of keeping or parking vehicle.
9. The Allottee along with other allottee(s) of Apartments in the building shall join in forming and registering the Society or Association or a Limited Company to be known by such name as the Promoter may decide and for this purpose also from time to time sign and execute the application for registration and/or membership and the other papers and documents necessary for the formation and registration of the Society or Association or Limited Company and for becoming a member, including the bye-laws of the proposed Society and duly fill in, sign and return to the Promoter within seven days of the same being forwarded

by the Promoter to the Allottee, so as to enable the Promoter to register the common organisation of Allottee. No objection shall be taken by the Allottee if any, changes or modifications are made in the draft bye-laws, or the Memorandum and/or Articles of Association, as may be required by the Registrar of Co-operative Societies or the Registrar of Companies, as the case may be, or any other Competent Authority.

- 9.1 The Promoter shall, within three months of registration of the Society or Association or Limited Company, as aforesaid, cause to be transferred to the society or Limited Company all the right, title and the interest of the Vendor/Lessor/Original Owner/Promoter and/or the owners in the said structure of the Building or wing in which the said Apartment is situated.
- 9.2 The Promoter shall, within three months of registration of the Federation/apex body of the Societies or Limited Company, as aforesaid, cause to be transferred to the Federation/Apex body all the right, title and the interest of the Vendor/Lessor/Original Owner/Promoter and/or the owners in the project land on which the building with multiple wings or buildings are constructed.
- 9.3 Within 15 days after notice in writing is given by the Promoter to the Allottee that the Apartment is ready for use and occupancy, the Allottee shall be liable to bear and pay the proportionate share (i.e. in proportion to the carpet area of the Apartment) of outgoings in respect of the project land and Building/s namely local taxes, betterment charges or such other levies by the concerned local authority and/or Government water charges, insurance, common lights, repairs and salaries of clerks bill collectors, chowkidars, sweepers and all other expenses necessary and incidental to the management and maintenance of the project land and building/s. Until the Society or Limited Company is formed and the said structure of the building/s or wings is transferred to it, the Allottee shall pay to the Promoter such proportionate share of outgoings as may be determined. The Allottee further agrees that till the Allottee's share is so determined the Allottee shall pay to the Promoter provisional

monthly contribution of Rs. per month towards the outgoings. The amounts so paid by the Allottee to the Promoter shall not carry any interest and remain with the Promoter until a conveyance/assignment of lease of the structure of the building or wing is executed in favour of the society or a limited company as aforesaid. On such conveyance/assignment of lease being executed for the structure of the building or wing the aforesaid deposits (less deduction provided for in this Agreement) shall be paid over by the Promoter to the Society or the Limited Company, as the case may be.

10. The Allottee shall on or before delivery of possession of the said premises keep deposited with the Promoter, the following amounts :-

- (i) Rs..... for share money, application entrance fee of the Society or Limited Company/Federation/ Apex body.
- (ii) Rs..... for formation and registration of the Society or Limited Company/Federation/ Apex body.
- (iii) Rs..... for proportionate share of taxes and other charges/levies in respect of the Society or Limited Company/Federation/ Apex body
- (iv) Rs.....for deposit towards provisional monthly contribution towards outgoings of Society or Limited Company/Federation/ Apex body.
- (v) Rs..... For Deposit towards Water, Electric, and other utility and services connection charges &
- (vi) Rs..... for deposits of electrical receiving and Sub Station provided in Layout

11. The Allottee shall pay to the Promoter a sum of Rs. for meeting all legal costs, charges and expenses, including professional costs of the Attorney-at-Law/Advocates of the Promoter in connection with formation of the said Society, or Limited Company, or Apex Body or Federation and for preparing its rules, regulations and bye-laws and the cost of preparing and engrossing the conveyance or assignment of lease.

12. At the time of registration of conveyance or Lease of the structure of the building or wing of the building, the Allottee shall pay to the Promoter, the Allottees' share of stamp duty and registration charges payable, by the said Society or Limited Company on such conveyance or lease or any document or instrument of transfer in respect of the structure of the said Building /wing of the building. At the time of registration of conveyance or Lease of the project land, the Allottee shall pay to the Promoter, the Allottees' share of stamp duty and registration charges payable, by the said Apex Body or Federation on such conveyance or lease or any document or instrument of transfer in respect of the structure of the said land to be executed in favour of the Apex Body or Federation.

13. REPRESENTATIONS AND WARRANTIES OF THE PROMOTER

The Promoter hereby represents and warrants to the Allottee as follows:

- i. The Promoter has clear and marketable title with respect to the project land; as declared in the title report annexed to this agreement and has the requisite rights to carry out development upon the project land and also has actual, physical and legal possession of the project land for the implementation of the Project;
- ii. The Promoter has lawful rights and requisite approvals from the competent Authorities to carry out development of the Project and shall obtain requisite approvals from time to time to complete the development of the project;
- iii. There are no encumbrances upon the project land or the Project except those disclosed in the title report;
- iv. There are no litigations pending before any Court of law with respect to the project land or Project except those disclosed in the title report;
- v. All approvals, licenses and permits issued by the competent authorities with respect to the Project, project land and said building/wing are valid and subsisting and have been

obtained by following due process of law. Further, all approvals, licenses and permits to be issued by the competent authorities with respect to the Project, project land and said building/ wing shall be obtained by following due process of law and the Promoter has been and shall, at all times, remain to be in compliance with all applicable laws in relation to the Project, project land, Building/ wing and common areas;

- vi. The Promoter has the right to enter into this Agreement and has not committed or omitted to perform any act or thing, whereby the right, title and interest of the Allottee created herein, may prejudicially be affected;
- vii. The Promoter has not entered into any agreement for sale and/or development agreement or any other agreement / arrangement with any person or party with respect to the project land, including the Project and the said [Apartment/Plot] which will, in any manner, affect the rights of Allottee under this Agreement;
- viii. The Promoter confirms that the Promoter is not restricted in any manner whatsoever from selling the said [Apartment/Plot] to the Allottee in the manner contemplated in this Agreement;
- ix. At the time of execution of the conveyance deed of the structure to the association of allottees the Promoter shall handover lawful, vacant, peaceful, physical possession of the common areas of the Structure to the Association of the Allottees;
- x. The Promoter has duly paid and shall continue to pay and discharge undisputed governmental dues, rates, charges and taxes and other monies, levies, impositions, premiums, damages and/or penalties and other outgoings, whatsoever, payable with respect to the said project to the competent Authorities;
- xi. No notice from the Government or any other local body or authority or any legislative enactment, government ordinance, order, notification (including any notice for

acquisition or requisition of the said property) has been received or served upon the Promoter in respect of the project land and/or the Project except those disclosed in the title report.

14. The Allottee/s or himself/themselves with intention to bring all persons into whosoever hands the Apartment may come, hereby covenants with the Promoter as follows :-

- i. To maintain the Apartment at the Allottee's own cost in good and tenantable repair and condition from the date that of possession of the Apartment is taken and shall not do or suffer to be done anything in or to the building in which the Apartment is situated which may be against the rules, regulations or bye-laws or change/alter or make addition in or to the building in which the Apartment is situated and the Apartment itself or any part thereof without the consent of the local authorities, if required.
- ii. Not to store in the Apartment any goods which are of hazardous, combustible or dangerous nature or are so heavy as to damage the construction or structure of the building in which the Apartment is situated or storing of which goods is objected to by the concerned local or other authority and shall take care while carrying heavy packages which may damage or likely to damage the staircases, common passages or any other structure of the building in which the Apartment is situated, including entrances of the building in which the Apartment is situated and in case any damage is caused to the building in which the Apartment is situated or the Apartment on account of negligence or default of the Allottee in this behalf, the Allottee shall be liable for the consequences of the breach.
- iii. To carry out at his own cost all internal repairs to the said Apartment and maintain the Apartment in the same condition, state and order in which it was delivered by the Promoter to the Allottee and shall not do or suffer to be done anything in or to the building in which the Apartment is situated or the Apartment which may be contrary to the rules

and regulations and bye-laws of the concerned local authority or other public authority. In the event of the Allottee committing any act in contravention of the above provision, the Allottee shall be responsible and liable for the consequences thereof to the concerned local authority and/or other public authority.

- iv. Not to demolish or cause to be demolished the Apartment or any part thereof, nor at any time make or cause to be made any addition or alteration of whatever nature in or to the Apartment or any part thereof, nor any alteration in the elevation and outside colour scheme of the building in which the Apartment is situated and shall keep the portion, sewers, drains and pipes in the Apartment and the appurtenances thereto in good tenantable repair and condition, and in particular, so as to support shelter and protect the other parts of the building in which the Apartment is situated and shall not chisel or in any other manner cause damage to columns, beams, walls, slabs or RCC, Pardis or other structural members in the Apartment without the prior written permission of the Promoter and/or the Society or the Limited Company.
- v. Not to do or permit to be done any act or thing which may render void or voidable any insurance of the project land and the building in which the Apartment is situated or any part thereof or whereby any increased premium shall become payable in respect of the insurance.
- vi. Not to throw dirt, rubbish, rags, garbage or other refuse or permit the same to be thrown from the said Apartment in the compound or any portion of the project land and the building in which the Apartment is situated.
- vii. Pay to the Promoter within fifteen days of demand by the Promoter, his share of security deposit demanded by the concerned local authority or Government or giving water, electricity or any other service connection to the building in which the Apartment is situated.
- viii. To bear and pay increase in local taxes, water charges,

insurance and such other levies, if any, which are imposed by the concerned local authority and/or Government and/or other public authority, on account of change of user of the Apartment by the Allottee for any purposes other than for purpose for which it is sold.

- ix. The Allottee shall not let, sub-let, transfer, assign or part with interest or benefit factor of this Agreement or part with the possession of the Apartment until all the dues payable by the Allottee to the Promoter under this Agreement are fully paid up.
- x. The Allottee shall observe and perform all the rules and regulations which the Society or the Limited Company or Apex Body or Federation may adopt at its inception and the additions, alterations or amendments thereof that may be made from time to time for protection and maintenance of the said building and the Apartments therein and for the observance and performance of the Building Rules, Regulations and Bye-laws for the time being of the concerned local authority and of Government and other public bodies. The Allottee shall also observe and perform all the stipulations and conditions laid down by the Society/Limited Company/Apex Body/Federation regarding the occupancy and use of the Apartment in the Building and shall pay and contribute regularly and punctually towards the taxes, expenses or other out-goings in accordance with the terms of this Agreement.
- xi. Till a conveyance of the structure of the building in which Apartment is situated is executed in favour of Society/Limited Society, the Allottee shall permit the Promoter and their surveyors and agents, with or without workmen and others, at all reasonable times, to enter into and upon the said buildings or any part thereof to view and examine the state and condition thereof.
- xii. Till a conveyance of the project land on which the building in which Apartment is situated is executed in favour of Apex Body or Federation, the Allottee shall permit the Promoter and their surveyors and agents, with or without workmen

and others, at all reasonable times, to enter into and upon the project land or any part thereof to view and examine the state and condition thereof.

15. The Promoter shall maintain a separate account in respect of sums received by the Promoter from the Allottee as advance or deposit, sums received on account of the share capital for the promotion of the Co-operative Society or association or Company or towards the out goings, legal charges and shall utilize the amounts only for the purposes for which they have been received.

16. Nothing contained in this Agreement is intended to be nor shall be construed as a grant, demise or assignment in law, of the said Apartments or of the said Plot and Building or any part thereof. The Allottee shall have no claim save and except in respect of the Apartment hereby agreed to be sold to him and all open spaces, parking spaces, lobbies, staircases, terraces recreation spaces, will remain the property of the Promoter until the said structure of the building is transferred to the Society/Limited Company or other body and until the project land is transferred to the Apex Body /Federation as hereinbefore mentioned.

17. PROMOTER SHALL NOT MORTGAGE OR CREATE A CHARGE

After the Promoter executes this Agreement he shall not mortgage or create a charge on the *[Apartment/] and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, such mortgage or charge shall not affect the right and interest of the Allottee who has taken or agreed to take such [Apartment/plot].

18. BINDING EFFECT

Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules along with the payments due

as stipulated in the Payment Plan within 30 (thirty) days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub- Registrar as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and/or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 15 (fifteen) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.

19. ENTIRE AGREEMENT

This Agreement, along with its schedules and annexures, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all understandings, any other agreements, allotment letter, correspondences, arrangements whether written or oral, if any, between the Parties in regard to the said apartment/plot/building, as the case may be.

20. RIGHT TO AMEND

This Agreement may only be amended through written consent of the Parties.

21. PROVISIONS OF THIS AGREEMENT APPLICABLE TO ALLOTTEE / SUBSEQUENT ALLOTTEES

It is clearly understood and so agreed by and between the Parties hereto that all the provisions contained herein and the obligations arising hereunder in respect of the Project shall equally be applicable to and enforceable against any subsequent Allottees of the [Apartment/Plot], in case of a transfer, as the said obligations go along with the [Apartment/Plot] for all intents and purposes.

22. SEVERABILITY

If any provision of this Agreement shall be determined to be void or unenforceable under the Act or the Rules and Regulations made thereunder or under other applicable laws, such provisions of the Agreement shall be deemed amended or deleted in so far as reasonably inconsistent with the purpose of this Agreement and to the extent necessary to conform to Act or the Rules and Regulations made thereunder or the applicable law, as the case may be, and the remaining provisions of this Agreement shall remain valid and enforceable as applicable at the time of execution of this Agreement.

23. METHOD OF CALCULATION OF PROPORTIONATE SHARE WHEREVER REFERRED TO IN THE AGREEMENT

Wherever in this Agreement it is stipulated that the Allottee has to make any payment, in common with other Allottee(s) in Project, the same shall be in proportion to the carpet area of the [Apartment/Plot] to the total carpet area of all the [Apartments/Plots] in the Project.

24. FURTHER ASSURANCES

Both Parties agree that they shall execute, acknowledge and deliver to the other such instruments and take such other actions, in additions to the instruments and actions specifically provided for herein, as may be reasonably required in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

25. PLACE OF EXECUTION

The execution of this Agreement shall be complete only upon its execution by the Promoter through its authorized signatory at the Promoter's Office, or at some other place, which may be mutually agreed between the Promoter and the Allottee, in _____ after the Agreement is duly executed by the Allottee and the Promoter or simultaneously with the execution the said

Agreement shall be registered at the office of the Sub-Registrar. Hence this Agreement shall be deemed to have been executed at .

26. The Allottee and/or Promoter shall present this Agreement as well as the conveyance/assignment of lease at the proper registration office of registration within the time limit prescribed by the Registration Act and the Promoter will attend such office and admit execution thereof.

27. That all notices to be served on the Allottee and the Promoter as contemplated by this Agreement shall be deemed to have been duly served if sent to the Allottee or the Promoter by Registered Post A.D **and** notified Email ID/Under Certificate of Posting at their respective addresses specified below:

_____Name of Allottee

_____(Allottee's Address)

Notified Email ID: _____

M/s _____Promoter name

_____(Promoter Address)

Notified Email ID: _____

It shall be the duty of the Allottee and the promoter to inform each other of any change in address subsequent to the execution of this Agreement in the above address by Registered Post failing which all communications and letters posted at the above address shall be deemed to have been received by the promoter or the Allottee, as the case may be.

28. JOINT ALLOTTEES

That in case there are Joint Allottees all communications shall be sent by the Promoter to the Allottee whose name appears first and at the address given by him/her which shall for all intents and purposes to consider as properly served on all the Allottees.

29. Stamp Duty and Registration :- The charges towards stamp duty and Registration of this Agreement shall be borne by the allottee.

30. Dispute Resolution :- Any dispute between parties shall be settled amicably. In case of failure to settled the dispute amicably, which shall be referred to the _____ Authority as per the provisions of the Real Estate (Regulation and Development) Act, 2016, Rules and Regulations, thereunder.

31. GOVERNING LAW

That the rights and obligations of the parties under or arising out of this Agreement shall be construed and enforced in accordance with the laws of India for the time being in force and the _____ courts will have the jurisdiction for this Agreement

IN WITNESS WHEREOF parties hereinabove named have set their respective hands and signed this Agreement for sale at (city/town name) in the presence of attesting witness, signing as such on the day first above written.

First Schedule Above Referred to

Description of the freehold/leasehold land and all other details

Second Schedule Above Referred to

Here set out the nature, extent and description of common areas and facilities.

SIGNED AND DELIVERED BY THE WITHIN NAMED

Allottee: (including joint buyers)

(1) _____

(2) _____

At _____ on _____

in the presence of WITNESSES:

1. Name Signature _____

2. Name Signature _____

Please affix
photograph
and sign
across the
photograph

Please affix
photograph
and sign
across the
photograph

SIGNED AND DELIVERED BY THE WITHIN NAMED

Promoter:

(1) _____

(Authorized Signatory) WITNESSES:

Name _____

Signature _____

Name _____

Signature _____

Please affix
photograph
and sign
across the
photograph

Note – Execution clauses to be finalised in individual cases having regard to the constitution of the parties to the Agreement.

SCHEDULE 'A'

PLEASE INSERT DESCRIPTION OF THE [APARTMENT/PLOT]
AND THE GARAGE/CLOSED PARKING (IF APPLICABLE)
ALONG WITH BOUNDARIES IN ALL FOUR DIRECTIONS

SCHEDULE 'B'

FLOOR PLAN OF THE APARTMENT ANNEXURE – A

Name of the Attorney at Law/ Advocate,
Address :
Date :

No.

RE. :

Title Report Details of the Title Report

The Schedule Above Referred to
(Description of property)

Place:

Dated day of 20.....

(Signed)
Signature of Attorney-at-Law/ Advocate

ANNEXURE -B

(Authenticated copies of Property Card or extract Village Forms VI or VII and XII or any other revenue record showing nature of the title of the Vendor/Lessor/Original Owner/Promoter to the project land).

ANNEXURE -C-1

(Authenticated copies of the plans of the Layout as approved by the concerned Local Authority)

ANNEXURE - C-2

(Authenticated copies of the plans of the Layout as proposed by the Promoter and according to which the construction of the buildings and open spaces are proposed to be provided for on the said project)

ANNEXURE -D

(Authenticated copies of the plans and specifications of the Apartment agreed to be purchased by the Allottee as approved by the concerned local authority)

ANNEXURE - E

(Specification and amenities for the Apartment),

ANNEXURE -F

(Authenticated copy of the Registration Certificate of the Project granted by the Real Estate Regulatory Authority)

Received of and from the Allottee above named the sum of Rupees on execution of this agreement towards Earnest Money Deposit or application fee

I say received.

The Promoter/s.

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

R. K. DHANAWADE,
Deputy Secretary to Government.

APPENDIX D-2

HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032,

dated the 19th April 2017

NOTIFICATION

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.

No. REA. 2016/C.R. No. 79/DVP-2.—In exercise of the powers conferred by sub-sections (1) and clauses (oa),(r), (s), (u), (zb), (zc) 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/C.R. No. 79/DVP-2, dated the 8th of December 2016, published in the *Maharashtra Government Gazette*, Part IV-A, Extraordinary No. 164, dated the 8th of December 2016, is hereby pleased to make the following rules, as follows, namely :—

1. *Short title and commencement.*—(1) These rules may be called the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

2. *Definitions.* – 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 sub-section (1) of section 43 by the State Government by notification in the *Official Gazette*;

(c) “Authority” means the Maharashtra Real Estate Regulatory Authority established under the sub-section (1) of section 20.

(d) “Chairperson” means the Chairperson of the Authority appointed under section 21 of the Act;

(e) “Form” means the Form appended to these Rules;

(f) “State Government” or “Government” means the Government of Maharashtra.

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

3. *Manner of recovery of Interest, penalty and compensation.* – Any interest or penalty or compensation imposed on a promoter or an allottee or a real estate agent shall be recoverable under section 40 of the Act, from such promoter or allottee or real estate agent, as the case may be, in the same manner as applicable in respect of land revenue as provided in the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966).

4. *Manner of implementation of order, direction or decision of the Adjudicating Officer, the Authority or the Appellate Tribunal.* – For the purpose of sub-section (2) of section 40, every order passed by the Adjudicating Officer, Authority or Appellate Tribunal, as the case may be, under the Act or the rules and regulations made thereunder, shall be enforced by the Adjudicating Officer, the Authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the principal civil court of original jurisdiction in a suit. In the event such Adjudicating Officer, the Authority or Appellate Tribunal is unable to execute the order, it shall send a copy of such

order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order is being issued, resides, or carries on business, or personally works for gain alongwith a certificate stating that such an order has not been executed by it.

5. *Terms and conditions and the fine payable for compounding of offence.* – (1) The court may, for the purposes of compounding of any offence under section 70, accept a sum of money as specified in the Table below : –

Table

Offence	Money to be paid for compounding the offence
Offence under sub-section (2) of section 59	5 percent. of the estimated cost of the real estate project which may extend upto 10 percent. of such estimated cost.
Offence under section 64	5 percent. of the estimated cost of the real estate project which may extend upto 10 percent. of such estimated cost.
Offence under section 66	5 percent. of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, which may extend upto 10 percent. of such estimated cost.
Offence under section 68	5 percent. of the estimated cost of the plot, apartment or building, as the case may be, which may extend upto 10 percent. of such estimated cost.

(2) The Officer authorised by the Government may, with the approval of the Chairperson of the Authority, accept from any person charged with such offence, by way of compounding of the offence, a sum specified in the Table to sub-rule (1).

(3) On payment of the sum of money in accordance with the table above, no further proceeding shall be taken against the accused person in respect of the same offence, and any proceeding already taken or initiated, shall stand abated and the accused person, if in custody, shall be discharged.

(4) The promoter, allottee or real estate agent, as the case may be, shall comply with the orders of the Authority or the Appellate Tribunal within the period specified by the court, which shall not be more than thirty days from the date of compounding of the offence.

6. *Manner of filing complaints with the Authority and the manner of holding an inquiry by the Authority.*—(1) Any aggrieved person, having any interest in the project, may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the Adjudicating Officer, as per Form 'A' in triplicate which shall be accompanied by a fee of rupees five thousand through NEFT or RTGS system or any other digital transaction mode:

Provided that, when the Authority makes a provision for filing a complaint web-based, it shall not be necessary to submit such form in triplicate.

(2) The Authority shall follow, for the purposes of deciding any complaint as specified under sub-rule (1), the following procedure:

(a) Upon receipt of the complaint the Authority shall issue a notice alongwith particulars of the alleged contravention and the relevant documents to the respondent;

(b) The notice shall specify a date and time for further hearing;

(c) On the date so fixed, the Authority shall explain to the respondent or his authorized representative about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder, and if the respondent,—

(i) pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it may think fit in accordance with the provisions of the Act or the rules and regulations, made thereunder ;

(ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;

(d) In case the Authority is satisfied on the basis of the submissions made in the complaint that the submissions do not require any further inquiry, it may dismiss the complaint ;

(e) In case the Authority is satisfied on the basis of the submissions made that there is need for further hearing, it may order production of documents or other evidence on a date and time fixed by it ;

(f) The Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions ;

(g) The Authority shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the Authority, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence, the Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (11 of 1872) ;

(h) On the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions if satisfied that, —

(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such orders including imposition of penalty as it may think fit in accordance with the provisions of the Act or the rules and regulations made thereunder, with reasons to be recorded in writing

(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing ;

(i) If any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry, in the absence of such person or persons after recording the reasons for doing so.

7. *Manner of filing a complaint with the Adjudicating Officer and the manner of holding an inquiry by the Adjudicating Officer.*—(1) Any aggrieved person may file a complaint with the Adjudicating Officer, through the office of the Authority, for compensation under section 12, 14, 18 and 19. The complaint shall be filed in Form 'B' which shall be accompanied by a fee of rupees five thousand through NEFT or RTGS system or any other digital transaction mode.

(2) The Adjudicating Officer shall follow, for the purposes of deciding any complaint as specified under sub-rule (1), the following procedure:

(a) Upon receipt of the complaint the Adjudicating Officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) The notice shall specify a date and time for further hearing;

(c) On the date so fixed, the Adjudicating Officer shall explain to the respondent or his authorized representative about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,—

(i) pleads guilty, the Adjudicating Officer shall record the plea, and pass orders, adjudging the quantum of compensation as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;

(ii) does not plead guilty and contests the complaint, the Adjudicating Officer shall demand an explanation from the respondent;

(d) In case the Adjudicating Officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint.

(e) In case the Adjudicating Officer is satisfied on the basis of the submissions made that there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by it.

(f) On the date so fixed, the Adjudicating Officer shall require the applicant and respondent to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry. Thereafter, the Adjudicating Officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions.

(g) The Adjudicating Officer upon consideration of the evidence produced before it and other records and submissions is satisfied that, —

(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder it shall pass orders, adjudging the quantum of compensation as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder with reasons to be recorded in writing;

(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder the Adjudicating Officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.

(h) If any person fails, neglects or refuses to appear, or present himself as required before the Adjudicating Officer, the Adjudicating Officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(i) The Adjudicating Officer shall before passing any order, consider the factors specified in section 72.

8. *Manner of service of notice and order.* — (1) Adjudicating Officer shall deliver a certified copy of the order to the complainant and respondent.

(2) A notice or an order issued under these rules shall be served

in any of the following manner, —

(a) by delivering or tendering it to that person or person's authorised agent in an electronic form provided that there is sufficient evidence of actual delivery of the electronic record to the concerned person ; or

(b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or the last known place or residence or business place ; or

(c) if it cannot be served under clause (a) or (b) above, then by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain.

9. *Manner of filing Appeal to the Appellate Tribunal.* — (1) Every appeal filed under sub-section (1) of section 44 shall be accompanied by a fee of rupees five thousand through NEFT or RTGS system or any other digital transaction mode.

(2) Every appeal shall be filed in Form 'C' in triplicate appended to these rules along with the following documents, —

(a) attested true copy of the order against which the appeal is filed;

(b) copies of the documents relied upon by the appellant and referred to in the appeal;

(c) index of the documents :

Provided that, when the Authority makes a provision for filing a complaint web-based, it shall not be necessary to submit such form in triplicate.

FORM 'A'

[see rule 6]

COMPLAINT TO THE AUTHORITY

(Complaint under section 31 of the Act)

For use of Authority(s) office :

Date of filing :.....

Date of receipt by post :.....

Complaint No. :.....

Signature :.....

Authorized Officer :.....

IN THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY OFFICE (Name of place)

Between

..... Complainant(s)

And

..... Respondent(s)

Details of claim :

1. Particulars of the complainant(s) :

(i) Name of the complainant :

(ii) Address of the existing office/residence of the complainant :

(iii) Address for service of all notices :

2. Particulars of the respondents :

(i) Name(s) of respondent :

(ii) Office address of the respondent :

(iii) Address for service of all notices :

3. (a) Jurisdiction of the Authority :

The complainant declares that the subject matter of the claim falls within the jurisdiction of the Authority.

(b) Project Registration No.

4. Facts of the case :
[give a concise statement of facts and grounds for complaint]
5. Relief(s) sought :
In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s).....
[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]
6. Interim order, if prayed for :
Pending final decision on the complaint the complainant seeks issue of the following interim order :
[Give here the nature of the interim order prayed for with reasons]
7. Complaint not pending with any other court, etc. :
The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other Authority or any other Tribunal(s).
8. Particulars in respect of the fee in terms of sub-rule A(1) of rule 6 :
 - (i) Amount
 - (ii) Mode
9. List of enclosures :
[Specify the details of enclosures with the complaint]

Verification

I (name in full block letters) son/ daughter of the complainant do hereby verify that the contents of paragraphs [1 to 9] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place :

Date :

Signature of the complainant(s)

FORM 'B'

[see rule 7]

APPLICATION TO ADJUDICATING OFFICER

(Claim for compensation under section 31 read with section 71 of the Act)

(see rule 7)

For use of Authority(s) office :

Date of filing :.....

Date of receipt by post :.....

Complaint No. :.....

Signature :.....

Authorized Officer :.....

Between

..... Applicant(s)

And

..... Respondent(s)

Details of claim :

1. Particulars of the applicant(s) :

- (i) Name of the applicant :
- (ii) Address of the existing office / residence of the applicant :
- (iii) Address for service of all notices :
- (iv) Details of allottees apartment, plot or building

2. Particulars of the respondents :

- (i) Name(s) of respondent :
- (ii) Office address of the respondent :
- (iii) Address for service of all notices :
- (iv) Registration No. and address of project :

3. (a) Jurisdiction of the Adjudicating Officer :

The applicant declares that the subject matter of the claim falls within the jurisdiction of the adjudicating officer.

(b) Project Registration No.

4. Facts of the case :

(give a concise statement of facts and grounds of claim against the respondent)

5. Compensation(s) sought :

In view of the facts mentioned in paragraph 4 above, the applicant prays for the following compensation(s).....

[Specify below the compensation(s) claimed explaining the grounds of claim(s) and the legal provisions (if any) relied upon]

6. Claim not pending with any other court, etc. :

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of Law or any other Authority or any other Tribunal(s).

7. Particulars of the fee in terms of sub-rule A (1) of rule 7 :

(i) Amount

(ii) Mode

8. List of enclosures :

(Specify the details of enclosures with the application)

Verification

I (name in full block letters) son/ daughter of the applicant do hereby verify that the contents of paragraphs (1 to 8) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place :

Date :

Signature of the applicant(s)

FORM 'C'
(see rule 9)

APPEAL TO APPELLATE TRIBUNAL
(under section 44)

For use of Appellate Tribunal's office :

For use of Authority(s) office :

Date of filing :.....

Date of receipt by post :.....

Registrayion No. :.....

Signature :.....

Authorized Officer :.....

IN THE MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL (Name of place)

Between

..... Appellant(s)

And

..... Respondent(s)

Details of appeal :

1. Particulars of the appellants :
 - (i) Name of the appellant :
 - (ii) Address of the existing office / residence of the appellant :
 - (iii) Address for service of all notices :
2. Particulars of the respondents :
 - (i) Name(s) of respondent :
 - (ii) Office address of the respondent :
 - (iii) Address for service of all notices :
3. (a) Jurisdiction of the Appellate Tribunal :

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

(b) Project Registration No :

4. Limitation :

The appellant declares that the appeal is within the limitation specified in sub-section (2) of section 44

OR

If the appeal is filed after the expiry of the limitation period specified under sub-section (2) of section 44 specify reasons for delay

5. Facts of the case :

(give a concise statement of facts and grounds of appeal against the specific order of the Authority or the Adjudicating Officer, as the case may be passed under section(s)..... of the Act.

6. Grounds of Appeal :

7. Relief(s) sought :

In view of the facts mentioned in paragraph 5 above, the appellant prays for the following relief(s)

[Specify below the relief(s) sought explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

8. Interim order, if prayed for :

Pending final decision on the appeal, the appellant seeks issue of the following interim order :—

(Give here the nature of the interim order prayed for with reasons)

9. Matter not pending with any other court, etc. :

The appellant further declares that the matter regarding which this appeal has been made, is not pending before any court of law or any other Authority or any other Tribunal(s).

10. Particulars of the fee in terms of sub-rule A (1) of rule 9:

(i) Amount

(ii) Mode

11. List of enclosures:

(i) An attested true copy of the order against which the appeal is filed

- (ii) Copies of the documents relied upon by the appellant and referred to in the appeal
- (iii) An index of the documents

Verification

I (name in full block letters) son/ daughter of the appellant do hereby verify that the contents of paragraphs (1 to 10) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place :

Date

Signature of the appellant(s)

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

R. K. DHANAWADE,
Deputy Secretary to Government.

On behalf of Government Printing, Stationery and Publication, printed and published by Shri Parshuram Jagannath Gosavi, Printed At Government Central Press, 21-A, Netaji Subhash Road, Charni Road, Mumbai 400 004 and published at Directorate of Government Printing, Stationery and Publication, 21-A, Netaji Subhash Road, Charni Road, Mumbai 400 004, Editor : Shri Parshuram Jagannath Gosavi.

APPENDIX D-3

HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 17th 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 (l), (m), (n), (o) 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 of 2016, published in the *Maharashtra Government Gazette*, Extraordinary, Part IV-A, Extraordinary No. 162, dated the 8th of December of 2016, hereby makes the following rules for the establishment of the state Real Estate Regulatory Authority, as follows, namely : —

CHAPTER I

PRELIMINARY

1. *Short title and commencement.* — These rules may be called the Maharashtra Real Estate Regulatory Authority, Chairperson, Members Officers and other 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) “Authority” means the Maharashtra Real Estate Regulatory Authority established under the sub-section (1) of section 20 of the Act;
 - (c) “Consultant” means a consultant appointed by the Authority to assist it in discharging its functions under the Act;
 - (d) “Form” means the Forms annexed to these rules;
 - (e) “section” means section of the Act;
 - (f) “Selection Committee” means the committee specified in section 22;
 - (g) “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

REAL ESTATE REGULATORY AUTHORITY

3. *Real Estate Regulatory Authority.*—The Government may by notification in the *Official Gazette* establish an Authority under sub-section (1) of section 20 of the Act for such area as may be specified in the notification.

4. *Selection of Chairperson and other Members of Authority.*—(1) The State Government shall make a reference to the Selection Committee for appointment of the Chairperson and Members of the Authority or when any vacancy in the office of the Chairperson or Member arises or likely to arise in the Authority.

(2) The Selection Committee may, for the purpose of selection of the Chairperson or Member of the Authority, follow such procedure as it may as deem fit.

(3) The Selection Committee shall make a recommendation to

the State Government for the 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 meeting at Mumbai or at such places in the State, as may be decided by the Chairperson.

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

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

5. *Appointment of Chairperson and Members.* – The State Government shall consider the recommendations of the Selection Committee for the appointment of the Chairperson and Members or to 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. *Salaries and allowances and other conditions of service of Chairperson and Members of Authority.* –

(a) The salary and allowances payable to the Chairperson and Members of the Authority shall be as follows: –

(i) The Chairperson of the Authority shall be paid a monthly salary equivalent to that of the Chief Secretary of the State Government.

(ii) The Members of the Authority shall be paid a salary equivalent to the Principal Secretary of the State

Government.

(iii) *Dearness Allowance and City Compensatory Allowance.* – The Chairperson and the Members of the Authority shall be entitled to receive dearness allowance and city compensatory allowance at the rate as are admissible to the Chief Secretary of the State Government or Principal Secretary of the State Government, respectively.

(b) *Leave.* – (i) The Chairperson and Members shall be entitled to thirty days of earned leave for every year of service. The payment of leave salary during the leave shall be as admissible to the Chief Secretary or Principal Secretary in the State Government, as the case may be. The Chairperson or Member shall be entitled to encashment of fifty percent of earned leave to his credit at any time.

(ii) *Leave sanctioning authority.* – Leave sanctioning authority in case of, –

(a) the Chairperson of the Authority, shall be the Minister-in-Charge of the Housing Department of the State Government; and

(b) the Members of the Authority, shall be the Chairperson;

(c) *Travelling allowance and daily allowance.* – (i) The Chairperson and the Members while on tour (including the journey undertaken or on expiry of his term to proceed to his hometown) shall be entitled to travelling allowances, daily allowance, transportation of personal effects and other similar matters at the same rate as admissible to the Chief Secretary and Principal Secretary of the State Government respectively.

(ii) The Chairperson shall be the controlling officer in respect of bills relating to travelling allowances and daily allowances.

(d) *Domestic official tours.* – The Chairperson and Members, while on tour, shall be entitled to the facility of government accommodation in the guest house or inspection bungalows run

by the State Government or to hotel accommodation in case Government accommodation is not available, as applicable to the Chief Secretary or Principal Secretary of Government of Maharashtra, as the case may be.

(e) *Leave travel concession.* – The Chairperson and Members shall be entitled to Leave Travel Concession (L.T.C.) at the same rates as admissible to the Chief Secretary and Principal Secretary of the State Government, respectively.

(f) *Medical facilities.* – The Chairperson and Members shall be entitled to medical treatment and hospital facilities as provided to the members of Indian Administrative Service of the corresponding grade in the State Government.

(g) *Official visits abroad.* – The Chairperson and Members shall be entitled to undertake official visits abroad with the prior approval of the Minister-in-charge of the Housing Department and after clearance from Ministry of External Affairs on the points related to political affairs. The daily allowance and provision of accommodation during the period of tour abroad shall be regulated in accordance with the State Government instructions as applicable to the Chief Secretary and Principal Secretary, respectively of the State Government.

(h) *Conveyance facility.* – The Chairperson and Members shall be entitled to conveyance facilities as admissible to the Chief Secretary and Principal Secretary of the State Government respectively.

(i) *Accommodation to Chairperson and Members.* –

(i) the Chairperson of the Authority shall be entitled to residential accommodation as admissible to the Chief Secretary of the State Government;

(ii) the Member shall be entitled to residential accommodation as admissible to the rank of the Principal Secretary to the State Government drawing an equivalent pay. On demitting office, the Chairperson and Members shall be entitled to retention of residential accommodation for one month, on the same terms and conditions :

Provided that if the Chairperson or a Member of the Authority is staying in his own accommodation, he shall be paid a House Rent Allowance at the same rate as admissible to the Chief Secretary and Principal Secretary to the State Government respectively.

(j) *Telephone facilities.* – The Chairperson and Members of the Authority shall be entitled to telephone facilities as admissible to the Chief Secretary and Principal Secretary of the State Government, respectively.

(k) *Other allowances.* – The Chairperson and Members of the Authority shall be entitled to such other allowance as are applicable to the Chief Secretary or Principal Secretary respectively in the State Government.

7. If a serving officer of the State or Central Government is appointed as the Chairperson or Member of the Authority, as the case may be, his salary and allowances shall be as per rule 6, during the period he is holding the said post :

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

8. *Tenure of office.* – (1) The term of office of the Chairperson and Members shall be in accordance with the provisions of sub-section (1) of Section 23.

(2) When the Chairperson is unable to discharge his functions owing to death, resignation, absence, illness or any other cause, the senior-most Member of the Authority (in the order of appointment) 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 or till the vacancy is filled by nomination of a suitable person, under section 24.

9. *Oath of office and secrecy.* – (1) Every person appointed as the Chairperson of the Authority shall, before entering his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Minister-in-Charge of the Housing Department of the Government.

(2) Every person appointed as a Member of the Authority shall, before entering 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 Authority.

10. *Declaration of financial or other Interest.* – Before appointment, the Chairperson and the Member shall give an undertaking in Form III 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

11. *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 Members on the grounds specified in sub-section (1) of section 26, the Government may, after consulting the Chief Justice of the Bombay High Court appoint a Judge for the purpose of conducting such inquiry.

(2) The Government shall inform the charges against the Chairperson or such Members, 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 Members, as the case may be;

(b) material documents and other evidences relevant to the inquiry.

12. *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 Authority 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 medical examination of the Chairperson or Member of the Authority.

(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 by Order decide either to remove or otherwise the Chairperson or Member, as the case may be.

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

CHAPTER V

CONDITIONS OF SERVICE OF OFFICERS AND OTHER EMPLOYEES OF AUTHORITY

14. *Categories of officers and employees of the Authority and pay scales.*—The officers and employees required in the office of the Authority shall be recommended by the Authority 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 the regulations of the Authority, as approved by the State Government.

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

CHAPTER VI

MISCELLANEOUS

16. Consultants or experts or agency may be engaged by the Authority to facilitate the discharge of functions under sections 32 and 34 of the Act. The consultants or experts or agency, —

- (a) shall be paid a monthly honorarium as may be determined by the State Government, from time to time.
- (b) shall not be deemed to be regular members of the Staff borne on the establishment of the Authority.
- (c) may be appointed for a tenure not exceeding one year. The tenure may be extended on year to year basis.
- (d) the terms of their appointment may be terminated by the Authority by serving one months notice.

17. *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 may take decision after recording reasons within the framework of the Act. The decision of the State Government shall be binding on the Authority.

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

FORM – I

[See rule 9 (1)]

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

Regulatory Authority

I, _____, having been appointed as the Chairperson / Member (cross the portion not applicable) 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 the portion not applicable), of the Maharashtra Real Estate Regulatory Authority, to the best of my ability, knowledge and judgement, without fear or favour, affection or ill-will.

(Name of the Chairperson / Member)

Dated :

Maharashtra Real Estate Regulatory Authority.

FORM – II

[See rule 9 (2)]

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

Regulatory Authority

I, _____, having been appointed as the Chairperson/a Member (*cross out portion not applicable*) do solemnly affirm and (or) do 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 Regulatory Authority 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 Regulatory Authority.

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 Regulatory Authority, 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 Regulatory Authority.

(Name of the Chairperson / Member)

Dated :

Maharashtra Real Estate Regulatory Authority.

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

R. K. DHANAWADE,
Deputy Secretary to Government.

On Behalf Of Government Printing, Stationery And Publication, Printed And Published By Shri Parshuram Jagannath Gosavi, Printed At Government

Central Press, 21-a, Netaji Subhash Road, Charni Road, Mumbai 400 004 And Published At Directorate Of Government Printing, Stationery And

Publication 21-a, Netaji Subhash Road, Charni Road, Mumbai 400 004. Editor : Shri Parshuram Jagannath Gosavi

APPENDIX D-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* stablsh 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.

On Behalf of Government Printing, Stationery and Publication, Printed and Published by Shri Parshuram Jagannath Gosavi, Printed at Government

Central Press, 21-A, Netaji Subhash Road, Charni Road, Mumbai 400 004 and Published at Directorate Of Government Printing, Stationery and

Publication 21-A, Netaji Subhash Road, Charni Road, Mumbai 400 004.
Editor : Shri Parshuram Jagannath Gosavi

APPENDIX D-5

HOUSING DEPARTMENT

Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, Dated the 18th April 2017

NOTIFICATION

No. REA2016/CR.No.123/DVP-2.—In exercise of the powers conferred by sub-section (1) and clauses (zd) and (ze) of sub-section (2) of section 84 of the Real Estate (Regulation and Development) Act, 2016, and all other powers enabling it in that behalf, the Government of Maharashtra, in consultation with the Comptroller and Auditor General of India, is hereby pleased to make the following Rules, as follow, namely :—

1. *Short title and commencement.*— (1) These rules may be called the Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017.

(2) They shall come into force on the date of their publication in the *Official Gazette*.

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

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

(b) “Authority” means the Maharashtra Real Estate Regulatory Authority established under the sub-section (1) of section 20 of the Act;

(c) “Chairperson” means the Chairperson of the Authority appointed under section 21 of the Act;

(d) “Form” means the forms annexed to these Rules;

(e) “Member” means a Whole-time Member of the Authority appointed under section 21 of the Act;

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

(g) “Schedule” means a Schedule appended to the form;

(h) “State 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.

3. *Budget, Accounts and Audit.*—(1) At the end of the financial year of every year, the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare annual statement of accounts in form “A”.

(2) The Authority shall preserve accounts and other relevant records prepared under sub-rule (1) for a minimum period of five years.

(3) The account and other relevant records under the sub-rule (1) shall be signed by the Chairperson, Members, Secretary and the officer-in-charge of Finance and Accounts of the Authority.

(4) The accounts of the Authority and audit report shall, as soon as possible, be submitted to the State Government for laying before the State Legislature.

4. *Annual Report.*—(1) The Authority shall prepare its annual report in Form “B”.

(2) The Authority may also include in the Annual Report such other matters as deemed fit by the Authority for reporting to the State Government.

(3) The Annual Report shall, after its adoption at a meeting of the Authority and signed by the Chairperson and Members and authenticated by affixing the common seal of the Authority, with requisite number of copies thereof, be submitted to the State

Government within a period of one hundred and eighty days immediately following the close of the year for which it has been prepared.

FORM "A"

[See sub-rule (1) of rule 3]

ANNUAL STATEMENT OF ACCOUNTS

Receipts and payment Account for the year ended _____

(In Rupees)

A/c Code	Receipts	Current Year As on	Previous Year As on	A/c Code	Receipts	Current Year As on	Previous Year As on
1.	To Balance			13.	By Chairperson		
	Brought down :				Members :		
1.1.	To Bank			13.1.	By Pay and Allowances		
1.2.	To Cash in hand			13.2.	By Other benefits		
2.	To Fees Charge and Fine :			13.3.	By Travelling Expenses :		
2.1.	To Fees			13.3.1.	By Overseas		
2.2.	To Charges			13.3.2.	By Domestic		
2.3.	To Fines			14.	Officers :		
2.4.	To Other (Specify)			14.1.	By Pay and Allowances		
3.	To Grants			14.2.	By Retirement Benefits		
3.1.	To Accounts with Government			14.3.	By other benefits		
3.2.	To Other (Specify)			14.4.	By Travelling Expenses :		
4.	To Gifts			14.4.1.	By Overseas		
5.	To Seminar and Conferences			14.4.2.	By Domestic		
6.	To Sale of Publication			15.	By Staff :		
7.	To Income on Investments and deposits:			15.1.	By Pay and Allowances		

A/c Code	Receipts	Current Year As on	Previous Year As on	A/c Code	Receipts	Current Year As on	Previous Year As on
7.1.	To Income on Investments			15.2.	By Retirement benefits		
7.2.	To Income on Deposits			15.3.	By Other benefits		
8.	To Loans:			15.4.	By Travelling Expenses :		
8.1.	To Government			15.4.1.	By Overseas		
8.2.	To Other (specify)			15.4.2.	By Domestic		
9.	To Sale of Assets			16.	By Hire of Conveyance		
10.	To Sale of Investments			17.	By Wages		
11.	To Recoveries from pay bills			18.	By Overtime		
11.1.	To Loans and Advances Principal Amount			19.	By Honorarium		
11.2.	To Interest on Loans and expenses Advances			20.	By Other office		
11.3.	To Miscellaneous			21.	By Expenditure on Research		
51.	To Other (specify)			22.	By Consultation Expenses		
				23.	By Seminars and conferences		
				24.	By Publication of Authority		
				25.	By Rent and Taxes		
				26.	By Interest on Loans		
				27.	By Promotional Expenses		
				28.	By Membership fee		
				29.	By Subscription		
				30.	By Purchase of Fixed Assets (specify)		

A/c Code	Receipts	Current Year As on	Previous Year As on	A/c Code	Receipts	Current Year As on	Previous Year As on
				31.	By Investments and Deposits :		
				31.1.	By Investments		
				31.2.	By Deposits		
				32.	By Security Deposits		
				33.	By Loans and Advances to :		
				33.1.	By Employees :		
				33.1.1.	By Bearing Interest		
				33.1.2.	By Not bearing Interest		
				33.2.	By Supplier/Contractors		
				33.3.	By others (specify)		
				34.	By Repayment of loans		
				35.	By Others		
				35.1.	By Leave Salary and Pension		
				35.2.	Contribution		
				35.3.	By Audit Fees		
				35.4.	By Misc :		
				36.	By Balance Carried down :		
				36.1.	By Bank		
				36.2.	By Cash in hand		
Total				Total			

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer-In-Charge (Finance and Accounts)

Income and Expenditure Account

For the Period 1st _____ to 31st _____

(In Rupees)

A/c Code	Expenditure	Sche- dule	Curre- nt Year	Previo- us Year	A/c Code	Expenditure	Sche- dule	Curre- nt Year	Previo- us Year
			As on	As on				As on	As on
13.	To Chairperson and Members				2.	By Fees A Charge & Fine			
13.1.	To Pay and Allowances				2.1.	By Fees			
13.2.	To Other benefits C				2.2.	By Charges			
13.3.	To Travelling Expenses				2.3.	By Fines			
13.3.1	To Overseas				2.4.	By Others (Specify)			
13.3.2.	To Domestic				3.	By Grants B			
14.	To Officers				3.1	By Accounts with Government			
14.1.	To Pay and Allowances				3.2.	By Others (Specify)			
14.2.	To Retirement D benefits				4.	By Gifts			
14.3.	To other benefits C				5.	By Seminar and Conferences			
14.4.	To Travelling Expenses				6.	By Sale of Publication			
14.4.1.	To Overseas				7.	By Income on Investments & deposits			
14.4.2.	To Domestic				7.1.	By Income on Investments			
15.	To Staff				7.2	By Income on Deposits			
15.1.	To Pay and Allowances				11.2.	By Interest on Loan & Advances			
15.2.	To Retirement D benefits				12.	By Miscellaneous Income			

A/c Code	Expenditure	Sche- dule	Curre- nt Year	Previo- us Year	A/c Code	Expenditure	Sche- dule	Curre- nt Year	Previo- us Year
			As on	As on				As on	As on
15.3.	To Other benefits	C			12.1.	By excess of expenditure over income			
15.4.	To Travelling Expenses					(Transferred to Capital Fund Account)			
15.4.1.	To Overseas				15.4.2.	To Domestic			
16.	To Hire of Conveyance								
17.	To Wages								
18.	To Overtime								
19.	To Honorarium								
20.	To Other office expenses	E							
21.	To Expenditure on Research								
22.	To Consultation expenses								
23.	To Seminar and Conferences								
24.	To Publication of Authority								
25.	To Rent and Taxes								
26.	To Interest on Loans								
27.	To Promotional Expenses								
28.	To Membership fee	F							
29.	To Subscription	G							
35.	To Others								
35.1.	To Leave Salary and Pension								
35.2.	Contribution								
35.3.	To Audit Fee								

A/c Code	Expenditure	Sche- dule nt	Curre- nt Year	Previo- us Year	A/c Code	Expenditure	Sche- dule nt	Curre- nt Year	Previo- us Year
			As on	As on				As on	As on

35.4. To Misc.

37. To Depreciation H

48. To Loss on sale
of assets

49. To Bad Debts
Written off

50. To Provision for
Bad and Doubtful
debts
To Excess of income
Over expenditure
(Transferred to
Capital Fund Account)

Total

Total

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer-In-Charge (Finance and Accounts)

Balance Sheet as on 31st (Month) (Year) _____

A/c Code	Liabilities	Sche- dule nt	Curre- nt Year	Previo- us Year	A/c Code	Assets	Sche- dule nt	Curre- nt Year	Previo- us Year
			As on	As on				As on	As on

40. Funds I

43. Fixed Assets H

40.1. Capital Fund
Add Excess of
Income over
Expenditure /
less excess of
Expenditure
over Income

43.1. Gross Block at
Cost
Less Cumulative
Depreciation

40.2 Other Funds
(specify)

42.2 Net Block

A/c Code	Liabilities	Sche- dule	Curre- nt Year	Previo- us Year	A/c Code	Assets	Sche- dule	Curre- nt Year	Previo- us Year
			As on	As on				As on	As on
41.	Reserves	J			44.	Capital M Work-in-progress			
8.	Loans	K			31.	Investments and Deposits	N		
8.1.	Government				31.1.	Investment			
8.2.	Others				31.2.	Deposits			
42.	Current Liabilities and provisions	L			33.	Loans and Advances	O		
					3.1.	Account with Government	S		
					36.	Cash and Bank Balances	Q		
					46.	Other Current Assets	R		
	Total				Total				
Accounting Policies and Notes to					T				

Instructions :(1) The Schedules referred / referenced above shall be prepared by the Authority based on accounting principles followed by the State Government or as suggested by the Comptroller and Auditor General of India from time to time,

(2) The Schedules referred to above shall form an integral part of the Income and Expenditure Account or the Balance Sheet, as the case may be.

Chairperson (Signature)

Member(s) (Signature)

Secretary (Signature)

Officer In-Charge(Finance and Accounts)

FORM B

[See sub-rule (1) of rule 4]

ANNUAL REPORT TO BE PREPARED BY AUTHORITY**A. Introduction :**

(i) Chairman's statement :

(ii) Objectives :

(iii) Important achievements :

(iv) The year in review :

(a) Landmark decisions :

(b) b. Legislative work :

(c) c. Outreach programme :

(v) Capacity building:

(vi) International engagements:

(vii) Impact on:

(a) Allottees :

(b) Promoters :

(c) Real Estate Agents :

(d) Economy :

B. Registration of promoters and real estate agents under the Act:**I. In relation to Promoters:**

Sr. No.	Name of Promoter	Address of Promoter	Description of project for which registration has been issued	Fees Paid	Registration Number
(1)	(2)	(3)	(4)	(5)	(6)
Date of issue of registration	Date on which registration expires	Date of extension of registration with period of extension	Remark		
(7)	(8)	(9)	(10)		

II. In relation to Real Estate Agents :

Sr. No.	Name of real Estate Agent	Address of real Estate Agent	Registration Fee paid	Registration Number	Date of issue of registration certificate	Date on which registration certificate expires	Date and period of renewal of registration certificate	Remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

C. Number of cases filed before the Authority and the adjudicating officer for settlement of disputes and number of cases disposed :

Sl. No.	No. of cases pending in the last quarter with Authority	No. of cases received during the quarter by the Authority	No. of cases disposed of by the Authority

Sl. No.	No. of cases pending in the last quarter with the adjudicating officer	No. of cases received during the quarter by the adjudicating officer	No. of cases disposed of by the adjudicating officer

D. Statement on the periodical survey conducted by the Authority to monitor the compliance of the provisions of the Act by the promoters, allottees and real estate agents :

Sl. No.	Survey conduct during the quarter with details	Observation of Authority	Remedial steps taken

E. Statement on steps taken to mitigate any non-compliance of the provisions of the Act and the rules and regulations made thereunder by the promoters, allottees and real estate agents :

Sl. No.	Subject	Steps taken	Results achieved

F. Statements on directions of the Authority and the penalty imposed for contraventions of the Act and the rules and regulations made thereunder and statement on interest and compensations ordered by the adjudicating officer :

Sr. No.	Name of the Promoter	Details of the directions issued by the Authority/ adjudicating officer	Penalty/interest/ compensation imposed	Whether paid

Sr. No.	Name of the allottee	Details of the directions issued by the Authority/ adjudicating officer	Penalty/interest/ compensation imposed	Whether paid

Sr. No.	Name of the real estate agent	Details of the directions issued by the Authority/ adjudicating officer	Penalty/interest/ compensation imposed	Whether paid

G. Investigations and inquiries ordered by the Authority or the adjudicating officer: A brief narrative of investigations and inquiries taken up by the Authority or the adjudicating officers and references received from the competent authority or the appropriate Government.

H. Orders passed by the Authority and the adjudicating officer: A brief narrative of orders passed by the Authority or the adjudicating officers separately for where no offence is made out, and in case offence is proved, category-wise for each category of orders passed along with a tabular statement indicating the sections under which the order was passed and brief particulars of the orders.

I. Execution of the orders of the Authority and imposition of penalties : (i) monetary penalties details of recovery of penalty imposed, details of penalty imposed but not recovered, total number of matters and total amount of monetary penalty levied, total amount realized by resorting to rule 23; (ii) matters referred to court under section 59 - total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year; (iii) matters referred to court for execution of

order under section 40 - total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year.

J. Execution of the orders of the adjudicating officer and imposition of interest and compensation: (i) interest and compensations - details of interest and compensation imposed, details of interest and compensation imposed but not paid, total number of matters and total amount of interest and compensations imposed, total amount realized by resorting to rule 23; and (ii) matters referred to court for execution of order under section 40 - total number of matters referred to the court during the year, total number of matters disposed of by the court during the year, total number of matters pending with the court at the end of the year.

K. Appeals :

(i) Number of appeals filed against the orders of the Authority or the adjudicating officer in the year:

(ii) Number of appeals pending at the beginning of the year:

(iii) Appeals filed during the year:

(iv) Number of appeals allowed by the Appellate Tribunal during the year:

(v) Number of appeals disallowed by the Appellate Tribunal during the year:

(vi) Brief write up on the appeals allowed by the Appellate Tribunal:

L. References received from the appropriate Government under section 33 : a brief narrative on references received from the appropriate government under section 33 providing for - number of references received during the year, number of references disposed of during the year, number of references pending at the end of the year.

M. Advocacy measures under sub-section (3) of section 33 : a brief narrative on activities undertaken under sub-section (3) of section 33 - (i) workshops, seminars and other interactions with public / experts / policy-makers / regulatory bodies on laws and

policies relating to the real estate sector and for creating awareness on the same; (ii) papers and studies published for advocacy on laws and policies relating to the real estate sector and for creating awareness on the same; (iii) consultation papers published/placed on website of the Authority; (iv) analytical papers prepared and examined; (v) others.

N. Administration and establishment matters: (i) report of the Secretary; (ii) composition of the Authority; (iii) details of Chairperson and Members appointed in the year and of those who demitted office (iv) details of adjudicating officers appointed in the year and those who demitted office; (v) organizational structure; (vi) a tabular statement containing information on personnel in the Authority, category-wise: sanctioned posts, posts filled up, vacancies, appointments made in the year etc.

O. Experts and consultants engaged: details of number of experts and consultants appointed in the year and of those who demitted office.

P. Employee welfare measures, if any, beyond the regular terms and conditions of employment, undertaken by the Authority.

Q. Budget and Accounts: (i) budget estimates and revised estimates, under broad categories; (ii) receipts under broad categories in the Real Estate Regulatory Fund established under subsection (1) of section 75; (iii) actual expenditure under broad categories; (iv) balance available in the Real Estate Regulatory Fund under sub-section (1) of section 75; (v) any other information.

R. International co-operation: A brief narrative of international co-operation, if any, undertaken by the Authority.

S. Capacity Building: A brief narrative of capacity building initiative undertaken including (i) number of employees (category wise and grade wise) trained in house with details of such programmes like content, duration and faculty; (ii) number of employees (category wise and grade wise) trained by outside institutions (separately within Indian and outside India) with details of names of institutions and duration also to specify whether training was under internship, exchange programme, fellowships,

study leave, special arrangements with foreign universities/institutions; (iii) expenditure of capacity building initiatives.

T. Ongoing programmes: A brief narrative of ongoing programmes.

U. Right to Information: A brief narrative of (i) number of applications received by CPIO/ ACPIO seeking information under RTI Act; (ii) Number of applications for which information has been provided by CPIO; (iii) number of applications pending with CPIO; (iv) number of appeals filed before the First Appellate Authority against the order of CPIO; (v) number of appeals which have been disposed of by First Appellate Authority; (vi) number of appeals pending with the First Appellate Authority; (vii) number of applications/appeals not disposed of in the Stipulated time frame.

Chairperson (Signature)

Member(s) (Signature)

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

R. K. DHANAWADE,

Deputy Secretary to Government.

On Behalf of Government Printing, Stationery and Publication, Printed And Published by Shri Parshuram Jagannath Gosavi, Printed at Government

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Publication 21-A, Netaji Subhash Road, Charni Road, Mumbai 400 004.
Editor : Shri Parshuram Jagannath Gosavi

APPENDIX D-6

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

'A' Wing, Slum Rehabilitation Authority Building,
Prof. Anant Kanekar Road, Bandra (East), Mumbai 400 051

Dated : 24th April 2017

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (GENERAL) REGULATIONS, 2017

No: MahaRERA.2017/Gen.Regulations/18 :- In exercise of the powers conferred on it under sub-sections (1) and clause (i) of sub-section (2) of Section 85 of the Real Estate (Regulations and Development) Act, 2016 and of all other powers enabling it in that behalf, the Maharashtra Real Estate Regulatory Authority, with the approval of the State Government, hereby makes the following Regulations :-

Short Title, Object, Commencement and Extent:

1. (a) These regulations may be called the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

(b) The object of these Regulations is to establish procedures regarding the general functioning of the Authority and for the conduct of business of the Authority.

(c) These Regulations shall come into force on the date of their notification in the Official Gazette.

(d) These Regulations shall apply in relation to all matters

falling within the jurisdiction of the Authority in the State of Maharashtra.

Definitions

2. (a) In these Regulations, unless the context otherwise requires:-

(i) "Act" means the Real Estate (Regulation and Development) Act 2016 as amended from time to time;

(ii) "Adjudication" means the process of arriving at decisions on complaints submitted to the Authority or the Adjudicating Officer under Section 31 of the Act;

(iii) "Chairperson" means the Chairperson of the Authority;

(iv) "Authority" means the Maharashtra Real Estate Regulatory Authority;

(v) "Consultant" includes any person not in the employment of the Authority who may be appointed as such to assist the Authority on any matter required to be dealt with by the Authority under the Act and the rules and regulations made there under;

(vi) "Member" means a member of the Authority;

(vii) "Proceedings" mean and include proceedings of all nature that the Authority may conduct in the discharge of its functions under the Act and the rules and regulations;

(viii) "Secretary" means the Secretary of the Authority;

(ix) "Officer" means an Officer of the Authority;

(xi) "Regulations" mean the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 as amended from time to time.

(x) "Rules" mean the rules framed by Government of Maharashtra, under the Real Estate (Regulation and Development) Act 2016 and as amended from time to time.

(b) Words or expressions occurring in these Regulations and not defined herein but defined in the Act or the Rules shall bear the same meanings respectively assigned to them in the Act and the Rules.

(c) In construing these Regulations, the singular shall include the plural and vice versa.

Formats of Certificates of Architect, Engineer and Chartered Accountant:

3. The certificates, issued by the project architect, project engineer, chartered accountant and submitted to the banks for getting release of money from the separate account shall be in Form 1, 2, and 3 respectively. The certificate issued by the project architect on completion of each of the building/wing of the real estate project shall be in Form 4.

Additional Disclosures by Promoters on the Website and Project site:

4. In addition to all the details of the proposed Real Estate project, to be uploaded by the promoter on his webpage on the website of the Authority, as required under sub-section (1) of Section 11 of the Act and clause (1) and (2) of Rule 3 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017, the promoter shall additionally upload the following details:

a) The annual report on statement of accounts, in Form 5 (issued in accordance with the third proviso to section 4(2)(l) of the Act) duly certified and signed by the chartered accountant who is the statutory auditor of the promoter's enterprise.

Explanation 1: The chartered accountant certifying the progress of the registered real estate project for the purpose of withdrawal of amounts from the separate account should be a different entity than the chartered accountant who is the statutory auditor of the promoter's enterprise.

Explanation 2: If the Form 5 issued by the statutory auditor reveals that any certificate issued by the project architect, engineer or the chartered accountant has false or incorrect information and the amounts collected for a particular project have not been utilized for the project and the withdrawal has not been in compliance with the proportion to the percentage of completion of the project, the Authority, in addition to taking penal actions as contemplated in the Act and the Rules, shall also take up the matter with the concerned regulatory body of the said professionals of the architect, engineer or

chartered accountant, for necessary penal action against them, including dis-memberment.

5. The sanctioned plans, layout plans, along with specifications, approved by the Competent Authority shall be prominently displayed by the promoter at the project land site.

Authority's office, office hours and sittings:

5. The head office of the Authority shall be at Mumbai. The Authority may, by order, establish benches comprising one or more members, at places other than Mumbai.

6. The Authority shall follow the office timings and holidays as notified from time to time by the State Government for its offices in Mumbai and elsewhere, unless otherwise decided by the Authority.

7. The Authority may conduct its proceedings at the head office or at any other place within its jurisdiction on days and time as directed by the Chairperson.

Language of the Authority:

8. The proceedings of the Authority shall be conducted in English, provided that the Authority shall allow any person to plead or represent his case in Marathi.

9. The Authority, at its sole discretion, may accept complaint petitions made in any language other than in English or Marathi, provided that the same is accompanied by a translation thereof in English.

Provided that such translation may be dispensed with at the discretion of the Authority.

10. Any translation which is agreed to by the parties to the proceedings or which any of the parties furnish, may be accepted by the Authority as a true translation.

11. The Authority may, in appropriate cases, direct translation of Petitions and their accompanying documents into English or Marathi.

Authority to have seal of its own:

12. Any document requiring authentication by the Authority shall

be issued under the seal of the Authority, and shall be signed by the Secretary or other Officer authorized by the Chairperson in this behalf.

Officers of the Authority:

13. (a) The Authority shall have the power to appoint the Secretary, Officers and other employees for discharging various duties. The qualifications, experience and terms and conditions of service and appointment of such Secretary, Officers and other employees shall be subject to such regulations as may be specified by the Authority.

(b) The Authority may appoint or engage Consultants to assist the Authority in the discharge of its functions.

14. (a) The Secretary shall be the Principal Executive Officer of the Authority and shall exercise his powers and perform his duties under the control of the Chairperson.

(b) The Authority, in the discharge of its functions under the Act, may take such assistance from the Secretary as it may deem fit.

(c) In particular, and without prejudice to the generality of the provisions of sub-regulations (a) and (b) of this regulation, the Secretary shall have the following powers and perform the following duties, viz:-

(i) He shall have custody of the records and the seal of the Authority.

(ii) He shall receive or cause to receive all documents, including, *inter alia*, complaints, applications or reference pertaining to the Authority.

(iii) He shall scrutinize documents, including, *inter alia*, complaints, applications or references and shall be entitled to seek clarifications or rectifications upon the same and issue appropriate directions pertaining to the acceptance or rejection of such documents.

(iv) He shall prepare or cause to be prepared briefs and summaries of pleadings presented by various parties in cases filed before the Authority.

(v) He shall carry out such functions under the Act or the

Rules, as may be delegated to him by the Chairperson, by general or special order.

(vi) He shall assist the Authority in the proceedings relating to the powers exercisable by the Authority, as directed by the Chairperson.

(vii) He shall provide notice for meeting, prepare the agenda for meetings and minute the proceedings of the Authority's meetings.

(viii) He shall authenticate the orders passed by the Authority.

(ix) He shall, so far as it is possible, monitor compliance of the orders passed by the Authority and shall forthwith bring to the notice of the Authority any non-compliance thereof.

(x) He shall have the right to collect from the State Government or other offices, companies and firms or any other party as may be directed by the Chairperson, such information and record, report, documents, etc., as may be considered necessary for the purpose of efficient discharge of the functions of the Authority under the Act and the Rules and place the same before the Authority.

15. In the absence of the Secretary, the Officer of the Authority designated by the Chairperson in this behalf, shall exercise the functions of the Secretary.

16. The Chairperson shall, at all times, have the power, either on an application made by any interested or affected party or suo motu, to review, revoke, revise, modify, amend, alter or otherwise change any order issued or action taken by the Secretary or any Officer of the Authority, if considered appropriate.

17. The Secretary may, with the written approval of the Chairperson, delegate to any Officer of the Authority any function required by these Regulations or otherwise to be exercised by the Secretary.

Meetings

18. This section shall be applicable to the meetings of the Authority, other than the adjudicatory proceedings of the Authority.

19. The quorum for the meetings of the Authority shall be two.

20. If in any meeting of the Authority duly convened, the quorum is not present, the meeting shall stand adjourned for the next day at the same time and venue.

21. The Chairperson shall preside over the meetings and conduct the business. Members stationed at Benches, outside Mumbai, may participate in the meetings through video conferencing. If the Chairperson is unable to be present in the meetings for any reason, or where there is no Chairperson, the senior most Member present shall preside at the meeting.

22. (a) All questions which come up before any meetings of the Authority shall be decided by a majority of votes of the Members present and voting. In the event of an equality of votes, the Chairperson or in his absence, the Member presiding shall have a second or casting vote.

(b) Save as otherwise provided in these Regulations, every Member shall have one vote.

23. (a) The Secretary or in his absence an Officer of the Authority designated by the Chairperson, shall record the minutes of the meetings and maintain a register which will, amongst other things, contain the names and designation of Members and invitees present in the meeting, a record of proceedings and notes of dissent, if any. The draft minutes shall, as soon as practicable, be sent to the Chairperson and the attending Members.

(b) The decision taken in a meeting of the Authority shall be recorded in the minutes in a clear and concise manner, along with reasons. In case the minutes record any statement/submission made by an invitee, a copy of the minutes shall be sent to such invitee.

(c) The minutes of the previous meeting shall be confirmed by circulation or at the next meeting of the Authority.

Adjudication proceedings:

24. For adjudication proceedings with respect to complaints filed with the Authority, the Authority may, by order, direct that specific matters or issues be heard and decided by a single bench of either the Chairperson or any Member of the Authority.

Vacancies, etc., not to invalidate proceedings:

25. No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Authority.

Authorized Representative:

26. A person who is a party to any proceedings before the Authority may either appear in person or authorise any other person to present his case before the Authority and to do all or any of the acts for the purpose.

Provided that the person appearing on behalf of any person in any proceeding before the Authority shall file a Memorandum of Authorisation, in Form 6 herein.

Provided further that for matters pertaining to Rule 6(a) of the Maharashtra Real Estate(Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017 the Authority may, from time to time, determine the terms and conditions subject to which the allottees may authorise representative(s) to plead on their behalf. In such cases the Authority shall have the power to summon and enforce the attendance of all persons who are concerned with the Real Estate Project, including lenders, as well as the persons who have accorded permissions to the Real Estate Project, as Competent Authority.

Orders of the Authority:

27. The Authority Chairperson/Member(s) hearing a proceeding shall pass orders in such proceedings, and such orders shall be signed by the Chairperson/Members of the Authority hearing such proceeding. Every order made by the Authority shall be a reasoned order.

28. All orders and decisions issued by the Authority shall be certified by the signature of the Secretary or an Officer empowered in this behalf by the Chairperson and shall bear the official seal of the Authority and be communicated as expeditiously as possible from the date of passing thereof to all parties in the proceeding.

Commission's records –documentation, inspection, confidentiality and accessibility:

29. The Authority shall, as soon as may be practicable, maintain an indexed database of its records including, inter alia, complaints filed, details of hearings conducted, orders / documents issued from time to time.

30. (a) Subject to sub-regulation (c) herein, records of the Authority shall be open to inspection by all, subject to the payment of the fee and complying with the terms as the Authority may direct.

(b) The Authority shall, on such terms and conditions as the Authority considers appropriate, provide for supply of certified copies of documents and papers available with the Authority to any person, applying in Form 7, subject to the payment of fee and complying with the terms as the Authority may direct. The Authority shall designate an Officer for ensuring timely response to requests received for supply of certified copies of documents who shall endeavour to dispatch the certified copies of documents requested for within a period of fourteen (14) working days from the date of receipt of request.

(c) The Authority may, by order, direct that any information, documents and papers / materials maintained by the Authority, shall be confidential or privileged and shall not be available for inspection or supply of certified copies, and the Authority may also direct that such document, papers, or materials shall not be used in any manner except as specifically authorised by the Authority.

31. The Authority shall endeavour to make information involving public interest accessible and available to the public, including, inter alia, through its website.

Interim Orders, investigation, inquiry, collection of information, etc:

32. The Authority may pass such ad-interim or interim orders, as the Authority may consider appropriate at any stage of any proceedings, having regard to the facts and circumstances of the case.

33. The Authority may make such direction or order as it thinks fit for collection of information, inquiry, investigation, entry, search,

seizure and, without prejudice to the generality of its powers, including, inter alia, the following :-

(a) The Authority may, at any time, direct the Secretary or any one or more Officers or any other person as the Authority considers appropriate to study, investigate or furnish information with respect to any matter within the jurisdiction of the Authority under the Act and the Rules.

(b) The Authority may, for the above purpose, give such other directions as it may deem fit and state the time within which the report is to be submitted or information furnished.

(c) The Authority may issue or authorise the Secretary or an Officer to issue directions to any person to produce before it and allow to be examined and kept by an Officer of the Authority directed in this behalf the books, accounts, etc., or to furnish any information to the designated Officer.

(d) The Authority may issue such directions, for the purpose of collection of any information, particulars or documents that the Authority considers necessary in connection with the discharge of its functions under the Act and the Rules.

(e) If any such report or information obtained appears to the Authority to be insufficient or inadequate, the Authority or the Secretary or an Officer authorised for the purpose may give directions for further inquiry, report and furnishing of information.

(f) The Authority may direct such incidental, consequential and supplemental matters to be attended to which may be considered relevant in connection with the above.

34. If the report or information obtained in accordance with Regulation 34 above or any part thereof is proposed to be relied upon by the Authority for forming its opinion or view in any proceedings, the parties to the proceedings shall be given a reasonable opportunity for filing objections and making submissions on such report or information.

Confidentiality:

35. (a) The Authority shall appraise and determine whether any document or evidence provided to it by any party and claimed by

that party to be of a confidential nature merits being withheld from disclosure to other parties as being confidential and shall provide brief reasons in writing for arriving at its conclusion.

(b) If the Authority is of the view that the claim for confidentiality is justified the Authority may direct that the same be not provided to such parties as the Authority may deem fit. However, the party claiming the confidentiality shall provide a brief non-confidential summary of the substance of the documents found to be confidential and the import of the same.

(c) Notwithstanding the above, it shall be open to the Authority to take into consideration the contents of the documents found to be confidential in arriving at its decision.

Review of decisions, directions, and orders:

36. (a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.

(b) An application for such review shall be filed in the same manner as a complaint under these Regulations.

(c) The Authority, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

(d) When it appears to the Authority that there is no sufficient ground for review, the Authority shall reject such review application.

(e) When the Authority is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the

opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.

Continuance of Proceedings after death, etc:

37. (a) Where in a proceeding, any of the parties to the proceeding dies or is adjudicated as an insolvent or in the case of a company under liquidation / winding up, the proceeding shall continue with the successors-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the party concerned, as the case may be.

(b) The Authority may, for reasons to be recorded, treat the proceedings as abated in case the Authority so directs and dispense with the need to bring the successors-in-interest on the record of the case.

(c) In case any person wishes to bring on record the successors-in-interest, etc., the application for the purpose shall be filed within ninety (90) days from the event requiring the successors-in-interest to be brought on record. The Authority may condone the delay, if any, for sufficient reasons.

Issue of orders and directions:

38. Subject to the provisions of the Act, Rules and Regulations, the Authority may, from time to time issue orders and directions in regard to the implementation of the Regulations and procedure to be followed.

Saving of inherent power of the Authority:

39. Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.

40. Nothing in these Regulations shall bar the Authority from adopting in conformity with the provisions of the Act or Rules, a procedure, which is at variance with any of the provisions of these Regulations including summary procedures, if the Authority, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for so dealing with such a matter or class of matters.

41. Nothing in the Regulations shall bar the Authority to deal with any matter or exercise any power under the Act or Rules for which no regulations have been framed, and the Authority may deal with such matters, powers and functions in a manner it thinks fit.

General power to amend/rectify:

42. The Authority may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it (including any clerical or arithmetical error in any order passed by the Authority), and all necessary amendments, rectifications shall be made for the purpose of determining the real question or issue arising in the proceedings.

Provided that if the Authority desires to make amendments or rectifications in order to determine the real question or issue arising the Authority shall provide an opportunity to the parties affected by such amendment or rectification touching the real question or issue to make representations and submissions with respect to the proposed amendment or rectification.

Power to remove difficulties:

43. If any difficulty arises in giving effect to any of the provisions of the Regulations, the Authority may, by general or special order, do anything not being inconsistent with the provisions of the Act or Rules, which appears to be necessary or expedient for the purpose of removing the difficulties.

Extension or abridgement of time prescribed:

44. Subject to the provisions of the Act or the Rules, the time prescribed by the Regulations or by order of the Authority for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by an order of the Authority.

Effect of non-compliance:

45. Failure to comply with any requirement of the Regulations shall not invalidate any proceeding merely by reason of such failure unless the Authority is of the view that such failure has resulted in miscarriage of justice.

Costs:

46. (a) Subject to such condition and limitation as may be directed by the Authority, the costs of and incidental to, all proceedings shall be awarded at the discretion of the Authority and the Authority shall have full power to determine by whom or out of what funds and to what extent such costs are to be paid and give all necessary directions for the aforesaid purposes.

(b) The costs shall be paid within thirty (30) days from the date of the order or within such time as the Authority may, by order, direct. If a party fails to comply with an order for costs within the permitted period, the order of the Authority awarding costs shall be executed forthwith in the same manner as a decree/order of a Civil Court.

Administrative Charges and Standard Fees:

47. The administrative charges to be retained by the Authority in cases of withdrawal of application for registration of any Real Estate Project in accordance with Rule 3(7) of the Maharashtra Real Estate(Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017 shall be Rupees five thousand only. The remaining amount of registration fees shall be refunded to the promoter within 15 days through RTGS or NEFT system or any other digital transaction mode.

48. The Authority may, by order, fix standard fees, including annual fees, to be levied on the promoters or real estate agents or allottees for inspection of documents, certified copies of documents, the updating of website, database management and maintenance of the website.

FORM 1 [see Regulation 3]**ARCHITECT'S CERTIFICATE**

**(To be submitted at the time of Registration of Ongoing Project
and for withdrawal of Money from Designated Account)**

Date :

To

The _____ (Name & Address of Promoter),

Subject : Certificate of Percentage of Completion of Construction Work of _____ No. of Building(s)/_____ Wing(s) of the _____ Phase of the Project [MahaRERA Registration Number] situated on the Plot bearing C.N. No/CTS No./Survey no./ Final Plot no _____ demarcated by its boundaries (latitude and longitude of the end points) _____to the North____to the South _____to the East _____to the West of Division _____ village _____ taluka _____ District _____ PIN_____admeasuring _____sq.mts. area being developed by [Promoter's Name]

Sir,

I/ We _____ have undertaken assignment as Architect /Licensed Surveyor of certifying Percentage of Completion of Construction Work of the _____Building(s)/_____ Wing(s) of the _____Phase of the Project, situated on the plot bearing C.N. No/CTS No./Survey no./ Final Plot no _____ of Division _____ village _____ taluka _____ District _____ PIN_____admeasuring _____sq.mts. area being developed by [Promoter's Name]

1. Following technical professionals are appointed by Owner / Promoter :-

- (i) M/s/Shri/Smt _____as L.S. / Architect;
- (ii) M/s/Shri/Smt _____as Structural Consultant
- (iii)M/s/Shri/Smt _____as MEP Consultant
- (iv)M/s/Shri/Smt _____as Site Supervisor

Based on Site Inspection, with respect to each of the Building/Wing of the aforesaid Real Estate Project, I certify that as on the date of this certificate, the Percentage of Work done for each of the building/Wing of the Real Estate Project as registered vide number _____ under MahaRERA is as per table A herein below.

The percentage of the work executed with respect to each of the activity of the entire phase is detailed in Table B.

Table A

Building /Wing Number____(to be prepared separately for each Building /Wing of the Project)

Sr. No.	Tasks /Activity	Percentage of work done
1	Excavation	
2	_____ number of Basement(s) and Plinth	
3	_____ number of Podiums	
4	Stilt Floor	
5	_____ number of Slabs of Super Structure	
6	Internal walls, Internal Plaster, Floorings within Flats/Premises, Doors and Windows to each of the Flat/Premises	
7	Sanitary Fittings within the Flat/Premises, Electrical Fittings within the Flat/Premises	
8	Staircases, Lifts Wells and Lobbies at each Floor level connecting Staircases and Lifts, Overhead and Underground Water Tanks	
9	The external plumbing and external plaster, elevation, completion of terraces with waterproofing of the Building/Wing,	
10	Installation of lifts, water pumps, Fire Fighting Fittings and Equipment as per CFO NOC, Electrical fittings to Common Areas, electro, mechanical equipment, Compliance to conditions of environment /CRZ NOC, Finishing to entrance lobby/s, plinth protection, paving of areas appurtenant to Building/Wing, Compound Wall and all other requirements as may be required to Obtain Occupation /Completion Certificate	

TABLE-B
Internal & External Development Works in Respect
of the entire Registered Phase

S.No	Common areas and Facilities, Amenities	Proposed (Yes/No)	Percentage of Work done	Details
1.	Internal Roads & Foothpaths			
2.	Water Supply			
3.	Sewarage (chamber, lines, Septic Tank , STP)			
4.	Storm Water Drains			
5.	Landscaping & Tree Planting			
6.	Street Lighting			
7.	Community Buildings			
8.	Treatment and disposal of sewage and sullage water			
9.	Solid Waste management & Disposal			
10.	Water conservation, Rain water harvesting			
11.	Energy management			
12.	Fire protection and fire safety requirements			
13.	Electrical meter room, sub-station, receiving station			
14.	Others (Option to Add more)			

Yours Faithfully

Signature & Name (IN BLOCK LETTERS) of L.S/ Architect
 (License NO.....)

FORM-2 [see Regulation 3]
ENGINEER'S CERTIFICATE

(To be submitted at the time of Registration of Ongoing Project and
for withdrawal of Money from Designated Account- Project wise)

Date:

To

The _____ (Name & Address of Promoter),

Subject: Certificate of Cost Incurred for Development of [Project Name] for Construction of _____ building(s)/_____ Wing(s) of the _____ Phase (MahaRERA Registration Number) situated on the Plot bearing C.N. No/ CTS No./ Survey no. / Final Plot no _____ demarcated by its boundaries (latitude and longitude of the end points) _____ to the North _____ to the South _____ to the East _____ to the West of Division _____ village _____ taluka _____ District _____ PIN _____ admeasuring _____ sq.mts. area being developed by [Promoter]

Ref: MahaRERA Registration Number _____

Sir,

I/ We _____ have undertaken assignment of certifying Estimated Cost for the Subject Real Estate Project proposed to be registered under MahaRERA, being _____ Building(s)/)/ _____ Wing(s) of the _____ Phase situated on the plot bearing C.N. No/CTS No./Survey no./ Final Plot no _____ of Division _____ village _____ taluka _____ District _____ PIN _____ admeasuring _____ sq.mts. area being developed by [Owner/Promoter]

1. Following technical professionals are appointed by Owner/ Promoter :-

- (i) M/s/Shri/Smt _____ as L.S. / Architect
- (ii) M/s/Shri/Smt _____ as Structural Consultant
- (iii) M/s/Shri/Smt _____ as MEP Consultant
- (iv) M/s/Shri/Smt _____ as Quantity Surveyor *

2. We have estimated the cost of the completion to obtain Occupation Certificate/ Completion Certificate, of the Civil, MEP and Allied works, of the Building(s) of the project. Our estimated cost calculations are based on the Drawings/plans made available to us for the project under reference by the Developer and Consultants and the Schedule of items and quantity for the entire work as calculated by _____ quantity Surveyor* appointed by Developer/Engineer, and the assumption of the cost of material, labour and other inputs made by developer, and the site inspection carried out by us.
3. We estimate Total Estimated Cost of completion of the building(s) of the aforesaid project under reference as Rs_____(Total of Table A and B). The estimated Total Cost of project is with reference to the Civil, MEP and allied works required to be completed for the purpose of obtaining occupation certificate / completion certificate for the building(s) from the _____ being the Planning Authority under whose jurisdiction the aforesaid project is being implemented.
4. The Estimated Cost Incurred till date is calculated at Rs._____(Total of Table A and B). The amount of Estimated Cost Incurred is calculated on the base of amount of Total Estimated Cost.
5. The Balance cost of Completion of the Civil, MEP and Allied works of the Building(s) of the subject project to obtain Occupation Certificate / Completion Certificate from_____ (planning Authority) is estimated at Rs_____(Total of Table A and B).
6. I certify that the Cost of the Civil, MEP and allied work for the aforesaid Project as completed on the date of this certificate is as given in Table A and B below :

Table A

Building /Wing bearing Number_____ or called _____
(to be prepared separately for each Building /Wing of the Real Estate Project)

Sr.No	Particulars	Amount
1	Total Estimated cost of the building/ wing as on _____ date of Registration is	Rs._____/ -
2	Cost incurred as on _____ (based on the Estimated cost)	Rs._____/ -
3	Work done in Percentage (as Percentage of the estimated cost)	_____ %
4	Balance Cost to be Incurred (Based on Estimated Cost)	Rs._____/ -
5	Cost Incurred on Additional /Extra Items s on _____not included in the Estimated Cost (Annexure A)	Rs._____/ -

Table B
(to be prepared for the entire registered phase of the Real Estate Project)

Sr.No	Particulars	Amount
1	Total Estimated cost of the Internal & External Development Works including amenities and Facilities in the layout as on _____ date of Registration is	Rs._____/ -
2	Cost incurred as on _____ (based on the Estimated cost)	Rs._____/ -
3	Work done in Percentage (as Percentage of the estimated cost)	_____ %
4	Balance Cost to be Incurred (Based on Estimated Cost)	Rs._____/ -
5	Cost Incurred on Additional/Extra Items as on _____not included in the Estimated Cost (Annexure A)	Rs._____/ -

Yours Faithfully

Signature of Engineer

(Licence No.....)

*** Note**

1. The scope of work is to complete entire Real Estate Project as per drawings approved from time to time so as to obtain Occupation Certificate / Completion Certificate.
2. (*) Quantity survey can be done by office of Engineer or can be done by an independent Quantity Surveyor, whose certificate of quantity calculated can be relied upon by the Engineer. In case of independent quantity surveyor being appointed by Developer, the name has to be mentioned at the place marked (*) and in case quantity are being calculated by office of Engineer, the name of the person in the office of Engineer, who is responsible for the quantity calculated should be mentioned at the place marked (*).
3. The estimated cost includes all labour, material, equipment and machinery required to carry out entire work.
4. As this is an estimated cost, any deviation in quantity required for development of the Real estate Project will result in amendment of the cost incurred/ to be incurred.
5. All components of work with specifications are indicative and not exhaustive.

Annexure A

List of Extra / Additional Items executed with Cost
(which were not part of the original Estimate of Total Cost)

FORM-3 [see Regulation 3]**Chartered Accountant's Certificate (On Letter Head)****(For Registration of a Project and Subsequent
Withdrawal of Money)**

Cost of Real Estate Project MahaRERA Registration Number_____

Sl. No.	Particulars	Amount (Rs.)	
		Estimated	Incurred

1. i. Land Cost:

- a. Acquisition Cost of Land or Development Rights, lease Premium, lease rent, interest cost incurred or payable on Land Cost and legal cost

Sl. No.	Particulars	Amount (Rs.)	
		Estimated	Incurred
	b. Amount of Premium payable to obtain development rights, FSI, additional FSI, fungible area, and any other incentive under DCR from Local Authority or State Government or any Statutory Authority		
	c. Acquisition cost of TDR (if any)		
	d. Amounts payable to State Government or competent authority or any other statutory authority of the State or Central Government, towards stamp duty, transfer charges, registration fees etc; and		
	f. Land Premium payable as per annual statement of rates (ASR) for redevelopment of land owned by public authorities.		
	g. Under Rehabilitation scheme:		
	(i) Estimated construction cost of rehab building including site development and infrastructure for the same as certified by Engineer		
	(ii) Actual Cost of construction of rehab building incurred as per the books of accounts as verified by the CA		
	Note :(for total cost of construction incurred, Minimum of (i) or (ii) is to be considered)		
	(iii) Cost towards clearance of land of all or any encumbrances including cost of removal of legal/illegal occupants, cost for providing temporary transit accommodation or rent in lieu of Transit Accommodation, overhead cost,		
	(iv) Cost of ASR linked premium, fees, charges and security deposits or maintenance deposit, or any amount whatsoever payable to any authorities towards and in project of rehabilitation.		
	Sub-Total of LAND COST		

Sl. No.	Particulars	Amount (Rs.)	
		Estimated	Incurred

ii. Development Cost/ Cost of Construction :

a. (i) Estimated Cost of Construction as certified by Engineer

(ii) Actual Cost of construction incurred as per the books of accounts as verified by the CA

Note : (for adding to total cost of construction incurred, Minimum of (i) or (ii) is to be considered)

(iii) On-site expenditure for development of entire project excluding cost of construction as per (i) or (ii) above, i.e. salaries, consultants fees, site overheads, development works, cost of services (including water, electricity, sewerage, drainage, layout roads etc.), cost of machineries and equipment including its hire and maintenance costs, consumables etc.

All costs directly incurred to complete the construction of the entire phase of the project registered.

b. Payment of Taxes, cess, fees, charges, premiums, interest etc to any statutory Authority.

c. Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction;

Sub-Total of Development Cost	

- 2. **Total Estimated Cost of the Real Estate Project**
[1(i) + 1(ii)] of Estimated Column
- 3. **Total Cost Incurred of the Real Estate Project**
[1(i) + 1(ii)] of Incurred Column
- 4. **% completion of Construction Work**
(as per Project Architect's Certificate) %
- 5. **Proportion of the Cost incurred on Land Cost and _____% Construction Cost to the Total Estimated Cost. (3/2 %)**
- 6. **Amount Which can be withdrawn from the Designated Account**
Total Estimated Cost * Proportion of cost incurred
(Sr. number 2 * Sr. number 5)
- 6. **Less: Amount withdrawn till date of this certificate as per the Books of Accounts and Bank Statement**
- 7. **Net Amount which can be withdrawn from the Designated Bank Account under this certificate**

This certificate is being issued for RERA compliance for the Company[Promoter's Name] and is based on the records and documents produced before me and explanations provided to me by the management of the Company.

Yours Faithfully
Signature of Chartered Accountant
(Membership Number.....)

Name

(ADDITIONAL INFORMATION FOR ONGOING PROJECTS)

- 1. Estimated Balance Cost to Complete the Real Estate Project (Difference of Total Estimated Project cost less Cost incurred) (calculated as per the Form IV)
- 2. Balance amount of receivables from sold apartments as per Annexure A to this certificate (as certified by Chartered Accountant as verified from the records and books of Accounts)

- 3. (i) Balance Unsold area (to be certified by Management and to be verified by CA from the records and books of accounts)
(ii) Estimated amount of sales proceeds in respect of unsold apartments (calculated as per ASR multiplied to unsold area as on the date of certificate, to be calculated and certified by CA) as per Annexure A to this certificate
- 4. Estimated receivables of ongoing project. Sum of 2 + 3(ii)
- 5. Amount to be deposited in Designated Account – 70% or 100%

IF 4 is greater than 1, then 70 % of the balance receivables of ongoing project will be deposited in designated Account

IF 4 is lesser than 1, then 100% of the of the balance receivables of ongoing project will be deposited in designated Account

This certificate is being issued for RERA compliance for the Company [Promoter's Name] and is based on the records and documents produced before me and explanations provided to me by the management of the Company.

Yours Faithfully

Signature of Chartered Accountant
(Membership Number.....)

Name

Annexure A

Statement for calculation of Receivables from the Sales of the Ongoing Real Estate Project

Sold Inventory

Sl. No.	Flat No.	Carpet Area (insq. mtrs)	Unit Consideration as per Agreement/Letter of Allotment	Balance Receivable

(Unsold Inventory Valuation)

Ready Recknor Rate as on the date of Certificate of the Residential/commercial premises Rs _____ per sm.

Sl. No.	Flat No.	Carpet Area (insq. mtrs)	Unit Consideration as per Read Reckoner Rate (ASR)

FORM 4 [see Regulation 3]**ARCHITECT'S CERTIFICATE**

(To be issued on completion of each of the Building/Wing)

Date :

To

The _____ (Name & Address of Promoter),

Subject : Certificate of Completion of Construction Work of _____ Building/_____ Wing of the Building of the project [MahaRERA Registration Number] situated on the Plot bearing C.N. No/CTS No./Survey no./Final Plot no _____ demarcated

by its boundaries (latitude and longitude of the end points)
 _____to the North_____to the South _____to the East _____to
 the West of Division _____ village _____ taluka
 _____ District _____PIN _____ admeasuring
 _____sq.mts. area being developed by Promoter'sName]_____

Sir,

I/ We_____ have undertaken assignment as Architect
 /Licensed Surveyor of certifying Completion of Construction Work
 of _____ Building/ _____Wing of the Building situated on
 the plot bearing C.N. No/CTS No./Survey no./ Final Plot no
 _____of Division _____ village _____ taluka
 _____ District _____PIN _____
 admeasuring _____sq.mts. area being developed by
 [Promoter's Name]

1. Following technical professionals are appointed by Owner /
 Promoter :-

- (i) M/s/Shri/Smt _____as L.S. / Architect ;
- (ii) M/s/Shri/Smt _____as Structural Consultant
- (iii) M/s/Shri/Smt _____as MEP Consultant
- (iv) M/s/Shri/Smt _____as Site Supervisor

Based on Completion Certificate received from Structural Engineer
 and Site Supervisor; and to the best of my/our knowledge I/We
 hereby certify that _____Building/ _____Wing of the
 Building has been completed in all aspects and is fit for occupancy
 for which it has been erected / re-erected / constructed and
 enlarged. The _____Building/ _____Wing of the Building is
 granted Occupancy Certificate/Completion Certificate bearing
 number _____ dated _____by _____(Local Planning
 Authority)

Yours Faithfully

Signature & Name (IN BLOCK LETTERS)
 of L.S/ Architect with (Licence No.....)

FORM 5[see Regulation 4]**ON THE LETTER HEAD OF CHARTERED ACCOUNTANT
(WHO IS STATUTORY AUDITOR OF THE PROMOTER'S
COMPANY/FIRM)****ANNUAL REPORT ON STATEMENT OF ACCOUNTS**

To [NAME & ADDRESS OF PROMOTER]

SUBJECT: Report on Statement of Accounts on project fund utilization and withdrawal by [Promoter] for the period from _____ to _____ with respect to MahaRERA Regn. Number _____

1. This certificate is issued in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 read along with the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.
2. I/We have obtained all necessary information and explanation from the Company, during the course of our audit, which in my/our opinion are necessary for the purpose of this certificate.
3. I/We hereby confirm that I/We have examined the prescribed registers, books and documents, and the relevant records of [Promoter] for the period ended _____ and hereby certify that:
 - i. M/S. _____ (Promoter) have completed _____% of the project titled _____(Name) MahaRERA Regn. No. _____ located at _____
 - ii. Amount collected during the year for this project is Rs. _____ and amounts collected till date is Rs. _____
 - iii. Amount withdrawn during the year for this project is Rs. _____ and amount withdrawn till date is Rs. _____
4. I/We certify that the [Name of Promoter] has utilized the amounts collected for _____ project only for that project and the withdrawal from the designated bank account(s) of the said project has been

in accordance with the proportion to the percentage of completion of the project.

(If not, please specify the amount withdrawn in excess of eligible amount or any other exceptions)

(Signature and Stamp/Seal of the Signatory CA)

Name of the Signatory:

Place:

Full Address:

Date:

Membership No.:

Contact No.: E mail:

Form 6 [see Regulation 26]

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

Complaint No. /

In the matter of

..... Petitioner

V/s Respondent(s)

Memo of Authorisation

I/We, ... the petitioner/respondent abovenamed do hereby nominate, appoint and constitute, to act, plead and appear on my/our behalf in the aforesaid matter.

IN WITNESS WHEREOF I/We have set and subscribed my/our hands to this writing on this day of

Place : _____

Signature

[Petitioner/Respondent]

Date : _____

Address for Correspondence

I/We accept

Form 7 [See Regulation 30]**BEFORE THE MAHARASHTRA REAL ESTATE
REGULATORY AUTHORITY.**

Application for inspection / obtaining copies of documents/records

I hereby apply for grant of permission to inspect / obtain copies of the following documents / records in the above case. The details are as follows:

1. Name & Address of the person seeking permission to inspect / obtain copies of the documents / records.
2. Whether he is party to the case or he is the authorised representative of any party. [Furnish necessary particulars]
3. Details of papers/documents sought to be inspected / copies required
4. Date and duration of the inspection sought
5. The amount of fee payable (as per relevant Regulations) and the mode of payment

Place:

Date :

Signature

Office Use

Granted inspection on _____ / Rejected

Granted copies of documents on _____ / Rejected

Secretary / Officer / Nominee of the Authority

Secretary, MahaRERA.

GAUTAM CHATTERJEE
Maharashtra Real Estate Regulatory Authority

APPENDIX D-7

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

'A' Wing, Slum Rehabilitation Authority Building,
Prof. Anant Kanekar Road, Bandra (East), Mumbai 400 051
Dated : 24th April 2017

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (RECRUITMENT AND CONDITIONS OF SERVICE OF EMPLOYEES) REGULATION, 2017

NOTIFICATION

No:MahaRERA-2017/Recruitment/19:- In exercise of the powers conferred on it under sub-sections (1) and clause (i) of sub-section (2) of Section 85 of the Real Estate (Regulation and Development) Act, 2016, and of all other powers enabling it in that behalf, the Maharashtra Real Estate Regulatory Authority, with the approval of the State Government, hereby makes the following Regulations:-

CHAPTER-I

PRELIMINARY

1. Short Title, extent and commencement.- (1) These regulations may be called the Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017.

(2) They shall come into force on the date of their notification in the Official Gazette.

(3) These Regulations shall be applicable to all employees of the Maharashtra Real Estate Regulatory Authority appointed under Section 20 of the Real Estate (Regulation and Development) Act, 2016.

2. Definitions.- (1) In these regulations, unless the context otherwise requires:-

(a) "Act" means the Real Estate (Regulation and Development) Act 2016 as amended from time to time;

(b) "Appendix" means A to C appendix of these Regulations ;

(c) "Authority" means the Maharashtra Real Estate Regulatory Authority;

(d) "Chairperson" means the Chairperson of the Authority ;

(e) "Competent Authority" means the Chairperson or such other officer of the Authority designated for the purpose by the Authority, in accordance with these Regulations ;

(f) "Employees" include all persons appointed as officers or staff on deputation, contract or regular basis, in accordance with these Regulations;

(g) "Functions" means and includes all works relating to the activities of the Authority;

(h) "Member" means a Member of the Authority;

(i) "Officer" means an Employee of the Authority in the category of 'officer' in accordance with these Regulations;

(j) "Secretary" means the Secretary of the Authority;

(k) "Service" means the service by officers and staff of the Authority;

(l) "Staff" means an Employee of the Authority in the category of 'staff' in accordance with these Regulations;

(m) "Year" means Calendar year;

(n) "Government" or "State Government" means the Government of Maharashtra;

(2) Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall have the meanings

assigned in the Act and / or the rules and regulations made there under.

CHAPTER-II

OFFICERS AND STAFF OF THE AUTHORITY

3. Categorization of Posts.- (1) The categories of employees of the Authority, their pay scales, sanctioned strength has approved by the State Government shall be as shown in the Appendix-A;

(2) The posts shown at serial numbers 1 to 7 in the Appendix 'A' shall be in the category of 'officers', and the remaining posts shall be in the category of 'staff'.

(3) The Authority shall have the power to amend the categories of posts from time to time.

4. Qualification, Experience & Mode of Recruitment.-

(1) The educational qualifications, experience, other conditions and mode of appointment to the posts on the establishment of the Authority shall be as prescribed in Appendix - 'B'.

(2) The employees shall be appointed by the Authority either:

- (i) on deputation; or
- (ii) on contract basis;

Provided that on failure to get employees on deputation or contract basis, employees may be appointed on a regular basis.

(3) The Authority shall have the power to determine the mode of recruitment/appointment to a particular vacancy or a group of vacancies or all vacancies.

5. Re-designation of Posts.- (i) Without changing the pay-scale of a post, the Authority may, at its discretion, re-designate that post to indicate its functional requirements:

(ii) The Authority may alter, amend or revise the number, categories, pay-scale, qualifications or other provisions contained in Appendix 'A' and Appendix 'B' considering its functional requirements with the prior approval of the State Government.

Provided that the Authority shall notify such re-designation of posts or modification to Appendix 'A' and Appendix 'B'.

Provided further that, the authority may at its discretion relax the qualifications given in Appendix 'B' for such officers / staff who have retired from Government department or Public Sector Undertakings or Urban Local Bodies or Public Utilities, and having higher relevant experience for the concerned post.

CHAPTER III

PROCEDURE FOR RECRUITMENT AND APPOINTMENT

6. Appointing Authority.- All appointments of Officers and Staff shall be made by the Authority.

7. Announcement of Vacancies.- Except as provided in these Regulations, the Authority shall advertise for the vacancies to be filled in on a regular basis by duly giving wide publicity.

Provided that the vacancies to be filled in by deputation shall be circulated to the relevant Government departments, public sector undertakings or public utility.

8. Eligibility.- The educational qualification for the posts shall be as stipulated in Appendix 'B' and the same shall not be relaxed.

9. Reservation of posts.- The policy of the State Government regarding reservation of posts shall be applicable for recruitments on regular basis.

10. Medical Fitness Certificate.- All eligible candidates shall furnish a medical fitness certificate before appointment as may be required by the Authority, except candidates on deputation and on contract.

11. Verification of Character.- All appointments on regular basis shall be subject to verification of the character and antecedents as may be decided by the Authority from time to time.

Provided such verifications shall not be applicable in case of candidates who are already in the employment of Government or public sector organizations prior to joining the Authority.

12. Age limit.- (1) The age limit for appointments to the posts on regular basis shall be as prescribed for similar posts by the State Government. The upper age limit shall not be applicable for appointment to the posts on deputation or contract basis.

(2) Persons retired on superannuation shall be eligible for appointment in the service of the Authority on a contract basis only.

13. Probation.- (1) Except as provided in these Regulations, a candidate appointed by nomination on a regular basis shall be on probation for a period of one year.

(2) The services of the probationer may be terminated by the Authority after giving thirty days clear notice, if his performance is unsatisfactory in the opinion of the Authority.

(3) The probationer may resign from service by giving thirty days clear notice or equivalent salary in lieu thereof.

(4) Such terminated probationer shall not be entitled to any compensation upon termination.

(5) The period of probation shall not include the period spent on earned leave, extraordinary leave, medical leave and the period of unauthorized absence but shall include any period spent on casual leave.

(6) The Authority may extend the probation period by a further period of one year, if it deems appropriate, based on the performance of the probationer during the period of probation.

14. Seniority.- The seniority of an employee in a particular cadre shall be reckoned from the date of his appointment in that cadre and subject to his placement in the merit list recommended by the Selection Committee.

Provided that such date shall be reckoned as the date of appointment in the Authority in case of employees who are already in service with the Authority prior to the formulation of these Regulations.

15. Selection Committee.- (1) All appointments, on regular basis to the various posts, shall be made on the recommendations of the Selection Committee.

(2) The Selection Committee for the posts of Officers shall be the Authority and shall also include the Secretary of the Authority as Member-Secretary.

(3) The Authority may co-opt one or more experts as members of the Officers' Selection Committee to assist it.

(4) The Selection Committee for the posts of Staff shall be chaired by the Secretary and shall consist of such Officers as may be designated by the Authority.

(5) The Committee may co-opt one or more experts as members of the Staff Selection Committee to assist it.

(6) The Selection Committees shall, in consultation with the Authority, from time to time devise the mode and procedure of selection of candidates to various posts.

16. Superannuation.- The employees, appointed on a regular basis, shall retire from the service of the Authority on attaining the age of superannuation as may be laid down by the State Government from time to time.

17. Resignation.- An employee of the Authority appointed on a regular basis may resign from his post by giving ninety day's clear notice to the Authority or by depositing three month's salary in lieu of such notice:

Provided that the Authority, at its discretion, may relax this condition in exceptional cases after recording the reasons therefore.

18. Appointment on Deputation.- (1) The vacancies of Officers and Staff may be filled in by deputation of employees from a Government department or public sector undertakings or Urban Local Body or public utility.

(2) The Authority shall determine the vacancies to be filled in by deputation and the period of such deputation from time to time:

Provided that the period of deputation may be extended by mutual consent between the Authority, the individual concerned and the concerned Government department/ undertaking/ utility.

(3) If the Authority decides that the services of the person on

deputation are no longer required, the incumbent shall be repatriated to his parent organization even before the completion of the normal period of his deputation.

(4) The pay, allowances and other benefits and conditions of service of a person on deputation from a Government department shall be governed by the relevant provisions of the Maharashtra Civil Services (Joining time, foreign service and payments during suspension, dismissal and removal) Rules, 1981 or such other rules or regulations governing the same as may be in force from time to time.

(5) The pay, allowances, other benefits and conditions of service of a person on deputation from a public sector undertaking or public utility shall be governed by the relevant rules of his parent organization:

Provided that in the absence of any such rules, the provisions of Maharashtra Civil Services (Joining time, foreign service and payment during suspension, dismissal and removal) Rules, 1981 or such other rules or regulations governing the same as may be in force from time to time, shall be applied.

(6) The Authority may absorb a deputationist in the Authority's services on contract basis.

Provided that such deputationist's terminal benefits shall be protected in such a way that the individual concerned is not adversely affected upon absorption.

19. Appointment on Contract.- (1) The vacancies of Officers and Staff shall preferably be filled in by appointing persons on a contract basis, so as to obtain experienced and/or qualified or otherwise suitable candidates.

(2) The duration of the first appointment on contract basis shall not exceed five years:

Provided that the duration of the contract may be further renewed by the Authority from time to time for a period not exceeding two years at a time, for each subsequent extension.

(3) Persons appointed on contract shall be entitled to a consolidated remuneration, which would remain fixed during the

contract period:

Provided that, where the period of such contract exceeds one year, the Authority may consider increasing such remuneration, but not more often than once a year;

Provided further that, while determining such remuneration, the pay and the other monetary benefits and allowances available to a regular employee in that category or post shall be taken into consideration:

Provided further that, the Authority may, at its discretion, compensate for the fixed nature of the remuneration in such cases by suitable placement of the selected candidate in the scale of pay of that category or post.

(4) The remuneration may be revised at the discretion of the Authority when it decides to extend or renew the contract of an employee who was initially appointed on contract.

Provided that the increase in remuneration at the time of every renewal shall be limited to a maximum of 25% of the original amount.

(5) An employee appointed on a contract basis shall be eligible for earned leave on average pay for thirty days, and casual leave for eight days during a calendar year or part thereof.

(6) Where an employee has been appointed on a contract basis, then such employee or the Authority shall be entitled to terminate the contract and discontinue the employment by giving thirty day's clear notice in writing to the other party or by depositing one month's pay in lieu of such notice.

CHAPTER IV

PAY AND ALLOWANCES

20. Pay Scale.- The scales of pay of the employees shall be such as prescribed in Appendix `A' or as may be revised by the Authority from time to time to be at par with employees of corresponding grade/ pay-scale of the State Government.

21. Increment.- The employees shall be eligible to draw annual increments as a matter of course unless it is withheld under the

orders of the competent authority.

Except in case of confirmation after probation, an increment shall become payable on the first day of the month in which it becomes due.

22. Pay Fixation,- (1) The pay of an employee on his first appointment on a regular basis shall be fixed at the minimum stage of pay-scale of the respective cadre:

Provided that the Authority shall have the discretion to fix the salary of any employee, in the pay-scale applicable to him, on initial appointment in such way as to protect reasonably the emoluments of such employee in the earlier employment or as deemed appropriate by the Authority.

(2) When an employee is appointed to a higher post on promotion, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in the lower post by one increment at the stage at which such pay has accrued:

Provided that in case of an employee drawing pay at the maximum of the pay-scale, the amount of last increment shall be taken into account for pay fixation in the aforesaid manner.

(3) When an employee is appointed from a higher post to a lower post due to reversion or due to reduction of establishment, his pay in the lower post shall be fixed at the stage in the time scale of the lower post at which he would have drawn his pay had he been not appointed to the higher post.

(4) The pay of an employee, reappointed on regular basis after a physical break of more than 24 hours, due to any reason shall be fixed at the minimum of the time-scale.

(5) When a competent authority orders reversion of an employee from a higher post to a lower post as a penalty, the pay of such employee shall be fixed at a stage, not exceeding the maximum of the lower post.

23. Allowances.- (1) The employees of the Commission shall be entitled to draw Dearness Allowances, City Compensatory

Allowance, Conveyance Allowance and House Rent Allowance on such scales and subject to such conditions as may be made applicable to Government employees by the State Government from time to time.

(2) Where any Staff undertakes any special functions, having regard to the multifunctional requirements of the Authority, or any additional functions pertaining to another post, owing either to a vacancy in such other post or to special circumstances resulting in an increase in workload of such other post, then such employee may be granted a special allowance for the additional functions so undertaken:

Provided that such special allowance shall be paid on a monthly basis on the recommendation of the Secretary and with the prior approval of the Authority:

Provided further that the amount of such special allowance shall be as determined by the Authority and shall in no event exceed the 25% of basic salary applicable to such other post, payable for such period for which such additional functions were undertaken.

24. Overtime Allowance.- The employees of the Authority shall be entitled to draw overtime allowance on such terms and conditions as may be made applicable to the corresponding grade of the employees of the State Government, from time to time.

25. Ex-gratia Payment.- (1) The employees of the Authority shall be eligible for ex-gratia payment as per the scale and conditions laid down from time to time by the State Government for its employees.

(2) The employees of the Authority shall be entitled to such other allowances as may be made applicable to its employees by the State Government from time to time.

26. Other.- (1) In respect of all matters relating to pay and allowances not specifically covered under these Regulations, the relevant provisions of the Maharashtra Civil Services (Pay) Rules, 1981 shall be applicable to the employees of the Authority;

(2) The above provisions in Chapter IV shall not apply to employees appointed on contract basis.

CHAPTER V

OTHER CONDITIONS OF SERVICE

27. Working Hours.- The Authority shall follow the office timings as notified from time to time by the State Government for its offices in Mumbai and elsewhere, unless otherwise decided by the Authority

28. Holidays.- The employees of the Authority shall be entitled to such public holidays as may be declared by the State Government from time to time:

Provided that the Authority may direct an employee to work on holidays if the exigencies of service so demand.

29. Leave Travel Concession.- The regular employees of the Authority shall be eligible for Leave Travel Concession for his hometown and for "Maharashtra Darshan" as per prevailing rules of State Government.

30. Loans and Advances.- The regular employees of the Authority shall be eligible for all types of interest bearing advances as well as non-interest bearing advances as per the scales sanctioned and conditions laid down by the State Government for its employees.

31. Promotion.- The regular employees of the Authority shall be eligible for promotion to next higher post after fulfilling the criteria as prescribed in the Regulations

32. Pay scale in lieu of stagnation.- The regular employees of the Authority shall be eligible for next stage of higher pay scale on completion of twelve continuous years of service, subject to assessment of his performance as per the relevant State Government Orders or Resolutions.

33. Medical Reimbursement.- The Authority shall reimburse the medical expenses/hospitalization charges/medical checkup charges incurred for the illness of regular employees of the Authority or dependent member of his family as per prevailing rules of the State Government.

34. Provident Fund.- The provisions of the Employees Provident

Fund & Miscellaneous Provisions Act, 1952 and the Employees' Provident Fund Scheme, 1952, as may be in force from time to time, shall apply to all regular employees of the Authority.

35. Pension.- The provisions of the State Government's new Defined Contribution Pension Scheme (D.C.P.S.) for its employees as may be enforced from time to time shall be made applicable to the regular employees of the Authority.

36. Gratuity.- The regular employees of the Authority shall be governed by the provisions of the Gratuity Act, 1972 as amended from time to time.

37. Leave.- The employees in regular service of the Authority shall be governed by the provisions of Maharashtra Civil Services (Leave) Rules, 1981 and any other applicable laws, rules and regulations of the State Govt. in the matter of admissibility and regulation of leave

38. Conduct & Discipline.- (1) The provisions of the Maharashtra Civil Services (Conduct) Rules, 1979 and the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, as amended from time to time and any other applicable laws, rules and regulations, as applicable to employees of the State Government, shall apply to the employees in the regular service of the Authority.

(2) The appointing authority, disciplinary authority, appellate authority and reviewing authority in respect of the officers and staff of the Authority shall be as specified in Appendix-`C'.

39. Traveling Allowance and Daily Allowance.- The employees of the Authority shall be governed by the rules applicable to the State Government employees for the purposes of traveling allowance and daily allowance.

Provided that, the Daily Allowance on tour will be either at the rate prescribed in TA rules or on the basis of actuals, within the limits decided by the Authority, in the event of Government accommodation not being available. The reimbursement of actual expenses shall be subject to production of supporting vouchers.

CHAPTER VI MISCELLANEOUS

40. Record of Service.- A record of service of all employees shall be maintained as per the format followed for State Government employees.

41. Performance Appraisal.- The performance of the regular employees shall be assessed and reviewed annually in the manner and in the form adopted by the State Government

42. Residential Telephone, Cell Phone and Internet Facility.- Eligibility and reimbursement for residential telephone, cell phone and Internet facility to Officers and staff shall be as per prevailing norms of the State Government.

43. Training.- The employees may have to undergo such training as may be decided by the Authority.

44. Authority for service matter.- In respect of any service matter not specifically mentioned in these Regulations, the relevant provisions of the Maharashtra Civil Services Rules and/or other dispensation of the State Govt. in this behalf shall be applicable to the employees of the Authority.

45. Saving of inherent power of the Authority,- Nothing in these Regulations shall bar the Authority from adopting a procedure which is at variance with any of the provisions of these Regulations, if the Authority, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure prescribed in the Regulations.

46. Power to remove difficulties.- If any difficulty arises in giving effect to any of the provisions of these Regulations the Authority may, by general or special order, do anything not being inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulties.

APPENDIX - A

Category of Employees, sanctioned strength and pay scales

(See Regulation 3)

S.No	Designation of Post	Pay Band and Grade Pay (In Rupees)		Sanctioned Strength
1.	Secretary	Rs. 15600 – 39000	Rs 8400/Rs 7600	1
2.	Deputy Secretary	Rs. 15600 – 39000	Rs 7600/Rs 6600	2
3.	Finance Controller	Rs. 15600 – 39000	Rs 7600	1
4.	Legal Adviser	Rs. 15600 – 39000	Rs 6600	1
5.	Technical Officer/ Ex. Engineer	Rs. 15600 – 39000	Rs 6600	3
6.	Administrative Officer / Under Secretary	Rs. 15600 – 39000	Rs 6600	3
7.	Account Officer	Rs. 15600 – 39000	Rs 5400	3
8.	Legal Assistant	Rs. 9,300 – 34,800	Rs 4400	4
9.	Clerks	Rs. 5200 – 20200	Rs.1900	16
10.	Accountant	Rs. 5200 – 20200	Rs.1900	4
11.	Steno (Higher Grade)	Rs. 9,300 – 34,800	Rs 4400	4
12.	Steno (Lower Grade)	Rs. 9,300 – 34,800	Rs 4300	6
13.	Multi-Tasking Staff	Rs. 4,400 – 7,400	Rs 1300	14

APPENDIX 'B'

Educational Qualifications, Experience and
Other Conditions for Recruitment

(See Regulation 4)

A. **Secretary.**- Recruitment to the post of Secretary shall be either-

i. by deputation of a person from Government Department or Public Sector Undertakings or Urban Local Bodies or Public Utility (equivalent to the post of Joint Secretary to the State Govt.), preferably having qualifications or established experience in Housing, Urban Development, Real Estate Development, Infrastructure or Administration.

or

ii. by nomination of a person on contract basis having qualifications, experience as at (i) above.

B. Deputy Secretary.- Recruitment to the post of Deputy Secretary shall be either -

i. by deputation of a person from Government Department or Public Sector Undertakings or Urban Local Bodies or Public Utility (equivalent to the post of Deputy Secretary to the State Govt.), preferably having qualifications or established experience in Housing, Urban Development, Real Estate Development, Infrastructure or Administration.

or

ii. by nomination of a person on contract basis having qualifications, experience as at (i) above.

C. Finance Controller. - Recruitment to the post of Finance Controller shall be either:

i. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility,

or

iii. By appointment on contract.

Educational qualification: Degree from a recognized university, preferably in Accountancy, Commerce, or Statistics.

Experience:

a. 10 years' experience in accounting procedures in a Government Department or a Public Undertaking or a Public Utility.

b. Knowledge of operating accounting software is essential.

c. Proficiency in written and verbal communication skills.

d. Computer literacy preferred

D. Legal Adviser.- Recruitment to the post of Legal Adviser, as may be applicable shall be either:

1. By appointment on deputation from a Government

Department, or a Public Undertaking or Urban Local Body or a Public Utility.

or

2. By appointment on contract.- Educational qualification: Degree from a recognized university, preferably in law

Experience:

- a. 10 years' experience in law
- b. Computer literacy preferred.
- c. Proficiency in written and verbal communication skills.

E. Accounts Officer.- Recruitment to the post of Accounts Officer shall be either:

1. By appointment on deputation from Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

or

2. By appointment on contract.

Educational qualification: Degree from a recognized university, preferably in Accountancy, Commerce, or Statistics.

Experience:

- a. 5 years' experience in accounting procedures in a Government Department or a Public Undertaking or a Public Utility.
- b. Knowledge of operating accounting software is essential.
- c. Proficiency in written and verbal communication skills.
- d. Computer literacy preferred

F. Technical Officer. - Recruitment to the post of Technical Officer shall be either:

1. By appointment on deputation from Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

or

2. By appointment on contract.

Educational Qualifications:

- a. Engineering Degree from a recognized university.
- b. Computer literacy preferred.

Experience:

- a. 5 years Experience in Housing, Urban Development, Real Estate Development or Infrastructure.
- b. Proficiency in written and verbal communication skills.

F. Administrative Officer.- Recruitment to the post of Administrative Officer shall be either:-

1. By appointment on deputation from Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

or

2. By appointment on contract.

Educational Qualifications:

- a. Degree from a recognized university.
- b. Computer literacy preferred.

Experience:

- a. 5 years Experience in Housing, Urban Development, Real Estate Development, Infrastructure or Administration.
- b. Proficiency in written and verbal communication skills.

G. Legal Assistant.- Recruitment to the post of Legal Assistant, as may be applicable shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility.

or

2. By appointment on contract.

Educational qualification: Degree from a recognized university preferably in law

Experience:

- a. 3 years' experience in law
- b. Computer literacy preferred.
- c. Proficiency in written and verbal communication skills.

H. Accountant.- Recruitment to the post of Accountant shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility
2. By appointment on contract.

Educational qualification: Degree from a recognized university, preferably in Accountancy, Commerce, or Statistics.

Experience:

- a. Preferable Experience in accounting procedures in a Government Department or a Public Undertaking or a Public Utility.
- b. Knowledge of operating accounting software is essential.
- c. Proficiency in written and verbal communication skills.
- d. Computer literacy preferred

I. Clerks.- Recruitment to the post of Clerks shall be either:

1. By appointment on deputation from Government Department, or a Public Undertaking or Urban Local Body or a Public Utility
- or

2. By appointment on contract.

Educational Qualifications:

- a. Degree from a recognized university.
- b. Diploma/Certificate in Computer Applications.
- c. Computer literacy preferred.

Experience:

- a. 1 year working experience of computer operation, including

use of the latest version of MS Office suite/Windows Operating System, internet and e-mail applications.

- b. Proficiency in written and verbal communication skills.

J. Personal Assistant (Higher Grade).- Recruitment to the post of Higher Grade Personal Assistant shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

or

2. By appointment on contract.

Educational Qualifications:

- a. Degree from a recognized University.

- b. Should possess Government Commercial Certificate with the speed of 120 words per minute in shorthand and 40 words per minute in English typewriting.

- c. Computer literacy is essential.

Experience:

- a. Working experience of 3 years, preferable as Personal Assistant

- b. Proficiency in written and verbal communication skills.

K. Steno (Higher Grade).- Recruitment to the post of Higher Grade Steno shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

or

2. By appointment on contract.

Educational Qualifications:

- a. Degree from a recognized University.

- b. Should possess Government Commercial Certificate with the speed of 120 words per minute in shorthand and 40 words per minute in English typewriting.

- c. Computer literacy is essential.

Experience:

- a. Working experience of 3 years, preferable as Steno
- b. Proficiency in written and verbal communication skills.

L. Steno (Lower Grade).- Recruitment to the post of Lower Grade Steno shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility,

or

- 2. By appointment on contract.

Educational Qualifications:

- a. Degree from a recognized University.
- b. Should possess Government Commercial Certificate with the speed of 120 words per minute in shorthand and 40 words per minute in English typewriting.
- c. Computer literacy is essential.

Experience:

- a. Working experience of 1 year, preferable as Steno
- b. Proficiency in written and verbal communication skills.

M. Multi-Tasking Staff.- Recruitment to the post of Multi-Tasking shall be either:

1. By appointment on deputation from a Government Department, or a Public Undertaking or Urban Local Body or a Public Utility

Or

- 2. By appointment on contract.

Educational Qualification:

- a. Must have passed 8th standard examination from a school recognized by the Government.

Other Conditions:

- a. Must possess good physique
- b. Experience of office working

APPENDIX - C

Competent Authority for the purposes of disciplinary
action and appeals

(See Regulation 38)

Description	Designated Authority	Class of Employees
Appointing Authority	Chairperson	Officers
		Staff
Disciplinary Authority Secretary	Chairperson	Secretary
		Other Officers & Staff
Appellate Authority	Authority Chairperson	Secretary
		Other Officers & Staff
Reviewing Authority	Authority	Officers
		Staff

GAUTAM CHATTERJEE
Maharashtra Real Estate Regulatory Authority

APPENDIX E-1



**Ministry of Housing & Urban Poverty Alleviation
Government of India**

Real Estate (Regulation and Development) Act, 2016

FREQUENTLY ASKED QUESTIONS (FAQs)

STATUS:

1. What is the status of the Act?

The Real Estate Bill was passed by the Rajya Sabha on 10th March, 2016 and the Lok Sabha on 15th March, 2016. The Bill as passed by the Parliament was assented to by the Hon'ble President on 25th March, 2016. The Act as assented to by the Hon'ble President was published in the Official Gazette on 26th March, 2016 for public information.

2. When did the Act come into force?

Section 2, sections 20 to 39, sections 41 to 58, sections 71 to 78 and sections 81 to 92 were notified by the Central Government to come into effect from 1st May, 2016.

3. Why have some sections of the Act not been notified yet?

Some sections of the Act have not been notified yet, as the institutional structures, namely the establishment of the Regulatory Authority and the Appellate Tribunal are necessary prior to their enforcement. For e.g. projects can only be sold after they are registered with the Authority, thus, in the absence of the same there would be a vacuum.

4. When would the remaining sections of the Act come into force?

Sections 20 and section 43 provides that the Authority and the Appellate Tribunal need to be established within 1 year of the commencement of the Act. As the said sections were notified for commencement on 1st May, 2016 the Authority and the Appellate Tribunal are required to be established maximum by 30th April, 2017. Sections of the Act which have not been notified yet, would be notified maximum upon the expiry of that period.

OBJECTS AND REASONS:

5. What was the need for a regulatory law for the real estate sector?

The real estate sector has grown in the recent years but has largely been unregulated from the perspective of consumer protection. Though, consumer protection laws are available, the

recourse available therein are only curative, but not preventive. This has affected the overall potential growth of the sector due to absence of professionalism and standardization.

6. What are the objects and reasons for which the Act has been framed?

The Real Estate Act is intended to achieve the following objectives:

- a) ensure accountability towards allottees and protect their interest;
- b) infuse transparency, ensure fair-play and reduce frauds & delays;
- c) introduce professionalism and pan India standardization;
- d) establish symmetry of information between the promoter and allottee;
- e) imposing certain responsibilities on both promoter and allottees;
- f) establish regulatory oversight mechanism to enforce contracts;
- g) establish fast-track dispute resolution mechanism;
- h) promote good governance in the sector which in turn would create investor confidence.

CHAPTER I - PRELIMINARY

7. Who is the 'appropriate Government' as per the Act?

Section 2(g) of the Act defines 'appropriate Government' to mean as follows:

- (i) for the Union territory without Legislature, the Central Government;
- (ii) for the Union territory of Puducherry, the Union territory Government;
- (iii) for the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) for the State, the State Government.

8. What are the important responsibilities of the appropriate Government?

- a) As per section 84 the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
- b) As per section 20 the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30th April, 2017.
- c) As per section 20 the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
- d) As per section 43 the appropriate Government is required to establish the Appellate Tribunal within 1 year from its commencement i.e. maximum by 30th April, 2017.
- e) As per section 43 the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
- f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
- g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
- h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.

9. Does the definition of 'promoter' include public bodies such as Development Authorities and Housing Boards?

The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term 'promoter' which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

10. Does the definition of 'promoter' include all promoters in case of joint development?

As per the Explanation to section 2(zk) "where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder".

11. What is the rate of interest payable in case of default by the 'promoter' or the 'allottee'? Is the rate of interest payable by either party (promoter or allottee) the same?

As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest is required to be specified by the appropriate Government in the Rules.

12. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of 'advertisement'?

As per section 2(b), which defines 'advertisement' any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails.

13. Does the term 'allottee' include secondary sales?

As per section 2(d) an allottee includes a person who acquires the said 'apartment/plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

14. Is 'open parking areas' a part of 'common areas'?

Section 2(n) defines 'common areas' to include 'open parking areas', thus open parking areas cannot be sold to the allottees.

15. Is 'community and commercial facilities' which are provided in a real estate project are part of 'common areas'?

Section 2(n) defines 'common areas' to include 'community and commercial facilities', thus they are an integral part of the project, to be handed over to the Association of Allottees.

16. What happens in case of jurisdictions (States/UTs) which do not provide for both the 'occupancy certificate' and the 'completion certificate'?

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. The two definition are very broad and uses the term 'by whatever name called'. Thus, if in a State/UT only one certificate is issued which provides for both the aspects covered under the two definitions, it would suffice the requirements under the Act.

17. What is the difference between the term 'completion certificate' and 'occupancy certificate'?

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

18. The Act defines 'estimated cost of the real estate project', what is the significance of the definition?

Section 2(v) defines 'estimated cost of the real estate project', which means "the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges". The determination of the estimated cost of the real estate project is necessary due to Chapter VIII of the Act, which provides that penalties would be imposed on the promoter, for violations prescribed under the Act, based on the estimated cost of the real estate project.

19. What is the definition of ‘garage’ and can it be sold by the promoter independent of an ‘apartment’?

Section 2(y) defines the term ‘garage’, which can be sold to the allottee independent of the ‘apartment’.

20. What is the definition of ‘real estate project’? Does the term ‘project’ connote a ‘real estate project’?

The term ‘real estate project’ has been defined under section 2(zn) and the term ‘project’ has been defined under section 2(zj), which have been interchangeably used under the Act.

21. Are real estate agents covered under the Act? Does the term ‘real estate agents’ include web-portals engaged in selling of apartments or plots?

Section 2(zm) defines the term ‘real estate agents’, which is a very broad and inclusive definition and covers all from of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or apartments are also covered under the Act and are required to comply with the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

22. What happens in case a term is used under the Act but has not been defined?

Section 2(zr) is an omnibus definition which provides that terms which have not been defined under the Act or the Rules and Regulations made thereunder, would have the same meaning as respectively assigned to them under the relevant Municipal laws or under any law for the time being in force.

CHAPTER II - REGISTRATION OF PROJECT AND AGENTS

23. Does the Act cover both residential and commercial real estate?

The Act covers both residential and commercial real estate. Section 2(e) defines ‘apartment’ and section 2(j) defines ‘building’ which include both residential and commercial real estate.

24. Does the Act cover ongoing/incomplete projects?

As regards the ambit of the Act, there is no distinction between an ongoing project and a future project, i.e. both ongoing/incomplete projects and future projects are covered under the Act. Section 3(1) first proviso provides that promoters of 'all ongoing projects which have not received completion certificate will need to register their project with the Regulator Authority, within 3 months of its commencement'.

25. Does the Act cover all projects in urban areas and in rural areas?

Section 3(1) provides that all projects within a 'planning area' will require to be registered with the Authority. 'Planning Area' has been defined under section 2(zh).

However, section 3(1) second proviso gives powers to the Authority 'in the interest of allottees' to order/direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

26. Which projects are exempt from the ambit of the Act?

As per section 3(2) the following projects do not require to be registered under the Act:

- (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

27. At what stage can a promoter start to advertise his project for sale?

The promoter can advertise his project for sale after the project has been registered with the Regulatory Authority as provided in section 3(1).

28. What are the details to be furnished at the time of application for registration of real estate project with the Regulatory Authority?

Section 4 of the Act provides for details/information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the fees to be paid etc. are to be determined by the Rules made by the appropriate Government.

29. What are the formalities for the registration of a real estate project with the Regulatory Authority?

The promoter is required to make an application as per Form and fees prescribed by the Rules made by the appropriate Government, along with the documents/information and undertaking specified in section 4 to the Authority for registration of the project. In addition, the promoter is also required to append other / additional documents/information as specified in the Rules.

30. In how many days is the Regulatory Authority required to register the real estate project?

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

31. What in case the application for registration of the real estate project is incomplete?

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made thereunder, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

32. Is there a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application?

Section 5 of the Act provides that the Authority has to decide on

the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.

33. What is the period of validity of registration granted to a real estate project by the Regulatory Authority?

As per section 4, the validity of the registration granted to a project shall be the period declared by the promoter under section 4(2)(l)(C), at the time of making the application for registration, within which he would complete the project.

34. Is the promoter required to maintain an 'escrow account' or a 'separate account'?

Is a 'separate account' to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?

Section 4(2)(l)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal.

Section 4(2)(l)(D) clearly provides that the funds can only be used for construction and land cost.

35. On what basis is the promoter required to withdraw the money from the separate account?

As per section 4(2)(l)(D) first and second proviso, the promoter is required to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. In addition, the promoter is permitted to withdraw from the separate account 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:

36. Is the promoter required to get his accounts audited?

As per section 4(2)(l)(D) third proviso, the promoter is required to 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 and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

37. Is the application for registration of a real estate project, proposed under the Act is manual or it can also be done online?

Section 4 envisages that for a period of one year the application process can be both manual and online based, however, after one year it is mandatory to make the entire process online. However, for the purposes of project information to the prospective consumers, it would help in establishing the web portal at the earliest.

38. Can the period of registration granted to a real estate project by the Regulatory Authority be extended? What is the definition of force majeure?

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstances, without the fault of the promoter, which shall not be more than a maximum period of 1 year. Explanation to section 6 has defined force majeure to mean 'a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project'.

39. What are the terms and conditions for extension of registration?

The terms and conditions, the application form and the fees payable for extension of registration shall be in the manner as prescribed by the Rules.

40. Can the registration of a project be revoked?

As per section 7 the Authority has the powers to revoke registration of a project, for violations specified under the said section. However, revocation of registration of a project is

envisaged as a last resort and can only be done after providing a reasonable opportunity of being heard.

41. What are the next steps that can be taken for project completion in case of revocation of a project?

In case a project is revoked, section 8 provides for various mechanisms in which the project can be completed. However, in such a scenario, the association of allottees shall have the first right of refusal for carrying out the remaining development works.

42. Does the Act also cover real estate agents? What are the duties and responsibilities of the real estate agents?

Section 9 of the Act provides that real estate agents which engage in selling projects registered under the Act, can only do so after registering themselves with the Authority.

The mechanisms for registration, the fees payable, the period of registration, subsequent renewal etc. are matters to be detailed vide the Rules.

Section 10 of the Act provides for detailed functions and duties of real estate agents.

CHAPTER III - FUNCTIONS AND DUTIES OF PROMOTER

43. What are the important functions and responsibilities of the promoter after registration of the project with the Authority?

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

44. What are the disclosures to be made on the website of the Regulatory Authority?

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, the detailed list is required to be specified in the Rules.

45. What is the promoter's obligations regarding veracity of the advertisement or prospectus?

As per section 12 the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus. In case of any loss sustained by any person due to false information contained therein, the promoter is liable to make good the loss sustained due to the same.

46. Can the promoter collect any amount of money towards booking of the apartment/plot?

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment/plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

47. What is the 'Agreement for Sale' and is it binding on the 'promoter' and the 'allottee'?

As per section 13(2) the appropriate Government is required to specify through Rules the 'Agreement for Sale' to be entered into between the promoter and the allottee. This Agreement is binding on the parties, however, internal flexibility could be provided in the said Agreement for Sale, for determination/insertion of other provisions as decided between the parties.

48. Can the promoter modify/amend the sanctioned plans or project specifications after having been approved by the competent authority and disclosed to the allottees?

As per section 14 of the Act the promoter can only modify/ amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification/alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of

the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

49. What is the period for which the promoter is liable for any structural defects etc. in the project/apartment etc.?

As per section 14(2) the promoter shall be liable for 5 years from the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

50. What is the obligation of the promoter as regard transfer of the project to a third party?

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two third of allottees and the Regulatory Authority.

In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

51. What is the obligation of the promoter as regards insurance of real estate project?

As per section 16 the promoter is required to seek an insurance of the real estate project towards title of the land and towards construction of the project.

However, the said section provides that this provision shall only come into effect after and in the manner as may be notified by the appropriate Government.

52. What is the obligation of the promoter as regards transfer of title of the apartment/plot?

Section 17 of the Act provides for detailed provisions regarding transfer of title of the apartment and the project to the allottee and to the association of the allottees respectively.

53. What is obligation of the promoter towards return of amount and compensation to the allottee?

Section 18 of the Act provides for provisions as regards various

situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

CHAPTER IV - RIGHTS AND DUTIES OF ALLOTTEES

54. What are the rights and duties of the allottees under the Act?

Section 19 provides for the various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered into with the allottees, namely – stage wise schedule of completion of the project and the services, claim timely possession of the apartment / plot, entitlement to necessary documents and plans etc. Section 20 provides for the various duties of the allottees, which provide for matters relating to payment regarding the apartment / plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association etc.

CHAPTER V - THE REAL ESTATE REGULATORY AUTHORITY

55. What is the time lines for establishment of the Regulatory Authority?

As per section 20 the Regulatory Authority is required to be established within 1 year of the commencement of the said section. As section 20 has been notified with effect from 1st May, 2016, the Authority is required to be established maximum by 30th April, 2017.

However, for speedy implementation of the Act, section 20 empowers the ‘appropriate Government’ to appoint an interim Regulatory Authority, until the establishment of the full time Authority.

56. How are the Chairman and the Members of the Authority required to be appointed?

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the appropriate Government on the recommendations of a Selection Committee

comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Chairman and the Members.

57. What are the important responsibilities of the 'Regulatory Authority'?

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibility of the Regulatory Authority are:

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;
- c) Renewal of registration of the real estate agent and its revocation;
- d) As per section 34 the Authority is responsible to maintain a website of records for public viewing of –
 - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website;
 - details of promoters with photographs of promoters;
 - details of projects in case of revocation of registration or where any project penalized under the Act;
 - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
- e) As per section 71 the Authority is required to appoint one or more 'adjudicating officer' in consultation with appropriate Government.
- f) As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
- g) As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

58. How can a complaint be fled with the Authority for any violations under the Act?

Section 31 of the Act provides for filing of complaint by an aggrieved with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are to be specified by Rules to be made by the appropriate Government.

59. What is the time period within which the Authority is required to dispose of any matter that is brought to it for consideration?

Section 29 provides that the Authority should endeavour to dispose of the questions/complaints as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it could not be disposed of during the said period the Authority is required to record its reasons for the same.

CHAPTER VI - CENTRAL ADVISORY COUNCIL

60. What is the composition of the Central Advisory Council?

The Central Advisory Council, to be headed by the Union Minister for Housing, is a multi-member body comprising of representatives of specified Central Ministries, five representatives of State Governments to be selected by rotation, five representatives of Regulatory Authorities to be selected by rotation and any other central government department as notified.

The Central Advisory Council is also required to have representatives of consumers, real estate industry, real estate agents, construction labourers, NGOs, and academic/research institutions.

61. What is the role and responsibility of the Central Advisory Council?

The Central Advisory Council is required to advise the Central Government on matters relating to implementation of the Act, questions of policy, protection of consumer interest, foster growth and development of the real estate sector, and other matters as may be assigned to it by the Central Government.

CHAPTER VII - THE REAL ESTATE APPELLATE TRIBUNAL

62. What is the time lines for establishment of the Appellate Tribunal under the Act?

As per section 43 of the Act, the Appellate Tribunal is required to be established within 1 year of the commencement of section 43. As section 43 has been notified with effect from 1st May, 2016, the Appellate Tribunal is required to be established maximum by 30th April, 2017.

However, for speedy implementation of the Act, section 43 empowers the 'appropriate Government' to designate an existing Appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act.

63. What are the important responsibilities of the Appellate Tribunal?

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders/decisions/directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

64. Can an appeal be fled against the decision or the orders of the Appellate Tribunal?

Any person aggrieved by the decision or order of the Appellate Tribunal can file and appeal with the High Court.

65. What is the time period within which the Appellate Tribunal is required to dispose of the appeal?

Section 44 provides that the Appellate Tribunal should endeavour to dispose of the appeal as expeditiously as possible but not later than sixty days from filing the appeal. However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same.

66. How are the Chairman and the Members of the Appellate Tribunal required to be appointed?

As per section 46 the Chairman of the Appellate Tribunal shall be a sitting or retired Judge of the High Court. Section 46 also provides that the Appellate Tribunal shall comprise of at-least two Members one of whom shall be a Judicial Member and the other shall be a Technical or Administrative Member.

As per section 46 the Members of the Appellate Tribunal are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Judicial / Administrative Members.

CHAPTER VIII - OFFENCES, PENALTIES AND ADJUDICATION

67. What is the punishment prescribed for non-registration of a project under the Act?

As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project.

However, in case the promoter consistently defaults or does not comply with the directions / orders of the Authority as regards registration of the project with the Authority, he shall be liable to additional fine of ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.

68. What is the punishment prescribed for violation of section 4 which provides for application for registration of the project?

As per section 60 if the promoter defaults as regards matters covered under section 4, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

69. What is the punishment prescribed for violation of other provisions of the Act by the promoter?

As per section 61 if the promoter defaults any other provision of

the Act or the Rules and Regulations made thereunder, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

70. What is the punishment prescribed for non-compliance of the orders of the Authority by the promoter?

As per section 63 if the promoter fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the estimated cost of the real estate project.

71. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the promoter?

As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend upto three years or with both.

72. What is the punishment prescribed for non-registration of by a real estate agent under the Act?

As per section 62, where under the Act, it is obligatory for the real estate agent to register himself with the Authority, and the real estate agent fails to do the same, he shall be liable to a penalty upto of rupees ten thousand per day of default, which may cumulative extend upto five percent of the cost of the plot/apartment, for which the sale has been facilitated by him.

73. What is the punishment prescribed for non-compliance of the orders of the Authority by the real estate agent?

As per section 65 if the real estate agent fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot/apartment, for which the sale has been facilitated by him.

74. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the real estate agent?

As per section 66 if the real estate agent fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty

for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment, for which the sale has been facilitated by him or with imprisonment for a term which may extend upto one year or with both.

75. What is the punishment prescribed for non-compliance of the orders of the Authority by the allottee?

As per section 67 if the allottee fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment.

76. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the allottee?

As per section 68 if the allottee fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot/apartment or with imprisonment for a term which may extend upto one year or with both.

77. Can an offence which provides for imprisonment be compounded?

As per section 70 if any person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions which may be prescribed by Rules made by the appropriate Government. In addition, the fine payable in lieu of imprisonment needs to be specified by the said Rules, which cannot be more than the maximum fine payable for that offence.

78. What is the role of the Adjudicating Officer?

The Adjudicating Officer is a quasi-judicial person who is mandated to adjudicate on disputes arising under section 12, 14, 18 and section 19. The Adjudicating Officer shall be a person who is or has been a District Judge.

79. What are the factors that need to be taken into account by the Adjudicating Officer while deciding a dispute under sections 12, 14, 18 and 19 of the Act?

The Adjudicating Officer shall, while deciding the disputes under section 12, 14, 18 and 19 of the Act, have regard to – the

amount of disproportionate gain or unfair advantage, the amount of loss, repetitive nature of the default and such other factors that the Adjudicating Officer may consider necessary in furtherance of justice.

CHAPTER IX - FINANCE, ACCOUNTS, AUDITS AND REPORTS

80. What is the mechanism to finance the functioning of the Authority?

The Central Government or the State Government as the case may be, may through due appropriation make grants and loans to the Authority.

81. Who is required to constitute the Real Estate Regulatory Fund? What are the purposes for which the Fund is supposed to be used?

The appropriate Government is required to constitute the Real Estate Regulatory Fund, which is to be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

The said Fund is required to be used towards payment of salary and allowances to the Chairperson and the Members of the Authority and the Appellate Tribunal and such other expenses of the Authority in connection with the functions and purposes specified under the Act.

82. Can the penalties imposed under the Act be deposited in the Real Estate Regulatory Fund?

As per section 76 penalties recovered under the Act are to be deposited in the Consolidated Fund of India (in case of Authority established by the Central Government) and in the State Account (in case of Authority established by the State Government).

However, as per section 75, grants received by the Authority, fees received under the Act/Rules and the interest accrued thereon shall be credited to the Real Estate Regulatory Fund.

83. Is the Authority required to prepare a budget and maintain

proper accounts and other relevant records? Are the accounts of the Authority required to be audited?

As per section 77 the Authority is required to prepare a budget and maintain proper accounts and other relevant records and also prepare an annual statement of accounts in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, section 77 provides that the accounts of the Authority are required to be audited by the Comptroller and Auditor General of India.

The accounts of the Authority as certified by the Comptroller and Auditor General of India (audit report) is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

84. Is the Authority required to prepare an Annual Report?

As per section 78 the Authority is required to prepare an Annual Report in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, the said Annual Report is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

CHAPTER X - MISCELLANEOUS

85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?

As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act.

Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

86. Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?

The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.

87. Can the Authority delegate any of its functions under the Act?

As per section 81, the Authority is empowered to delegate such of its powers and functions under the Act to any Member, officer or any other person subject to conditions specified in the order issued for the same. However, the Authority cannot delegate the responsibility of making Regulations under section 85 under the Act.

88. What is the time line for notification of the Rules by the appropriate Government under the Act?

As per section 84 of the Act, Rules are required to be prepared by the “appropriate Government” within 6 months of the commencement of the Act. As section 84 commenced with effect from 1st May, 2016, Rules were required to be prepared by the ‘appropriate Government’ by 31st October, 2016.

89. What is the time line for notification of the Regulations by the Authority under the Act?

As per section 85 of the Act, Regulations are required to be notified by the ‘Regulatory Authority’ within 3 months of its establishment.

90. Are the Rules, Regulations etc. notified required to laid before the Parliament or the State Legislature?

As per section 86 every Rule, Regulation, notification issued by the appropriate Government or the Authority, is required to be laid before the Parliament or the State Legislature, as the case may be.

91. Does the Government have the power to issue Orders towards Removal of Difficulties while implementing the Act?

The Central Government, under section 91, has been empowered to notify Orders towards removal of difficulties

while implementing the Act. However, such removal of difficulties Order cannot be issued after the expiry of a period of two years since its commencement.

92. Why was section 92 repealing the Maharashtra Housing (Regulation and Development) Act, 2012 provided under the Act?

The Maharashtra Housing Act, 2012 was received for seeking presidential assent under Article 254(2) of the Constitution of India, when the Real Estate Bill was not enacted. For the sake of uniform application across the country, the said State Act, was repealed under Article 254(2) proviso of the Constitution of India

APPENDIX E-2

FAQs for MahaRERA Website

I. General FAQs

1. What are the objects and reasons for which the Real Estate (Regulation and Development) Act 2016 has been framed?

The Real Estate Act is intended to achieve the following objectives:

- ensure accountability towards allottees and protect their interest;
- infuse transparency, ensure fair-play and reduce frauds & delays;
- introduce professionalism and pan India standardization;
- establish symmetry of information between the promoter and allottee;
- imposing certain responsibilities on both promoter and allottees;
- establish regulatory oversight mechanism to enforce contracts;
- establish fast-track dispute resolution mechanism;
- promote good governance in the sector which in turn would create investor confidence.

2. Which areas of Maharashtra are included in the Planning Area as defined in the Act?

In accordance with notifications issued by Urban Development

Department of Government of Maharashtra, MR & TP Act is applicable to all the districts of Maharashtra. Hence, all areas of Maharashtra are included in Planning Area as defined in Section 2(zh) of the Act.

3. Does the definition of 'promoter' include public bodies such as Development Authorities and Housing Boards?

The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term 'promoter' which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

4. If a real estate project has land area more than 500 sq.mts. but containing less than 8 apartments. Does it still need to be registered?

Yes. Every real estate project which has land area more than 500 sq.mts. or has more than 8 apartments needs to be registered

5. If a real estate project has land area less than 500 sq.mts. but contains more than 8 apartments. Does it still need to be registered?

Yes. Every real estate project which has land area more than 500 sq.mts. or has more than 8 apartments needs to be registered

6. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of 'advertisement'?

As per section 2(b), which defines 'advertisement', any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails. Prospectus, which is intended for sale of apartment in real estate project, will also be covered.

7. Can advertisement be issued for a new project after 1st May, 2017 without registering the said project?

No. The advertisement issued after 1st May 2017 must carry the MahaRERA Registration Number of the project.

8. Does the term 'allottee' include secondary sales?

As per section 2(d) an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent. The Act doesn't include rental projects, lease / leave and License deals.

9. Is it permissible to sell parking to allottees?

The position of parking is as follows;

- a) Open Parking Area: This has been clearly included in the definition of "Common Areas" which need to be conveyed to the Association of Allottees after Occupancy Certificate is received. Hence, sale or allotment of Open Parking Areas by the Promoter is not permissible
- b) Covered Parking as defined in the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 is permitted to be sold.
- c) Garage as defined in the Act is permitted to be sold.

10. What is the obligation of the promoter towards return of amount and compensation to the allottee?

Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

11. Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?

An aggrieved person can only approach one of the two forums for redressal of his grievance.

12. Is there some fee, in addition to the fees prescribed in the Rules, to be charged from promoters, real estate agents and complainants for the MahaRERA website uploading and online services?

Yes. It has been detailed in the MahaRERA Order available on the MahaRERA website.

II. FAQs from Consumer's Perspective

13. Is it mandatory for the promoter to obtain permissions for the real estate project before applying for registration to MahaRERA?

Yes, the layout of the real estate project has to be approved. However, the promoter may include some buildings in his application of registration where apartments are proposed and the Building approvals are pending. Building Approval for the apartment must be obtained before the agreement for sale is signed between the promoter and buyer, regarding the said apartment.

14. What is the penalty prescribed for non-registration of a project under the Act?

If any promoter fails to register as per Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both.

15. How will a flat buyer know, if the real estate project is duly registered under MahaRERA?

The MahaRERA website would display all the registered projects. It is mandatory that the advertisement for marketing of apartments in the real estate project must carry the MahaRERA registration number.

16. Whether registration of real estate agents would be project specific, location specific or individual specific?

Real estate agents have to get registered with MahaRERA either as an individual or as "other than individual". Promoters while applying for registration of any real estate project will have to indicate the names of registered real estate agents who will be working as agents in the said project. Names of such agents will be displayed along with other project specifications on the MahaRERA website, upon registration of the project.

17. What are the penalties that a Real Estate Agent would face if he fails to adhere to the mandates prescribed by MahaRERA?

If any real estate agent fails to register and contravenes the provisions of section 9 or section 10 of the Act, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by MahaRERA.

18. Is the promoter required to give any undertaking to MahaRERA for completing his project within a specified period?

Yes, in accordance with the provisions of the Act, the promoter, while applying for registration to MahaRERA, has to give a declaration, supported by an affidavit, indicating the time period within which he undertakes to complete the project or phase thereof, as the case may be.

19. If the registration of a real estate project is revoked for any reason, how will the interest of the buyer, in such project, be protected by MahaRERA?

MahaRERA will take action in accordance with section 8 of the Act.

20. In case of delay in getting possession from the promoter, will the buyer be entitled to get interest on the amount paid by him, for such delayed period?

Yes. In accordance with the model form of agreement, if the Promoter fails to abide by the time schedule for completing the project and handing over the [Apartment/Plot] to the Allottee, the Promoter agrees to pay to the Allottee, who does not intend to withdraw from the project, interest as specified in the Rule, on all the amounts paid by the Allottee, for every month of delay, till the handing over of the possession.

21. Will such interest payment by the promoter to the buyer be automatic or the buyer will have to approach MahaRERA?

The interest payment is in accordance with the model form of agreement and hence should be automatically paid. The buyer

may have to file a complaint to MahaRERA if there is a grievance.

22. Is there a ceiling on the interest to be levied by the promoter in case of default in payment of any instalments by the allottee/buyer?

In accordance with the model form of agreement, the Allottee has to pay to the Promoter, a rate of interest equal to the State Bank of India highest Marginal Cost of Lending Rate plus two percent, on all the amounts which become due and payable by the Allottee to the Promoter under the terms of the Agreement from the date the said amount is payable by the allottee(s) to the Promoter.

23. What are the provisions for an aggrieved person to lodge a complaint?

Section 31 of the Act and Rule 6 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 provide for filing of complaint with MahaRERA, by an aggrieved person who has any interest in the registered project. The aggrieved person can file an application online as per format provided by MahaRERA. It shall include the following details:

- Registration number of the project to which the complaint pertains
- Particulars of the complainant and respondent
- Facts of the case
- Relief Sought
- List of Enclosures and so on

24. Can a promoter or a real estate agent also file complaint against a buyer?

Yes. An aggrieved person having any interest in the registered real estate project can file complaint.

25. Is there any provision for interim relief to be granted, pending the final adjudication of the complaint?

The procedure to be followed by MahaRERA while adjudicating

a complaint is detailed in section 36 of the Act read with Rule 6(2) of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

26. Where will the aggrieved home buyer be required to file his complaint?

The aggrieved person can file an application online as per format provided by MahaRERA website.

27. On what grounds can the home buyer file a complaint?

An aggrieved person may file a complaint with MahaRERA for any violation or contravention of the provisions of the Act or the Rules or Regulations made there under.

28. Who would decide the complaints?

As per Regulation 24 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, for adjudication proceedings with respect to complaints filed, MahaRERA may, by order, direct that specific matters or issues be heard and decided by a single bench of either the Chairperson or any Member of the Authority.

29. Is there any pecuniary jurisdiction for complaint handling Authorities?

No. However, geographical jurisdiction may be specified for Chairperson or members of MahaRERA.

30. Is there any time limit prescribed for disposal of complaints?

Section 29 of the Act provides that complaints should be disposed off as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it cannot be disposed of during the said period, the Real Estate Regulatory Authority is required to record its reasons for the same.

31. If the buyer wants to file a complaint in Consumer Court, is there any bar under the Act?

No. As per section 79 of the Act, civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which Real Estate Regulatory Authority or the adjudicating

officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act. Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

32. Is there appeal provided against the orders given by MahaRERA? Is there a time limit? What are the fees?

Any person aggrieved by any direction or decision or order made by MahaRERA or by an adjudicating officer may file an appeal before the Appellate Tribunal within a period of sixty days, in accordance with Rule 9 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

33. Is there any time limit prescribed for the promoter for formation of society or any other legal entity of home buyers?

Promoter has to enable formation of Legal Entity like Cooperative Society, Company, Association, Federation etc. within three months from the date on which fifty one per cent of the total number of Purchasers, in such a building or a wing, have booked their apartment.

34. Is there a time limit prescribed for the promoter to execute conveyance in favour of the association of buyers?

Promoter shall execute a registered conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate or fifty one per cent of the total number of Purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.

III. FAQs from Promoter's perspective:

35. How does the Act Impact Joint Promoters or joint Venture Agreements or cases of joint development with land owner on revenue share basis or area share basis, where landlord and promoter are two different parties but both are beneficiaries of sale of project?

The Act makes both the Promoters and the landlord or any such parties which are beneficiary of a sale of a project and *receive* payments from allottees as Co-Promoters and hence liable to adhere to the provisions of the Act and Rules and Regulations made there under.

36. How does the promoter make an application for registration?

MahaRERA shall launch online application for registration from 1st May 2017. All promoters shall make their applications online through this IT solution, filling the details in the requisite forms, uploading the required documents and paying the necessary fees.

37. Is it compulsory for the promoter to register the project immediately after he gets sanctioned approvals?

Promoter has to register the project before he starts any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.

38. Will ongoing Project have to stop sales or construction till receiving the Registration?

At the end of ninety days from the date of notification of Section 3 of the Act, the promoter of an ongoing project shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, unless he registers the project.

39. Can promoter change the completion date for ongoing projects while registering?

Yes, while registering project, promoter needs to give revised date of completion which should be commensurate with the amount of development completed

- 40. If an ongoing project is registered under MahaRERA, then will the Act be applicable for the entire project or will it be applicable only to units sold after registration?**

Registration is of the Project/Phase and hence the provisions of the Act are applicable to all units of the Project/Phase.

- 41. Can an allottee who has executed agreement with the promoter prior to the on-going project getting registered with the Authority, be a complainant before MahaRERA?**

MahaRERA empowers any aggrieved person to file a complaint with respect to a registered real estate project. This will include an allottee who has an agreement executed before the project is registered with MahaRERA. However, MahaRERA will have authority to adjudicate for violations and contravention of provisions of the Real Estate (Regulation and Development) Act or rules and regulations made thereunder.

- 42. Can the promoter change the plans of subsequent phases after registration of the 1st phase?**

The Act puts an obligation on a promoter to obtain consent of each allottee, if he wants to change the building plans for the phase that is registered. If a subsequent phase has not been registered, the promoter can change the plans of the subsequent phases without obtaining consent of the allottees from current / ongoing phases. However, if the subsequent phases are also registered, consent of allottees, of the concerned phases, would be needed as mentioned in section 14 of the Act

- 43. If the promoter needs to change the plans of an on-going project post registration, will he need the consent of the pre-registration purchasers?**

MahaRERA protects the interest of all the Allottees; including those who have executed an agreement before the project is registered under its provisions Hence, if the promoter wants to change the plans post registration, then consent of all pre-registration allottees shall be required as well.

- 44. The promoter can hand over the common amenities only after completing subsequent phases. What should he commit to the customer for the registered phase?**

A promoter should meticulously plan the buildings of the registered phase & common areas and then declare the individual date of handing over possession of the building & common areas. Each phase along with the development works shall have to be completed and handed over to the allottee within the time frame defined by the promoter, during registration, for that phase of the project.

45. Is insurance of the project compulsory? What are the provisions regarding Insurance?

Promoter has to obtain all such insurance as notified by the State Government. So insurance will be compulsory only after the Notification is issued by the State Government. The Act says that the State Government can prescribe various types of insurance including but not limited to

- a) Title of the land and building as a part of the real estate project; and
- b) Construction of the real estate project.

The promoter is liable to pay the insurance premium before transferring the same to the allottee / association of allottees. The documents related to insurance will have to be handed over to the association of allottees when the same is formed.

46. Can project finance taken by promoters from financial institutions be withdrawn from designated 70% account?

Yes, if this is declared at the time of registration and subject to provisions of Section 4 of the Act and Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 made there under. However, the money withdrawn should be utilized towards construction expenses of the project, on priority.

47. In case of joint development with land owner on revenue share basis or area share basis, whether land owner's component could be withdrawn from designated account of 70%?

The Act makes both the Promoters and the land owner or any such parties which are beneficiary of a sale of a project and *receive*

payments from allottees, as Co-Promoters and hence liable to adhere to the provisions of the Act and Rules and Regulations made there under. The withdrawal of money would be subject to provisions of Section 4 of the Act and the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 made there under.

48. Whether money collected from allottees towards stamp duty, registration, share money for society, deposits for maintenance, corpus funds, infrastructure charges, parking charges etc., are required to be deposited in the designated bank account (70%)?

Yes, since these are part of the project cost

49. When does the promoter need to form society, association etc.?

The Promoter has to ensure that an association of allottees is formed within three months of 51% of allottees have booked their apartment in the project.

50. If due to a change in government policy, the promoter is entitled to additional FSI etc., can the promoter build additional floors in a registered ongoing project where initially those floors were not planned?

Yes, but consent of allottees would be needed as mentioned in section 14 of the Act.

51. Whether MahaRERA recognizes Maharashtra Ownership Flats Act and Apartment Ownership Act?

Yes, the said Acts have not been repealed. However, In case of inconsistent provisions, the provisions of the Central Act shall prevail.

52. There is a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application. How will the promoter receive ID & password?

In accordance with the Act, MahaRERA shall within a period of seven days of the deemed registration, provide registration number.

53. How will the Act, Rules and Regulations affect advertisement of projects with many phases?

A promoter would be allowed to advertise, market, book, sell or offer to sell or invite persons to purchase plot, apartment or building in a phase of a real estate project, only if the said phase is registered. A promoter cannot advertise, commit or sell amenities or facilities that are in a subsequent phase which is still not registered.

54. What if an adjoining land is purchased by the promoter? Can he continue with same registration?

No, it has to be separately registered if the said adjoining land was not a part of the project which has been registered.

55. What should the promoter do in case the particular brand of fixtures and fittings as mentioned in the specifications are not available in the market since the production of that type is stopped by the supplier? Will the promoter still be liable in such case? And what in case fixture/fittings do not give guarantee for more than five years.

In accordance with section 14 of the Act, the promoter should take previous consent of the concerned allottee.

56. What if Part OC is received for the project: is it exempt from registration?

No

57. Estimated Cost should be submitted only for area for which approvals/plans cleared as on date of registration of project or it should also include costs even for the proposed future expected area to be generated? (Bearing in mind the pros and cons for the figures depending solely on estimated costs)

Estimated cost of the whole project that has been put up for registration has to be indicated while applying for registration.

58. Registration: Are various certificates (Architect, Engineer, and CA) required at the time of registration?

Please refer to the Forms 1, 2 and 3 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

59. Does developer need to submit the certificates to Banker or retain with him?

The original certificates have to be retained by the promoter because the same are required to be verified and audited by the statutory auditor of the promoter's company at the end of every financial year. Copies may also have to be submitted to the concerned bank, if demanded by them

60. Separate Bank Account: can escrow account opened with the BANK from whom loans are availed, be treated as Separate Bank Account for a MahaRERA registered project.

No. A separate bank account needs to be opened in accordance with the provisions of the Act and rules made there under.

61. Can separate account be more than one since at times there might be multiple lenders in same project (building wise lender) though developer might register the project at one go.

No. There should be one designated bank account for every registered project or registered phase of a project.

62. Sometimes buyer is ready and gives undertaking that he is ok to give money beyond 10% however does not want to register. Should it be allowed?

No. Section 13(1) of the Act prohibits the promoter from taking more than 10% of the cost of apartment without entering into a written agreement for sale, duly registered.

63. Referral bookings: Existing customers referring to others for buying the flat in same project or other project of same developer: will they be treated as Real Estate Agent?

Yes, if it is against a consideration. Real Estate Agent is clearly defined in section 2(zm) of the Act

64. For Foreign brokers registration and advertisement outside India, will same rule apply as in India ?

Yes, if it pertains to a registered project under MahaRERA.

65. In case of customers default: can developer be selective in cancelling units?

Provision of termination of agreement is covered in the Model Form of Agreement attached to Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate

Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

66. Internal changes: assuming making a duplex at customers request: will this be treated as Major change and require approval of other allottees?

Please refer to section 14 of the Act

IV. FAQS from Real Estate Agent's Perspective

67. Who needs to apply for Registration for broking business in Real Estate?

Every Real Estate Agent who intends to facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a registered real estate project being sold by the promoter in any planning area in Maharashtra, shall have to apply for registration to Maharashtra Real Estate Regulatory Authority (MahaRERA).

68. What is the procedure to obtain registration to operate as Real Estate Agents? What are documents required to get real estate agent's license?

It will be through an easy online process. The procedure is explained in Rule 11 of Maharashtra Real estate(Regulation and Development)(Registration of Real Estate projects, Registration of Real Estate Agents, rates of Interest and Disclosures on website) Rules 2017.

69. What is the fee for registration? What is the duration?

The fees are in accordance with Rule 11(3) of the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017. The registration is valid for a period of five years

70. Will marketing and sales staff of Builder/ Promoter/ Developer also need to take registration as an agent?

A real estate agent is clearly defined in Section 2(zm) of the Act.

71. Will the registration of MahaRERA be operated in other states?

No. The registration is valid only for Maharashtra region.

72. Is this registration transferable to another agent or to other state where agents intend to shift his office?

No

73. Even if real estate agent has not taken any commission from client and taken it from promoter, can the agent still be responsible and liable for builder's default?

The agent's liability is in accordance with Section 10 of the Act. He is not held liable for the promoter's default.

74. If real estate agent is not listed with promoter's registration at MahaRERA website, still can he sell in this project?

No. If the promoter has not included the real estate agent's name at the time of registration, it will have to be included by the promoter, subsequently, and up dated in the MahaRERA website. The real estate agent can operate in the project only thereafter.

75. Will MahaRERA protect Agents for their commissions not paid by builder or by parties to the deal?

No, these will be guided by the agreements that real estate agents have with the concerned promoters or allottees.

76. Will agent be responsible till the delivery of flats / real estate unit done or is he responsible till documents are registered?

The responsibility of the real estate agent will be in accordance with Section 10 of the Act.

77. What will be the penalties and fines?

Penalties for non-registration and contravention of provisions of section 9 and 10 are given in Section 62 of the Act.

78. What are unfair Trade Practices?

It is explained in Section 10 (c) of the Act.

79. What if promoter gives false information or documents to real estate agent and agent acts upon such information, will he be liable?

Under Section 12 of the Act, it is the obligation of the promoter regarding veracity of advertisement and prospectus. The agent is liable if he makes a false or misleading representation concerning the services that he intends to offer.

80. Will listing websites/newspapers/exhibitions promoting real estate needs to take agents' license?

Yes, if they intend to facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a registered real estate project being sold by the promoter in any planning area.

81. Will digital media listings by builders / agents need to get approved from MahaRERA?

No

82. Will real estate agents putting advertisement on builders' behalf need to get approved his print / radio/ TV/ other media promotions content?

No, however no advertisement should be put out for a project unless the concerned promoter has registered the project with MahaRERA. The agent should not advertise for services that are not intended to be offered.

83. If registration is not given within 30 days, will it be deemed registration?

Yes, if the Authority fails to issue any communication about deficiencies, within 30 days of the receipt of the application for registration.

84. Does an entity "Other than an Individual", who has applied and paid registration fees, need to apply separately for its staff?

No, as long as the staff operate under the aegis of the said entity.

85. Will a multi-state operator of real estate agency business need to apply in all state of India?

For working as a real estate agent in Maharashtra, registration will be given by MahaRERA.

86. Is Agent authorized to sign on behalf of his promoter / builder?

No.

Additional FAQs wrt to IT Application

1. Is there a file size limit and specific format for documents to be uploaded in the application?

Yes. The file size limit is 1MB per file and only PDF files can be uploaded on the application.

2. Where can I get template for “Declaration in Form B”?

The template for Form B is available at Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 uploaded on the MahaRERA website <https://maharera.mahaonline.gov.in>. **The Declaration in Form B should be an Affidavit on minimum 100 Rupees and duly notarized.**

3. Where can I get templates for Certificates (Form 1, Form 2, Form 3, Form 4 and Form 5)?

All of the aforementioned templates for Certificates are available in Maharashtra Real Estate Regulatory Authority (General) Regulations 2017. Copy of this regulation can be downloaded from MahaRERA website <https://maharera.mahaonline.gov.in>

4. In the Online Registration Form for Projects, It is mandatory to upload Details of Encumbrances Certificate. However, my project has no encumbrances so what do I upload??

If your project has no encumbrances, then you can upload a self-certification stating that your project has no encumbrances.

5. In the Online Registration Form, we have been asked to upload copy of PAN card. Whose PAN Card should we upload?

Incase of individual user, you are requested to upload the individual's PAN Card. In case of organization (Other than Individual), you are requested to upload copy of Organisation's PAN Card. No other Copy of PAN cards are required.

- 6. In FAQ No.8, it has been mentioned that Act doesn't include rental projects, lease and Leave & license Deals. Does this mean that Long-term leasehold is also excluded from ambit of Act?**

No. The wording in Section 2(d) "has been sold (Whether as free hold or lease hold) or otherwise transferred by the promoter" indicates that the long term lease falls within the ambit of the Act.

However, the premises given on leave and license basis or on short term lease not exceeding five years are not covered under the Act.

- 7. In the Online Registration Form for Real Estate Agents, It is mandatory to upload Income tax returns of last 3 years. However, I have just started my organization and do not have income tax returns for 3 years so what do I upload?**

Incase you have not filed Income tax returns in last three years, , then you can upload a selfcertification stating that Income tax return is not available, along with reason for the same.

- 8. I want to register an Ongoing Project comprising of one tower, wherein I have received Part OC for the building. I want to register only those floors for which OC has not been registered as ongoing project. In this case, what do I enter as land area for these floors?**

The land area on which the complete project is being developed shall comprise as land area for this project.

Additional FAQ2

- 1. (A) From a buyers perspective, what is an acceptable evidence of sanction under RERA ? (a) IOD, or (b) Commencement certificate (CC) upto plinth or, (c) CC endorsed for the floor on which buyer wants to book the apartment ?**

For registration and booking it is IOD or IOA, which is building plan approval. For completion of the project within the time period mentioned in the registration, it is Occupancy Certificate.

- (B) Will sale of TDR amounts, form part of sales realization, and thus required to be deposited in the separate account for utilization towards construction cost of the project?**

Separate account is meant for amounts collected from allottees only.

(C) If a phase is considered up to certain floors as envisaged in the rules, then how & when will conveyance happen. Assuming the next phase approvals for upper floors are not secured in a timely manner, what will be the remedy envisaged for effecting conveyance?

Conveyance of the structure (floors) contained in the phase is possible.

- 2. (1) What if it's SRA Project, where the allottees complain regarding the demands put forward by them, not fulfilled by promoter? Can promoter complain about customers asking for extra area?**

Complaints to MahaRERA have to be against registered projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

(2) Can change in layout plan be made when DCR 2034 comes in effect after getting prior approval of previous plan?

Such changes would require 2/3rd consent of allottees.

- 3. (1) 10% booking amount will have to be paid after registration of project with RERA ?**

There is no such provision.

(2) Can RERA upload allottee persons' details on website like name, telephone number?

There is no such provision.

- 4. How to know the FSI allotted on the registered project?**

It can be seen in the details of the registered project on MahaRERA website.

- 5. Our builder (1) Selected about 4 yrs. back is adopting delaying tactics by not submitting final BMC approved drawings for Managing Committee approval etc. so that they can be submitted to BMC for approval. (2) Developer is disregarding terms of D.A. and supplemental D.A. is just dragging the project period. (3) He wants possession of society building without completing contractual obligation. Will 'RERA' help us in any manner?**

Complaints to MahaRERA have to be against registered

projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

6. How "Existing Member's" interest is protected in redevelopment project?

Existing members are members of the society which is a co-promoter in the redevelopment project. Complaints to MahaRERA can be filed against such registered projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

7. Newspaper REPORTS say No Development Permission (New Construction) as BMC is not clearing garbage/debris, shortage of water supply (i.e. infrastructure & environment requirement) No FSI also will be given to redevelopment project. Will the promoters be held responsible for such delays in ongoing projects? If policy changes by govt. or by High Court verdict, the project will be delayed. Who will be responsible?

Affected promoters may bring such issues up before MahaRERA. MahaRERA will take action in accordance with the Act and Rules, in consultation with concerned stakeholders.

8. (1) If project is mortgaged by developer but it is not disclosed on website what is the solution ?

Complaint can be filed by interested person for incorrect disclosure and violation of section 4 of the Act.

9. Our builder has abandoned the project (redevelopment project). Will this project come under MAHARERA?

Every on-going project has to be registered with MahaRERA before 30th July 2017. If the said redevelopment project does not have layout/building plan approval and if no booking of sale flats have taken place, the project will not be called an ongoing project.

**10. (1) In ongoing project the agreement with purchaser after 1st May 2017 is to be prepared as per MOFA OR RERA OR BOTH?
(2) If the buyer has already paid stamp duty before 1.5.2017 and executed agreement then under which Act is the agreement with buyer?**

Agreement entered prior to 1st May 2017 will be as per MoFA. All agreements post 1st May, 2017 have to be in accordance with the model form of agreement of MahaRERA.

11. If O.C./ B.C.C. are issued in May/June/July, does project have to be registered?

On-going projects have time till 30th July to register. If before doing registration, the project has got OC/BCC, the project has been completed as per section 5(3) of the Act. Hence, it does not require registration.

12. (1) If a promoter has declared FSI, common amenities etc. in the MOFA Agreement, can he reduce the same while registration of the project & if he reduces, what is the remedy to the consumer?

Violations in the terms of the MoFA agreement have to be taken up with the competent authority under MoFA. Complaints to MahaRERA have to be against registered projects, with respect to violations/contraventions of provisions of RERA Act, Rules or Regulations

13. In the case of joint development, where owner is there, is he liable to the development and would the owner include government authorities also i.e. land owning authorities.

Yes, they are co-promoters.

14. Pl. enlighten on the buildings which are occupied fully for last several years but no O.C./BCC till date. Are such buildings required to be registered under RERA?

An on-going project is one where construction is still not complete, OC is yet to be obtained and building has not been occupied by allottees. Such on-going projects have to be registered with MahaRERA. Buildings without OC/BCC but occupied by allottees have to approach Competent Authority under MoFA for deemed conveyance and thereafter approach planning Authority for OC.

15. As per our agreement completion date is June 2015. While registering with MahaRERA, promoter gives, say Jan. 2020 completion date. MahaRERA will enforce which date June 2015 or Jan. 2020? What happens to delay since June 2015 which

is the completion date as per agreement. How can buyer get compensation w.e.f. June, 2015?

Section 18 of the Act will apply.

- 16. (1) In JOA project wherein land owners share of revenue is say 40% & developers as 60%, the 70:30 maintainable will also be applicable for land owners share? (2) What if the developer has already obtained a takeout funding? (3) Cost of land includes premium & TDR payable which may be misutilized by Developer.**

Such land owners are Co-promoters. Their liabilities and responsibilities have been detailed in MahaRERA order available on the MahaRERA website.

- 17. Is Title Insurance applicable?**

Yes, in accordance with section 16 of the Act but only after notification by State Government.

- 18. (1) If promoter doesn't register on the MahaRERA website how can we complaint against him? (2) By when can we expect the result after complaint against him?**

Complaint against non-registration can be filed through an email to maharera.helpdesk@gmail.com. Such complaint will be treated as source complaint and suo-moto action will be initiated by MahaRERA.

- 19 Navi Mumbai right now has NAINA as approving authority, does this come under MahaRERA ?**

Yes, they are Planning Authority under MR&TP Act.

- 20. I have booked the flat in completed project with O.C. in the month of April 17 with 20% payment . Stamp duty is also paid in April 17. However registration of agreement of sale is not done in light of MahaRERA. Kindly guide for the consumer.**

Provisions(including model form of agreement) of MahaRERA apply after 1st May 2017.

- 21. Whether one building's part can be registered in phase development? In such phase manner when society can be formed?**

Phase is defined in the Rules. Society has to be formed once 51%

of allottees have booked their apartment in the phase.

- 22. Builder has not registered with RERA so far, can he sell his flats, collect the money and can register the sale deed as per format of MOFA not as per RERA.**

Provisions (including model form of agreement) of MahaRERA apply after 1st May 2017.

- 23. How MahaRERA is helpful in resolving redevelopment related problems for ongoing projects that have taken off before the inception of MahaRERA ?**

All on-going projects, except the ones exempted under section 3 of the Act, have to be registered with MahaRERA before 30th July 2017. Complaints to MahaRERA, against registered projects, can be filed with respect to violations/contraventions of provisions of Act, Rules or Regulations.

- 24. Can information uploaded by a promoter during registration be amended/edited by the promoter under the pretext of updating it?**

No. Fields which depict the progress of the project can only be updated.

- 25. Pending projects: What if a promoter gives unreasonably extended time frame for handing over possession with OC? Who decides which project should take how much time frame for possession? Are there going to be any norm from RERA or it is left in the sole discretion of promoter?**

The promoter shall disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

- 26. (1) Whether any particular flat under any RERA regd. project is sold or not, will there be any information on website about the registration no. of the flats already sold to avoid multiple fraudulent sale of one flat to multiple persons?**

There is no such provision. Any fraudulent action of the promoter is punishable under the Act.

27. Conveyance: If two or more buildings form independent housing societies, how the conveyance of a single plot will be possible without subdivision of plot ?

Please see rule 9 of Maharashtra Real Estate (Regulation and Development)(Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017.

28. A flat booked in a project. If construction not yet started or only beginning done, and 1% initial amount and stamp duty, registration fees taken and booked the flat. The project is expected to be completed in 2022. The builder may take project loan showing all flats are sold, booked and registered. The flat owner may take housing loan. But if, project not completed or abandoned after 50% how flat owner can get protection from builders banks demand of recovery and what will be position of housing loan liability ?

MahaRERA will take action in accordance with section 7 and 8 of the Act.

29. I have signed a Development Agreement (D.A./P.A.) with a builder as land owner. I have no involvement/role in the project. How can I be responsible for any project issues under RERA?

Such land owners are Co-promoters. Their liabilities and responsibilities have been detailed in MahaRERA order available on the MahaRERA website.

30. What if the builder does not register with RERA & no one complains?

MahaRERA can initiate suo-moto action.

31. Open parking can't be sold as per RERA. How will they be allotted to the customer ?

The legal entity of the allottees (society/association etc.) will allot.

32. If a promoter has sold entire stock and there is no receivable from any customer, in that case if there is no completion certificate then does the promoter have to register his project with MahaRERA ?

No, if the building work is complete and building is occupied.

- 33. Agriculture land more than 4000 sq.mtrs. to each purchaser with road, water and clubhouse facility. Is RERA applicable ? Does such project need registration?**

MahaRERA registration is required for projects which need approval from Planning Authority under MR&TP Act.

- 34. Builder is asking me to register flat under MOFA act after 1st May. What should I do?**

Allottee should insist on signing agreement as per RERA Act.

- 35. I am a land owner and have a JV with a developer. As per RERA, land owner is co-promoter and is equally liable. I have an area sharing and would be getting my share of flats to sell. I read that when I sell my share of flats, the proceeds of sale needs to be deposited in an escrow account. How and under what conditions, I would be able to withdraw the money from escrow account?**

The liabilities and responsibilities of co-promoters have been detailed in MahaRERA order available on the MahaRERA website.

- 36. Is MahaRERA applicable to SRA schemes under DCR 33(10)?**

Yes

- 37. Are existing residents of a redevelopment scheme covered under MahaRERA provisions?**

Yes, they are covered in the definition of allottees in the Act.

- 38. Our society land is less than 500 sq.m. but there are 16 apartments in the redevelopment project. Does MahaRERA apply?**

Yes, if there are some apartments which are for sale.

- 39. Should a society while selecting developer for redevelopment see if the developer is registered with MahaRERA?**

Projects are registered with MahaRERA, developers are not registered.

APPENDIX E-3

Clarifications received by K. K. Ramani & Associates from MahaRERA

K. K. Ramani & Associates

Advocates

Plot No. 118, Ramani Villa, 1st Road, TPS IV, Near Standard Chartered Bank,
Bandra (W), Mumbai – 400 050

Phone: (91-22) 2651 6611 Email: kkr@ramanilegal.com

Date: 20/06/2017

To,

MahaRERA Authority

3rd Floor, A-Wing, SRA Administrative Building,
Anant Kanekar Marg, Bandra East, Mumbai 400051

Sub : Areas requiring clarifications under RERA

We have come across certain issues which we feel need clarifications. In the interest of clarity and uniformity in implementation, we request clarification in respect of the below mentioned issues in reference to the mentioned background relating to them.

Registration

1.0 Registration of a project is mandatory under the Act. Failure to get the project registered visits with penalty and prosecution provided under Section 59 Of the Act. Apart from the penal provisions, the law prohibits a promoter from advertising, soliciting customers and selling the plots, apartments or building without getting the projects registered, contravention whereof also visits with penal consequences.

1.1 There is no clarity about the status of unregistered projects. Certain projects which are to be registered may not be registered by the promoter for whatever reason. There are projects which are

exempt from the requirement of registration. The status of such projects is not specified under the Act or the Rules as to whether such projects are subject to the regulatory provisions of the Act or not.

1.2 One view can be that projects which are registrable but not registered and those which are not to be registered remain outside the purview of RERA and, for all purposes will be governed by MOFA. The other view can be that getting registered is one of the obligations with consequences provided for non-compliance and all the provisions of RERA laying down obligations of the promoters, agents and allottees remain applicable in respect of unregistered projects as well. The question has assumed particular significance in respect of obligation to deposit 70% of realization in the separate bank account.

1.3 Answer to Q. 2,5 and 12 of the Additional FAQ 2 issued by the MahaRERA states that complaints to MahaRERA have to be against registered projects only. This seems to suggest that MahaRERA will regulate the registered projects only. In view of the uncertainty in the matter, however, a clarification is solicited.

1.4 RERA Rules requires ongoing projects to be registered within a period of 90 days. As a general rule any advertisement/sale is prohibited before registration. Maharashtra, however, has allowed this period of 90 days as a free period during which period sale etc. can take place even without registration. In other words the operation of Section 3 insofar as it relates to prohibition to advertise and/or sell before registration in case of ongoing project, has been deferred in Maharashtra by a period of 90 days and the provision will apply only from the expiry of 90 days.

1.5 Is such deferment only for above purpose or impact other provisions also. We may, in this connection, refer to Answer to Q. 11 of Additional FAQ 2 which states that ongoing projects have time till 30th July to register. If before doing registration, the project has got OC/BCC, the project has been completed as per section 5(3) of the Act and hence does not require registration. Under RERA, if OC stands issued by the date of commencement of the Act, the ongoing project is not to be registered which means that issue of OC thereafter will not avoid registration. The response referred to above gives relevance to the date of registration in place of the date of

commencement of the Act The scope of deferment will impact other areas also.

Promoters

2.0 There are cases where builders have entered into agreements with the Authorities like municipal corporation etc. for construction of affordable housing to be handed over to them , free of any charge, in consideration of additional FSI in the remaining area, without having to purchase TDR. The concerned Authority, in all probability, will sell these units. As per RERA, it is a project in which the person constructing and person selling are different and accordingly, both are co-promoters and are to be shown as such in the details to be submitted along with the application for registration.

2.1 In cases like this, issue arises as to whether the State or the Authority like MHADA or Municipal Corporation etc. are to be impleaded as co-promoter and whether such co-promoter will be subject to all the duties and responsibilities under the Act. Whether such Authority will also be liable to deposit 70% realization in a separate bank account.

2.2 Most of the societies are going through the process of redevelopment under which they appoint a developer who is assigned development rights over society land in consideration of flats for the members, free of charge. There are divergent views in respect of whether society in such redevelopment arrangement, is a co-promoter with the developer, or not. In reply to question no. 6 of FAQ-2 MahaRERA has stated that the existing members are members of the society which is a co-promoter in the redevelopment project. In RERA, the object of selling the plot, apartment or building is essential for a project to be called real estate project and for a person to be promoter. Since the society will not be selling the apartments in the newly constructed building but only providing them to its members in lieu of their flats in the old building, it is for consideration whether the society will fall within the term promoter so as to be liable as co-promoter with the builder. Such societies may have to be distinguished from primary co-operative societies constructing apartments or buildings for their members for initial allotment. A clarification in the matter will be useful for many societies.

Ongoing Projects

3.0 The law or the Rules do not define the term "Ongoing project". We have to take a meaning as generally understood. Projects may be in different stages of development at the commencement of the Act. What will make them ongoing project putting them to the requirement of registration? Is it ongoing construction or sale or both or any other criteria?

3.1 In answer to Q. 9 in Additional FAQ 2 it is stated that if the project does not have layout/building plan approval and if no booking or sale of flats have taken place, the project will not be called an ongoing project. In other words where neither construction has started nor any booking has taken place, it will not be ongoing. What if booking has taken place but construction has not started. Will it be ongoing ? What if advertisement has taken place and construction also started but no booking has taken place. Whether it will be ongoing?

3.2 In answer to Q. 14, it is stated that an ongoing project is one where construction is still not complete, OC is yet to be obtained and building has not been occupied by allottees. It needs to be clarified whether these determining situations are cumulative or alternative or to be considered in different permutations. For instance, if construction is fully complete and all units are sold and occupied, will it be ongoing project only for the reason that OC was not received on the day of commencement of the Act. If it is so, there will be a very large number of projects to be registered which may prove unproductive as there will hardly be anything left for RERA to regulate.

3.3 It also needs clarification as to whether it is booking/sale of the apartment or occupation by allottees, which will be relevant for such determination.

Deposit in and withdrawal from the separate bank account

4.0 Rule 5 provides for the manner in which the amount that is required to be deposited and can be withdrawn in respect of new projects. So far as ongoing projects are concerned, it provides for the amount to be deposited but is silent about the amount that can be withdrawn. The draft rules provided that the rule in respect of new

project will *mutatis mutandis* apply to ongoing projects but, the same is missing in the final rules.

4.1 In ongoing projects only the amount to be realized, and not the amount realized, is to be deposited which should imply that for withdrawal only the estimated cost of the balance project and the actual cost incurred for the balance project should be taken into account. There is, however, need for an authentic clarification.

4.2 Rule 5 provides for amount to be realized to be deposited in separate bank account in case of ongoing projects. The words 'to be realised' are not followed by the date from which the realization is to be reckoned. Does it envisage realization from the date of registration or the date of commencement of the Act.? On this will depend whether in case of ongoing project, realization within the permitted period of 90 days for registration will be subject to deposit or not.

4.3 Neither the Act nor the Rules prescribe the periodicity for making deposit which raises a question as to whether 70% of each individual receipt is to be deposited or there is some periodicity prescribed for the same. It is presumed that the realization need not directly go to the separate earmarked bank account. It should initially go to the common bank account and from there 70% thereof can go to the separate bank account.

4.4 There is a special issue arising in cases of redevelopment projects of immovable property where development is carried on the land belonging to person other than the developer. In such cases, the developer as well as the landowner are the promoters as the project is deemed to be jointly developed. The question as to whether they should open bank accounts separately has been dealt with in MahaRERA order dated 11th. May, 2017 and maintenance of separate accounts has been ordered.

4.5 If separate accounts are to be opened, the landowner will have to deposit 70% of the realization in respect of his share of constructed portion. The landowner, however, will not be incurring any cost which will mean that all his money will remain blocked till OC is received. This does not appear to be the legislative intent and a solution needs to be found.

4.6 A possible solution can either be to prescribe a single bank account for the project in which all the realizations are deposited and withdrawn as per rule 5 or, to lay down the manner of apportioning the total cost incurred between the land cost and construction cost. In substance, the cost incurred in construction of the landowner's portion is virtually the land cost for the development of the project and, if the cost relatable to landowner's portion is termed as the land cost, the landowner will be able to withdraw the proportionate cost out of his deposits.

4.7 In cases of ongoing projects, some of the plots or apartments might have been sold or booked prior to registration. It has been clarified that the registration takes place not only with reference the balance project but the whole project and such sold/booked units will also be governed by RERA. There may be situations where although the units were sold pre-registration but the amount in respect thereof is realized afterwards. It is not clear whether such realization is subject to deposit requirement up to the date of registration. A confirmation will help.

Advertisements

5.0 Every layout project offers certain amenities like swimming pool, gymnasium, club house etc. which are common facilities for all the buildings/wings in the layout. Such facilities are, however, included in the approved plan of only one of the buildings in the layout. It is desirable for the promoters to inform the potential buyers of other buildings about such facilities which impacts their decision to buy. A reference to answer to question 53 in FAQ 1 prohibits mention in the advertisement of whatever is not shown in the approved plan. This raises a question about the legality of mentioning such facilities in the advertisement of other buildings.

5.1 In this connection, it is relevant to mention that the layout plan which will be showing such facilities, is required to be submitted with registration application and is also to be displayed on the website. No harm, therefore, appears to be caused if such facilities are permitted to be mentioned in the application for initial phase or building in the layout.

Apartments/Buildings

6.0 The Act seeks to regulate sale of plots, apartments or buildings. The apartment or building as per the definition of these terms as per the Act are those which are used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade or for any other type of use ancillary to the purpose specified. In both the definitions the intended use is residential or commercial. The specific types mentioned in the definition of apartment also fall within these uses only. The word "industrial " is conspicuous by its absence which is leading to a doubt as to whether RERA governs construction of industrial units.

6.1 There are divergent views on the issue. As per one view, the absence of the word 'industrial 'is a conscious omission. The legislature does not intend RERA to govern industrial construction. The other view gives a wider meaning to the word commercial and feels that commercial include industrial as well. An authoritative view is therefore, solicited.

Land Cost

7.0 Explanation III to rule 5 lays down the manner of determining the construction cost. It specifically excludes interest on sum which the promoter has raised by way of loan for the purpose of purchase of land for the project or for obtaining the development rights over such land.

7.1 Explanation I which lays down the cost includable in land cost is silent about interest mentioned above. A question arises as to whether interest on loan borrowed for purchase of land which is excluded from construction cost, can form part of land cost.

7.2 The list of cost mentioned in explanation I is inclusive and not exhaustive. In the scheme of RERA, it appears that what is excluded from construction cost being relatable to land, can be taken to be part of land cost. This view finds support from the proforma certificate of the Chartered Accountant which includes interest cost incurred on land in the land cost. An authoritative clarification however, will be necessary.

Apartments on Long Lease

8.0 RERA applies to sale, allotment or transfer of plot, apartment or building by the promoter. The definition of 'allottee' clearly states that it will not include a person to whom such plot, apartment or building, as the case may be, is given on rent. A question in this connection arises as to whether a long term lease can be taken as sale. Although, a long term lease is technically a lease, a long term lease with provision for extension gives right of occupation for a long period and may be taken to be a viable and proven form of ownership. It needs to be clarified whether long term lease will tantamount to sale for the purpose of RERA and if so, how a long term lease will be defined.

Unsold Stock

9.0 Under the scheme of RERA any sale without registration of the project is prohibited. There will be situations where a project was registered up to a particular date and, for valid reasons, the registration was extended but the entire stock of plots or apartments could not be sold even by the extended, date of registration although the promoter had completed construction and obtained O.C. Will it be permissible for the promoter to sell the remaining units when registration has lapsed. Such situations will not be uncommon and some ways may have to be devised to meet them.

In the background of aforementioned facts, MahaRERA is requested to clarify the following issues in the background indicated above.

1. Whether the rights and obligations of promoters, allottees and agents under RERA are relevant to such stakeholders in projects which are-

(A) Required to be registered but not registered for any reason;

Ans: Promoters are, liable u/s 59, for contravention of Section 3 of RERA Act

and (B) Exempt from the requirement of registration as per the Act.

Ans: Provisions of RERA will apply only to registered projects [Paras 1.0 to 1.3]

2. Whether the provision in Maharashtra rules to permit advertisement/sale within 90 days from commencement of the Act even without registration impacts any other provision of the Act

Ans: MahaRERA follows Maharashtra Government Rules. It may have been the intention of Govt. of Maharashtra to not bring the Real Estate Industry to a standstill on 1st May 2017 by stopping sales in ongoing projects. Hence a window of 90 days has been provided. [Paras 1.4&1.5]

3. Whether the State or its institutions can be impleaded as promoters and whether they will be subject to all the duties and obligations under the Act, Rules and Regulations.

Ans: They can be impleaded as co-promoters. Duties, obligations and liabilities of co-promoters will be determined by the agreement they sign with the promoter. Only if the co-promoters get an area share to sell, they will have interaction with buyers and therefore they should be liable to adhere to the fiscal discipline norms of 70% deposits in designated accounts. [Paras 2.0 & 2.1]

4. Whether the society going for redevelopment, where it gets flats for the members and not for sale, is a promoter to be impleaded as a co-promoter.

Ans: Society being a landowner who is getting its revenue share, in kind, as constructed area+ additional area for its members, is a co-promoter. However, the area it gets for its member is revenue share and not area share because it is not for sale to new buyers. [Para 2.2]

5. Whether a project in which bookings were done but construction has not started will be treated as an ongoing project under RERA.

Ans: Yes, as third party rights have got created. [Para 3.1]

5.1 Whether a project in which construction had started and advertisements were also made but no booking has taken place will be treated as ongoing project under RERA

Ans: Yes, as advertisement for sale were made. [Para 3.1]

6. Whether the following projects will be ongoing within the meaning of the Act-

(a) In which construction was complete but sale/booking had not taken place of all the units on the relevant date.

Ans: If OC is obtained, it is not ongoing

(b) In which all the units stood sold but construction was going on the relevant date.

Ans: Yes, because construction is going on and OC not obtained.

(c) In which construction as well as sale was complete on the relevant date but OC was not received.

Ans: If construction completed and apartment occupied but no OC, then it is not ongoing [Paras 3.2 & 3.3]

7. Whether the relevant date for purposes of above will be 30th July in Maharashtra or the date of commencement of the Act i.e., 1st May.

Ans: Irrespective of 1st May or 30th July, 2017, if a project is constructed and OC obtained and prior to OC no advertisement or sale has been effected, then such project does not require registration.

8. Whether withdrawal from bank account in the case of ongoing project will be based on total estimated cost and total expenditure incurred or, on the balance estimated cost and expenditure on the balance project. [Para 4.1]

Ans: This will be clarified by MahaRERA circular

9. Whether the expression 'to be realized' in Rule 5 in the context of 70% deposit in case of ongoing project refers to amount to be realized from the date of commencement of the Act or from the date of registration [Para 4.2]

Ans: This will be clarified by MahaRERA circular

10. Whether deposit in separate bank account is based on individual realization or, on the total realization during a prescribed period- say monthly or quarterly.

Ans: 70% of every realization from the allottees has to be deposited in the separate account.[Para 4.3]

11. Whether in redevelopment projects, the cost of construction of landowner's share in constructed units can be taken as land cost and whether it will be permissible for the landowner to withdraw an amount equal to the cost incurred which is proportionate to his share in the constructed area as per the redevelopment agreement. [Para 4.4 to 4.6]

Ans: Question is not clear. If promoter+land owner are developing jointly as one entity, then they open and operate one single designated account. If land owner receives his share as revenue share or area share then he is a co-promoter.

12. Whether the amount realized post- registration in respect of the units sold pre-registration of ongoing project is subject to the requirement of deposit in separate bank account for a period of 90 days w.e.f. 01.05.2017 [Para 4.7]

Ans: Yes, but not for 90 days only but till OC is obtained.

13. Whether advertisement of a building in the layout can include the common facilities which will be available to the buyers in that building but are part of the approved plan of some other building of the layout. [Para 5.0 &5.1]

Ans: Yes, as long as the common facilities are registered in some phase, same or different, of the project.

14. Whether RERA have jurisdiction over the projects involving construction of units for industrial use [Para 6.0 &6.1]

Ans: Yes, the online registration portal of MahaRERA mentions so.

15. Whether long term lease tantamounts to transfer for the purpose of RERA? [para 8.0]

Ans: Yes

16. Suppose a new project was registered upto 31.12.2017, the Promoter got extension of one year upto 31.12.2018. He obtained OC in October, 2018 but could not sell all apartments upto 31.12.2018. Without registration he cannot

sell any apartment. What should a promoter do under such circumstances? [Para 9.0]

Ans: After OC no registration is needed. Hence, sale of apartments in building with OC does not require MahaRERA registration.

17. Whether the interest paid on the amount borrowed for acquiring land will be treated as the cost of land ? [Paras 7.0 to 7.2]

Ans: Yes

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MahaRERA Orders & Circulars



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No. MahaRERA/Secy /Order / /2017

Date:

MahaRERA Order No: 3
(Resolution No 1/ 4/ 17)

Subject: Designation of Hon. Member Shri. B D Kapadnis as adjudicating officer under section 71 of RERA Act, 2016

The Hon. Maharashtra Real Estate Regulatory Authority vide resolution no.1/4/17 dated June 20, 2016 has designated the Hon. Member Shri. B D Kapadnis as adjudicating officer for the purpose of adjudging compensation under section 12, 14, 18 and 19 of RERA Act, 2016.

By Approval of MahaRERA Authority

Secretary MahaRERA.

Slum Rehabilitation Authority (SRA) Building,
'A' Wing, Prof. Anant Kanekar Road,
Bandra (East), Mumbai 400 051.



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No.(MahaRERA/Secretary/Order/15/2017

Date: 17/4/2017

Subject: Charge for accessing MahaRERA web-based Application for registration of project and real estate agents, extension of registration for projects and real estate of agents including updating website, database management and maintenance under regulation 48 of the MahaRERA General Regulations 2017.

1) Preamble:

Government of India has enacted the Real Estate (Regulation and Development) Act 2016 and all the sections of the Act shall come into force with effect from May 1, 2017. Under this Act, Government of Maharashtra established Maharashtra Real Estate Regulatory Authority (MahaRERA), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the State of Maharashtra, with its headquarters at Mumbai. Authority has to operationalize a web based online system for

- Online Registration of projects
- Providing login and password to promoters so that they can update the status of projects on regular basis
- Publish and maintain website of records, for public viewing, of all real estate projects for which registration has been given
- 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 and so on
- Online filing of complaints.

In this regard, MahaOnline has been appointed to undertake the development of this application on transaction model basis. MahaOnline is a Joint Venture of Government of Maharashtra & TCS and has the mandate to provide state government services to citizens online, on transaction model basis. MahaOnline also implements Aaple Sarkar - the Right to Services Portal of Government of Maharashtra.

2) In exercise of the powers vested in MahaRERA and in accordance with Provision No.48 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017:-

2.1) Mahaonline is hereby authorized to levy the following convenience fees, which shall be over and above the fees of MahaRERA as prescribed in the rules, as per the resolution passed by MahaRERA being resolution number 1/1/2017 dated 17.4.17 which also includes the updating of website, database management and maintenance of the website etc. But Taxes and Bank Charges shall be charged extra on actual basis to be paid by the user.

The scale of this Mahaonline convenience fee to be levied on the promoters/real estate agents/complainant will be:

Sr.No	Type of Transaction	Fee per Transaction (Rs.) excluding taxes and bank charges
1	New Project Registration	750
2	Project Extension / Withdrawal Request	500
3	Annual fees to Projects for Status Updates	500
4	New Real Estate Agent Registration/Renewal	500
5	Complaint Filing	50

2.2) charges for inspections of documents and certified copies of the document shall be applicable under RTI Act and Rules there under as amended time to time.

3) This Oder will come to effect from 1st May 2017.

(Vasant Prabhu)

Secretary, MahaRERA

To:

- 1) Hon'ble Chairperson, MahaRERA
- 2) ACS, Housing Department, GoM
- 3) Shri. Prasad Kolte, MahaOnline (with Ref to No.RERA/GOM/20/2017/Dated 7thFebruary 2017)
- 4) FC, MahaRERA (Additional Charge, FC SRA)
- 5) Legal Advisor, MahaRERA (Competent Authority, Mhada)
- 6) Technical Officer, MahaRERA
- 7) KPMG, Consultant



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No.Maha-RERA/LA/32/2017

Date: 11th May 2017

OFFICE ORDER

Government of India has enacted the Real Estate (Regulation and Development) Act 2016 and all the sections of the Act have come into force with effect from May 1, 2017. Government of Maharashtra has also notified the rules under the Act and established Maharashtra Real Estate Regulatory Authority (MahaRERA), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the State of Maharashtra, with its headquarters at Mumbai. MahaRERA, thereafter, has notified Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 and Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017.

During the online registration process, it has been observed that several promoters enter into arrangement with individuals/organizations, by which the said individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale. For example, a landowner may handover his land to a promoter and in return be entitled 20% of the apartments developed or 20% of the revenue generated from sale of apartments or an investor gives money to the promoter at an initial stage of project launch and through an arrangement with the promoter gets entitled to a 20% share of the total area developed, which is constructed by the promoter but marketed and sold by the investor. However, in such scenarios, the sale proceeds to these individuals/organizations should not be considered as cost of the project and withdrawn from designated Bank Account merely by the virtue of this arrangement. For the purpose of withdrawal from the designated Bank Account, these individuals/organizations should be considered as Promoters and hence shall be termed as Co-Promoters.

Since the term Co-Promoter is not defined in the Act, Rules or Regulations, it is felt necessary to clearly define the term Co-Promoter.

Therefore, in exercise of the powers vested in MahaRERA under Regulation No.38 of Maharashtra Real Estate Regulatory Authority(General) Regulations 2017, the following definition of Co-Promoter is being notified:-

Co-Promoter means and includes any person(s) or organization(s) who, under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a share of the total revenue generated from sale of apartments or share of the total area developed in the real estate project. The liabilities of such Co-Promoters shall be as per the agreement or arrangement with the Promoters, however for the withdrawal from designated Bank Account, they shall be at par with the Promoter of the Real Estate Project.

Further, the arrangement or agreement of Co-Promoter(s) with Promoter should clearly detail the share of Co-Promoter(s) and a copy of the said agreement or arrangement should be uploaded on the MahaRERA portal, at the time of registration, along with other details of the Co-Promoter(s). Such Co-Promoters/Individuals/Organization should submit a declaration in Form B of MahaRERA (Regulation and Development) (Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest and Disclosure on website) Rules, 2017. Further, each of the Co-Promoters/Individuals/Organization, entitled to share of the total area developed, should open separate bank account for deposit of 70% of the sale proceeds realized from the allottees.

This order will come into force with immediate effect.

As approved by Hon'ble Maha-RERA

(Vasant Prabhu)
Secretary, MahaRERA



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

(MahaRera Order No:_____ 02_____ Dated 25/05/2017)

Government of India has enacted the Real Estate (Regulation and Development) Act 2016 and all the section of the Act have come into force with effect from May 1, 2017. Government of Maharashtra has also notified the rules under the Act established Maharashtra Real Estate Regulatory Authority (MahaRera), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the state of Maharashtra, with its headquarters at Mumbai. MahaRera, thereafter, has notified Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 and Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017.

In accordance with section 3 and 4 (2) (a) of the Real Estate (Regulation and Development) Act 2016, brief details of the enterprise are to be captured from the promoter on an online web-based system including the registered address.

For registering projects/agents in Maharashtra, for administrative convenience and in case of emergencies for urgent correspondence, promoters/real-estate agents should have a local address in Maharashtra even though they are headquartered outside Maharashtra or outside India. The promoter/real estate agent should enter his local address in Maharashtra while registering in the online application. Also if the Director/ Authorized Signatory or other functionaries of the Promoter's enterprise are based out of Maharashtra, a local address within Maharashtra needs to be entered. All correspondences of MahaRera would be sent to the enterprise/individual at the said local address in Maharashtra, as mentioned while registering in the online application.

This Order will come into force with immediate effect.

Secretary, MahaRERA

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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No.:- 1/2017

MahaRera/Secy/File No.27/53//2017

Dated:- 31.05.2017

Subject: - Clarification regarding "License Number" of Engineer

Ref: - Maharashtra Real Estate Regulatory Authority (General)

Regulation 2017.

Regulation 3 Form 2 (Engineers Certificate).

Preamble:-

Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 and all the sections of the Act have come into force with effect from May 1, 2017.

Government of Maharashtra has also notified the rules under the Act and established Maharashtra Real Estate Regulatory Authority (MahaRera), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the state of Maharashtra, with its headquarters at Mumbai. MahaRera, thereafter, has notified Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017, for the implementation of the Act and processing the applications received for Registration of Real Estate Projects and Agents.

The formats (I, II & III) of certificates, as prescribed, in the regulation are to be signed and issued by the Architect, Engineer and Chartered Accounts of project respectively. The Engineer who signs and issues the "Engineers Certificate" in form 2 has to mention License Number along with his signature. In the process, it has, however, been observed that the Engineer, who fulfil the criteria of qualification as define in section 2(4) of Real Estate (Regulation and Development) Act 2016, may not necessarily possess License Number, as there is no mandatory procedure of issuing Licenses to the Engineers, who prepare the plans & estimates & record the measurements of work done in the project.

2. In view of the above, holding of or possessing of License is not mandatory. The License Number is not required to be mentioned, while signing & issuing the Engineer's Certificate. However, the Engineers signing and issuing the certificate shall fulfil the criteria of fulfilling qualification, as define u/s 2(u) of the Act and shall also follow the laid down standard procedure of estimation and measurement. Further, that the Engineer who possesses, such License may mention this License Number or else may indicate as "Not applicable" against field meant for indicating License Number, in Form 2- Engineers Certificate.

This circular instruction shall come in force with immediate effect.

Sd/-

(proposal approved by Hon'ble
Chairperson MahaRERA)

Secretary/MahaRERA

TO,

1. All Concern
2. All heads & staff of MahaRERA office



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No.2/2017

Date: 31/05/2017

Sub: Recognition of heads of Finance Department of government controlled development authorities, autonomous bodies etc.

Preamble:-

Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 and all the sections of the Act have come into force with effect from May 1, 2017. Government of Maharashtra has also notified the rules under the Act and established Maharashtra Real Estate Regulatory Authority (MahaRERA), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the State of Maharashtra, with its headquarters at Mumbai. MahaRERA, thereafter has notified Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 and Maharashtra Real Estate Regulatory Authority (Recruitment and conditions of Service of Employees) Regulations, 2017.

Issue:

Whereas, the Chairperson of the Authority is vested with the administration powers under section 25 of the Act, which empowers the Chairperson to issue directions for conduct of the affairs of the Authority.

Therefore, in exercise of these powers and for the smooth conduct of affairs of the Authority, the following circular is being issued.

Various public authorities/government undertaking like Mhada, Cidco etc. are also developing housing colonies and are required to register the real estate projects undertaken by them with MahaRERA as they fall within the definition of promoter under section 2(zk) (iii). Every promoter, at the time of registration, is required to submit the certificate of Chartered Accountant in Form 3 and Form 5 annexed to Maharashtra Real Estate Regulatory Authority General Regulations, 2017. Further, the promoters are required to submit the certificate

of Chartered Accountant for withdrawal of money as prescribed in rule 5 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on website) Rules, 2017.

The above referred public authorities are State Government controlled autonomous bodies having heads of their respective finance department i.e. Finance Controller, Chief Accountants Officer etc. Such financial heads of public authorities, government undertakings shall be recognized by Maharashtra Real Estate Regulatory Authority as, deemed to be Chartered Accountants, for the purpose of registration with MahaRERA and certificates required to be submitted under the signature of Chartered Accountant shall be accepted under the signature of the head of the Finance Department of the respective public authority, government undertakings etc.

This order shall come into effect immediately.

(Proposal Approved by Hon'ble
Chairperson MahaRERA)

Secretary/MahaRERA

TO,

1. All concern
2. All heads and staff of MahaRERA office



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No. 3/2017

No. MahaReERA/Secy/File.No27/79/2017

Date: 07th June 2017

Self: Declaration to be submitted by promoters to the Bank.

Whereas the MahaRERA Authority, under section 37 of the RERA Act, 2016 and Regulation 38 of the MahaRERA (General) Regulations 2017 is vested with the powers to issue directions and orders to promoters, real estate agents and allottees from time to time for effective implementation of the Act and to achieve the underlying object behind the Real Estate (Regulation and Development) Act, 2016.

Whereas the promoter under section 4(2)(1)(D) of the Real Estate (Regulation and Development) Act, 2016 is required to deposit seventy percent of the amounts realized for the real estate project from the allottees in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and to be used only for that purpose. Further, 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 is also required to get his separate account 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 and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Under the provisions of Rule 5 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 the promoter

is required to submit the said certificates to the scheduled bank operating the separate account, for the purpose of withdrawal from time to time. Since, the promoter is required to get his designated separate account audited within six months after the end of every financial year it will not be proper to submit these certificates with the said bank. These certificates would be necessary to be retained with the promoter for the purpose of auditing. However, the promoter should submit self-declaration to the bank once every quarter as annexed herewith.

Henceforth the promoters of Real Estate Projects shall follow the above procedure for withdrawal of the amount time to time from designated separate bank account.

This circular shall come into force with immediate effect.

By approval of Hon'ble
Chairperson/MahaRERASecretary/MahaRERA

SELF-DECLARATION

I, Mr. / Mrs..... Promoter of the ongoing project having MahaRERA Registration No..... do hereby state and declare on solemn affirmation as under:

I say that 70% amount received from the allottee of said project is deposited by me in designated separate account and I am entitled to withdraw the said amount proportionate to the progress in the Real Estate Project.

I say that my withdrawals from my designated separate accounts No..... in the quarter.....(April-June, July-September, October-December, January-March) of the year.....are proportionate to the progress in Real Estate Project and for withdrawal of amount I have obtained requisite certificates from the project Architect, Engineer and practicing Chartered Accountant.

I undertake to produce these certificates for inspection if required by the Bank/MahaRERA Authority.

Yours faithfully,

Place:

Date:

Signature and Seal of the Promoter



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

MahaRera/Secy/File No.27/84//2017

Dated:-14.06.2017

Circular No.:- 4/2017.

Sub:- Clarification on Calculation of Carpet area as defined under section 2(k) of the Real Estate (Regulation and Development) Act, 2016

Ref:- Section 2(k) of the Real Estate (Regulation and Development) Act, 2016

Preamble:-

Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 and all the sections of the Act have to come into force with effect from May 1, 2017. Government of Maharashtra has also notified the rules under the Act and established Maharashtra Real Estate Regulatory Authority (MahaRERA), vide Notification No.23 dated 8 March 2017, for regulation and promotion of real estate sector in the State of Maharashtra, with its headquarters at Mumbai. MahaRERA, thereafter, has notified Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017, for the implementation of the Act and processing the applications received for registration of Real Estate Projects and Agents.

Whereas the MahaRERA Authority, under section 37 of the RERA Act, 2016 and Regulation 38 of the MahaRERA (General) Regulations 2017 is vested with the powers to issue directions and orders to promoters, real estate agents and allottees from time to time for effective implementation of the Act and to achieve the underlying object behind the Real Estate (Regulation and Development) Act, 2016.

Whereas under section 2(k) of the Real Estate (Regulation and Development) Act, 2016, carpet area of the apartment to be sold by the promoter is defined as "Carpet Area" means net usable floor area of an apartment, excluding the area covered by the external walls, area under services shafts, exclusive balcony or verandah area and exclusive open terrace

area, but including the area covered by the internal partition walls of the Apartment.

Explanation – For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be which is appurtenant to the net usable area of an apartment, meant for the exclusive use of the allottee and “exclusive open terrace area” means the area of the open terrace which is appurtenant to the net usable area of an apartment, meant for exclusive use of the allottee.

Whereas there are various interpretations being given to the words “internal partition walls” and “external walls” by different professionals and Architects and therefore there is need to clarify the terms “internal partition walls” and “external walls” in order to have uniformity in the calculation of carpet area of an Apartment across all the projects being registered with MahaRERA.

For the purpose of the Real Estate (Regulation and Development) Act, 2016 “walls” would mean walls made of Reinforced Cement Concrete (RCC) or plain concrete or shear wall(s) or wall made from bricks or blocks or precast material or drywalls or walls made of any material or composition of one or more of any of the materials and shall include column(s) within or adjoining or attached to the wall.

Therefore, for the purpose of calculation of carpet area under clause 2(k) of the Real Estate (Regulation and Development) Act, 2016,

All walls which are constructed or provided on the external face of an apartment shall be regarded as “external wall”

All walls or independent columns constructed or provided within an apartment shall be regarded as “internal partition wall”

An illustration is attached herewith for clarification of the walls which are to be considered as “External Walls” and “Internal Partition Walls” with respect to an apartment and also of the area to be included and excluded while calculating Carpet area of an Apartment.

This Order will come into force with effect from the date of commencement of the Real Estate (Regulation and Development) Act, 2016.

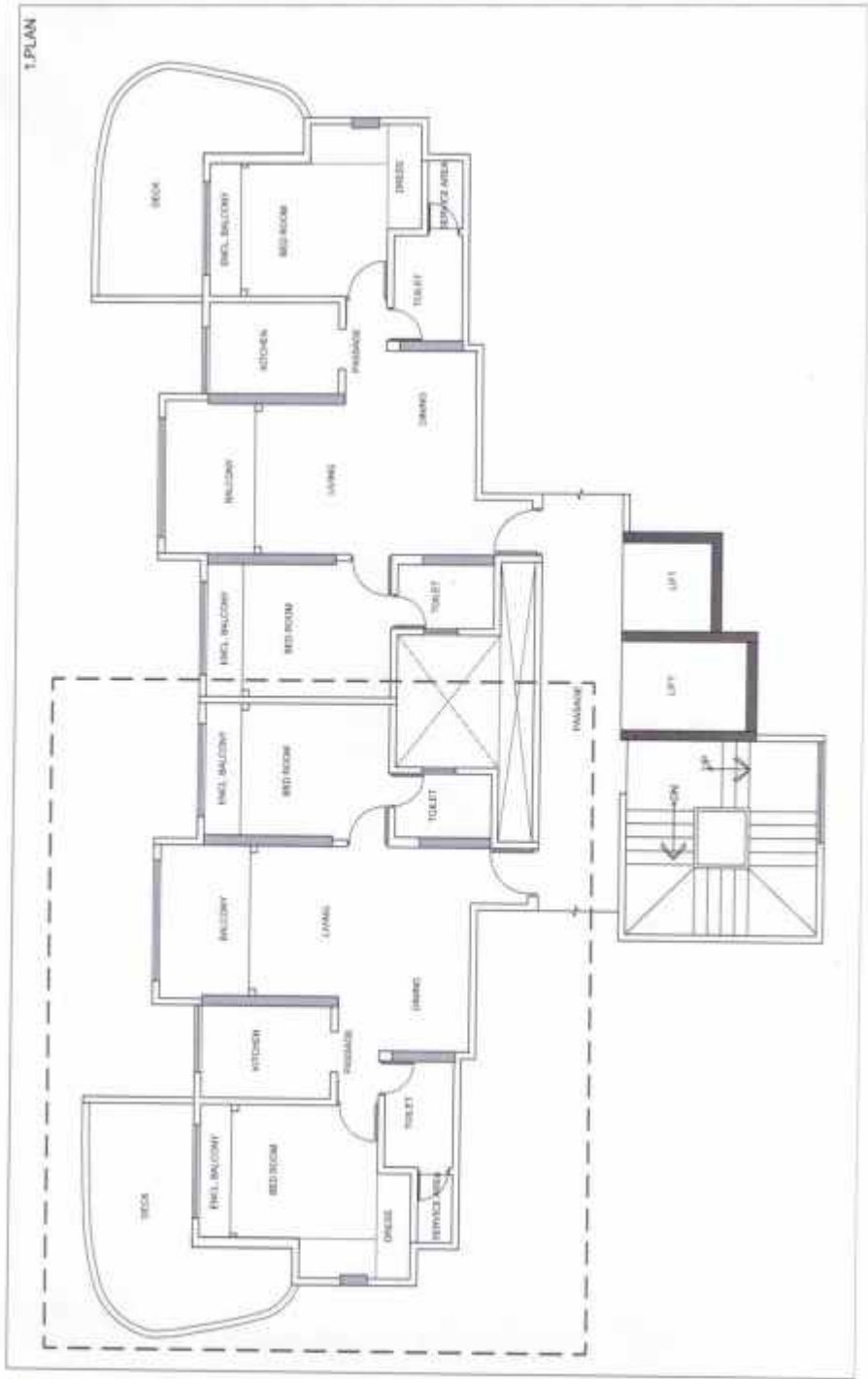
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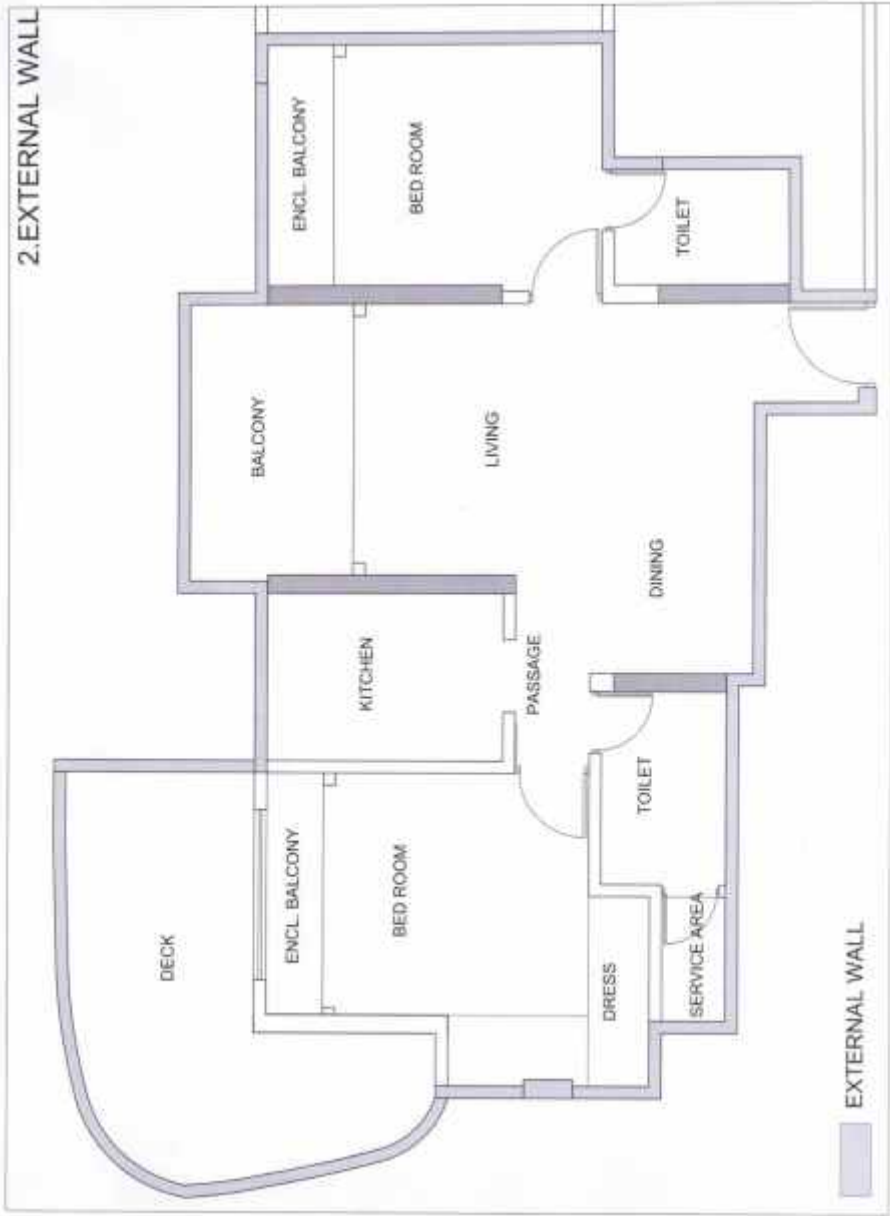
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Hon'ble Chairperson MahaRERA)

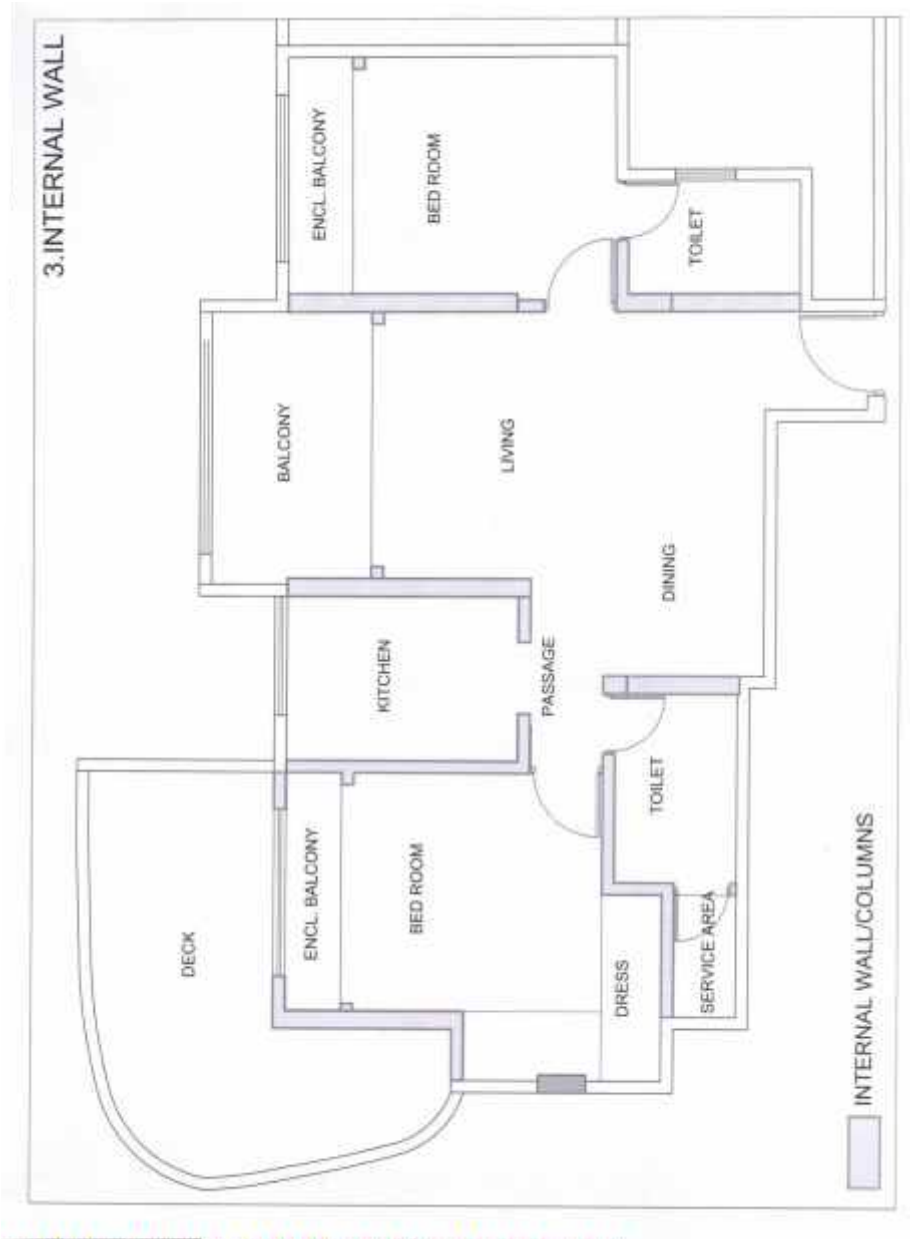
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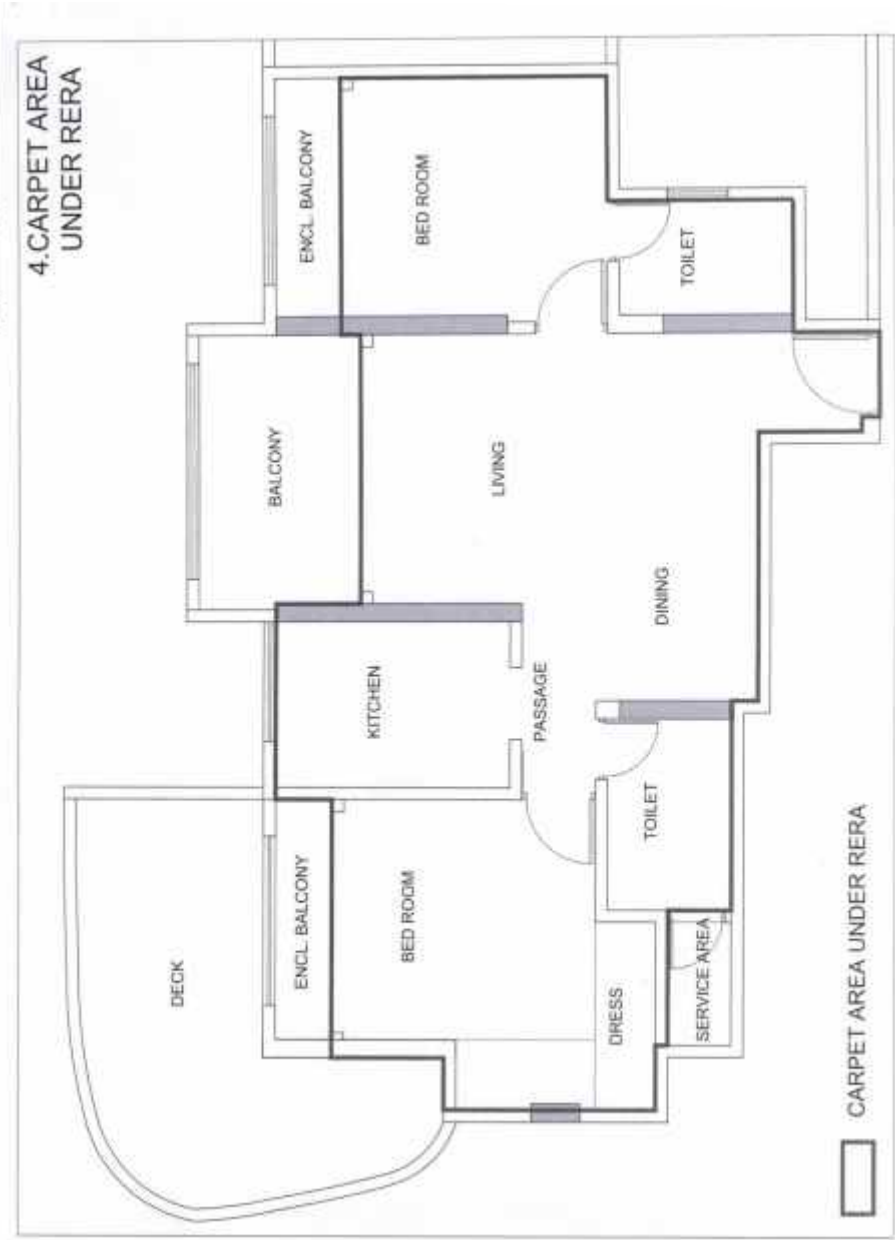
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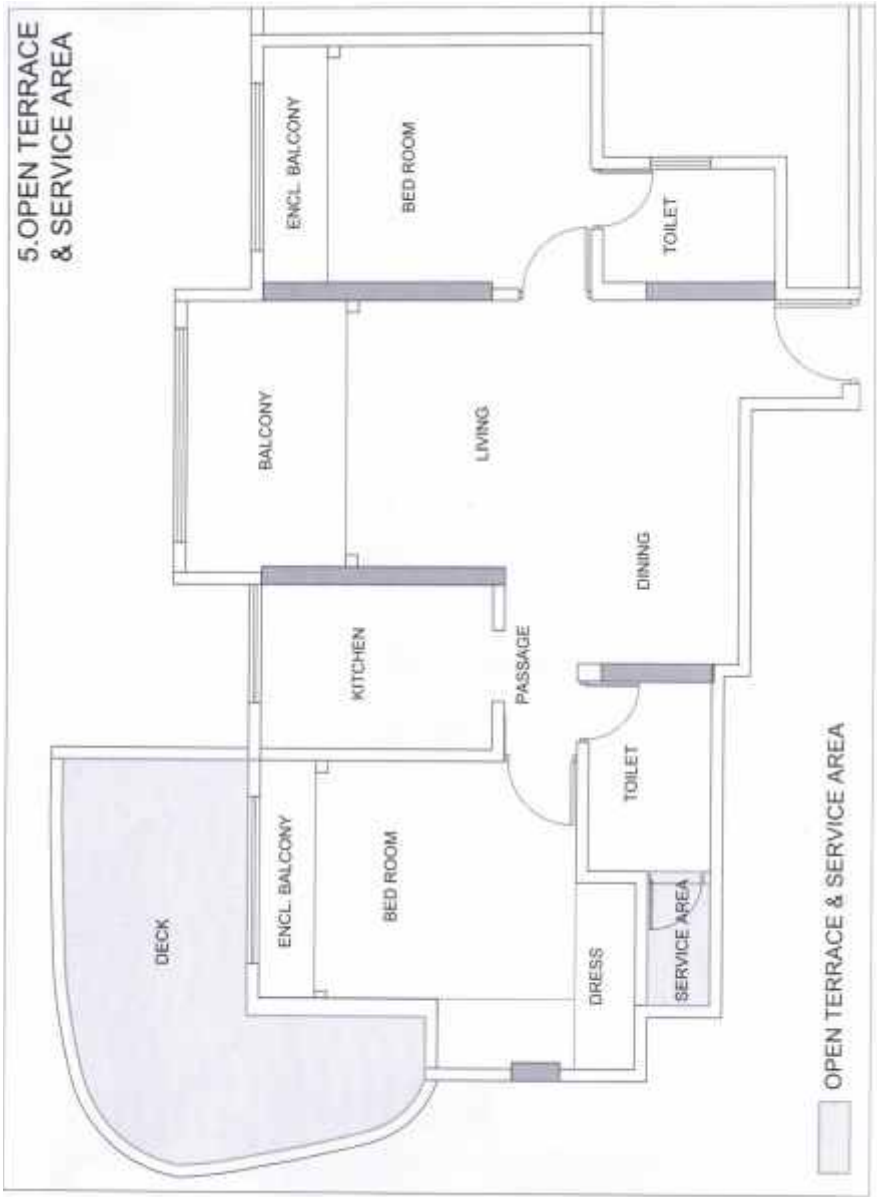
1. All concern
2. All heads & staff of MahaRERA office

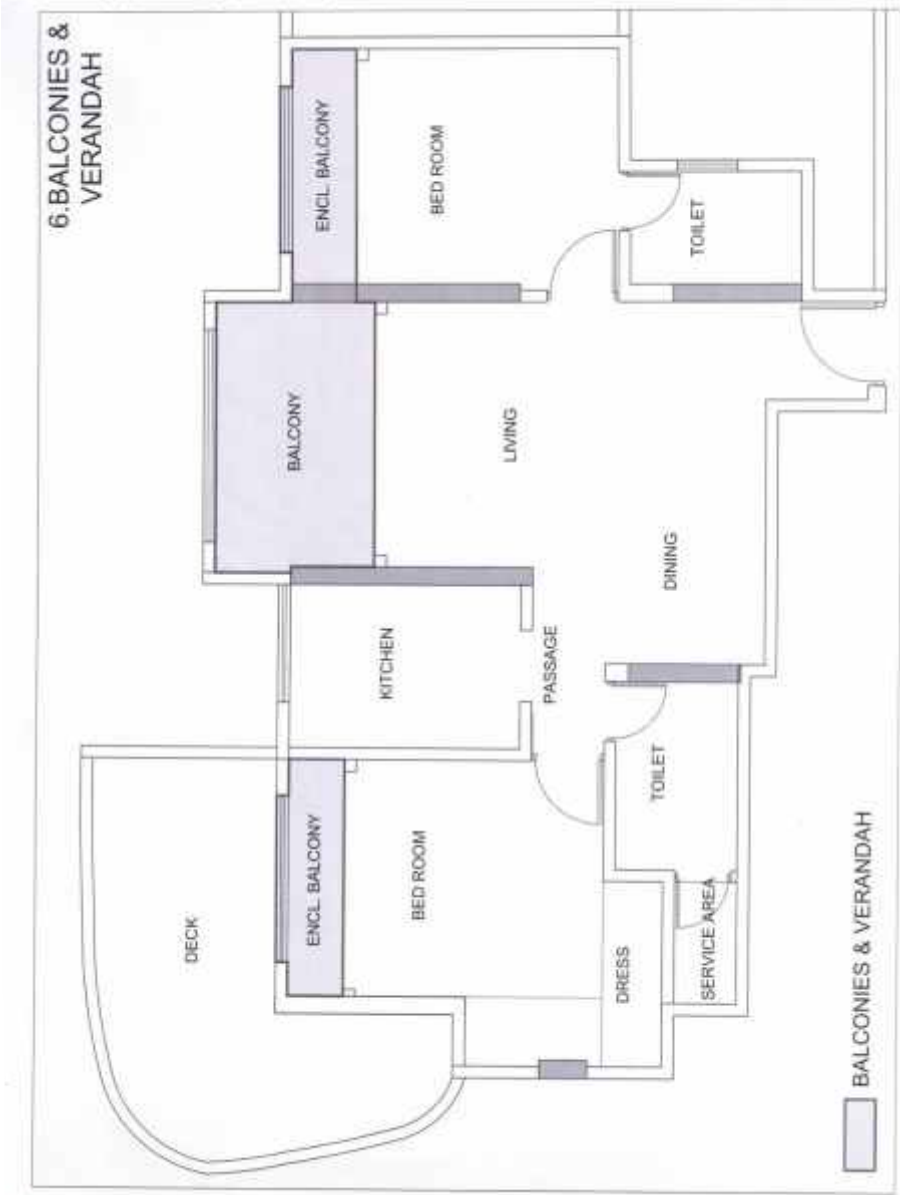
















MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No. MahaRERA/Secy/Order/106/2017

Dated: 27/06/2017

MahaRERA Order No: 4
(Resolution No. 2/4/17)

Subject: Clarification regarding the period within which promoter has to transfer the title by executing conveyance.

Whereas queries are received from various organizations of allottees, promoters, etc. regarding period within which conveyance is to be made to the legal entity of allottees.

Section 17 of the Real Estate (Regulation and Development Act, 2016(RERA) provides that the promoter shall execute a registered conveyance deed within specified period as provided under the local laws; provided that, in the absence of any local law, conveyance deed shall be carried out by the promoter within three months from the date of issue of occupancy certificate.

Rule 9(2)(iii) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017 states that if no period of conveying the title is agreed upon, the conveyance should be executed within three months from the date of issue of occupancy certificate or within one month of registration of the legal entity of allottees, whichever is earlier. Clause 9.2(ii) and 9.2(iii) of Model form of Agreement Annexure Attached to these rules, however, states the conveyance of title has to be effected within three months of registration of the legal entity of allottees.

Prior to commencement of this Act, Section 11(1) of the MOFA Act, 1963, which applied, stated that a promoter shall transfer the title to the society in accordance with the agreement executed therein and if no period for the execution of the conveyance is agreed upon then the promoter shall execute the

conveyance within the prescribed period. The prescribed period is provided in Rule 9 of the MOFA Rules, 1964 and as per the said Rule the promoter is required to execute the conveyance with 4 months from the date on which the co-operative society is registered.

From May 1, 2017 RERA has come into force and section 89 of RERA has overriding effect. Therefore, in respect of ongoing projects, which require to be registered under RERA, the agreements which are executed prior to May 1, 2017 shall be governed by the provisions of MOFA Act, 1963 and for execution of conveyance, the period prescribed in the MOFA Act 1963 and rules made thereunder will be applicable. However, all agreements for sale executed post May 1, 2017 for all real estate projects, irrespective of whether they require registration or otherwise, shall be governed by RERA with respect to the model form of agreement, as well as section 17 of the Act for transfer of title in favour of legal entity of allottees.

The MahaRERA Rules, 2017 being a subsidiary legislation, the substantive provisions of section 17 of the Act shall prevail and all agreements executed post May 1, 2017 shall be governed by section 17 of RERA and the conveyance should be executed within three months from the date of issue of occupancy certificate.

This order shall come into force with effect from the date of commencement of the Real Estate (Regulation and Development) Act, 2016.

By approval of MahaRERA

Secretary/ MahaRERA



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No. 5/2017

MahaRera/Secy/File.No27/1091

Date: 28/06/2017

Subject: Clarification on Operating Designated Bank Account.

Whereas the Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of affairs of the authority under section 25 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

The following clarifications are issued with respect to withdrawal of amounts deposited in separate account:

- 1) The provisions of Rule 5(1)(b) of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 applicable to new projects shall also apply mutatis mutandis to ongoing projects.
- 2) In Form 3 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017:
 - a) All cost items should be mutually exclusive. There should not be any double counting of costs.
 - b) The Development Cost/Cost of Construction of the project should not include marketing and brokerage expenses towards sale of apartments. Such expenses, though part of the project cost, should not be borne from the amount that is required to be deposited in the designated separate account.
 - c) In form 2, field 1(ii)(c), only interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction should be added to total cost of construction. The principal sum

should just be mentioned in the Form for information purpose. The Principal sum should not be added to the total cost of construction as this cost is already included in 1(ii) (a).

Projects already registered or applied for registration with MahaRERA before issuance of this circular, may not have factored in the above clarification while preparing estimated costs. For such projects, MahaRERA does not expect the estimated costs to be reworked. However, while reporting incurred amount in quarterly updates, the abovementioned consideration should be taken into account.

By the approval of Chairperson/MahaRERA

Secretary MahaRERA

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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No. 6/2017

No.MahaRERA/Secy/File No.27/113/2017

Date: 4th July 2017

Sub: Clarifications regarding Project Registration Process

Whereas, under section 25 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affair of the Authority,

Whereas Section 5, of the Real estate (Regulation and Development) Act, 2016 lays down that the Authority should decide on the registration application within thirty days. Accordingly, Maharashtra Real Estate Regulatory Authority (MahaRERA) has developed a robust online system for application, review and grant of registration of projects.

However, it has been noticed that promoters are committing some common mistake while filing the project registration, resulting in clarification solicitation by MahaRERA. Thereby, leading to delay in project registration

Hence, this clarification is being issued to overcome such issues and ensure speedy registration:

- 1) All the documents provided should be legible and clear. Blurred documents are not accepted.
- 2) Declaration in form B should be provided as per the prescribed format. Promoters are not allowed to remove or add any clause in the declaration.
- 3) Some fields in the application form are mandatory, against which information has to be submitted. However, even for rest of the fields which are not mandatory, the promoter should provide as much information as possible. If a data field is kept blank, it shall be assumed that the concerned field is not applicable for the respective project and the value is nil or not

applicable.

- 4) In case of document uploads, if a field is not applicable, then a self-declaration to the same effect shall be uploaded. Example: In case there are no encumbrances, a self declaration to the same should be uploaded.
- 5) The promoter should ensure the veracity and completeness of all data and documents provided. The promoter should also ensure strict adherence to Real Estate (Regulation and Developed) Act, Rules, Regulations and MahaRERA Orders/Circulars issued thereunder, while submitted information and documents. Mere grant of registration by MahaRERA does not necessarily mean that the contents and documents are in conformity with the provisions of the Act, Rules, Regulations and MahaRERA Orders/Circulars. Even after registration, if it is brought to notice of MahaRERA that misleading/incorrect information has been provided or documents do not adhere to Act, Rules, Regulations, MahaRERA Order/Circulars, and then necessary action shall be taken in such respect by MahaRERA.
- 6) It is hereby clarified that the period of 30 days mentioned in section 5 of the Act shall start only from the day on which the application for registration, complete in all respect, is received in the office of MahaRERA.

By the approval of Chairperson/MahaRERA

Dr. Vasant Prabhu
(Secretary MahaRERA)



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No. 7/2017

No.MahaRERA/Secy/FileNo.27/115/2017

Date: 4th July 2017

Subject: Clarification on CA Certificates

Whereas, under section 25 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of the Authority,

Whereas the second proviso to section 4(2)(1)(D) of RERA provides that 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,

Whereas the third proviso to section 4(2)(1)(D) of RERA further provides that 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 and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Whereas Rule 5 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 prescribes the withdrawal aspects of the amounts deposited in a separate account under section 4(2)(1)(D) of RERA. The said Rules require that for the purpose of withdrawal of amounts deposited in the Designated Bank Account in respect of New Project and

Ongoing Project, the promoter shall submit the following three certificates to the scheduled bank operating the Designated Bank Account:

- (i) Certificate from the project architect in Form 1 certifying the percentage of completion of the construction work of each of the tasks/activity of the building/wing of the project.
- (ii) Certificate from the Engineer in Form 2 for the actual cost incurred on the construction work of each of the building/wing of the project; and
- (iii) Certificate from a practicing chartered accountant other than the statutory auditor of the promoter, in Form 3, for the cost incurred on construction cost and the land cost. The practicing Chartered Accountant is also required to certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the Separate Bank Account. The promoter shall be required to follow the aforesaid procedure for every withdrawal from the Separate Bank Account till the occupancy certificate in respect of the project is obtained. On receipt of completion certificate in respect of the project, the entire balance amount lying in the Separate Bank Account can be withdrawn by the promoter.

Whereas Regulation 3 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 prescribes the format of the certificates to be issued by the project Architect, project Engineer, Chartered Accountant for getting release of money from the Separate Bank Account:

- (a) Certificate from the project Architect in Form 1.
- (b) Certificate from the project Engineer in Form 2.
- (c) Certificate from the Chartered Accountant in Form 3.
- (d) Certificate from the project Architect on completion of each building/wing of the real estate project in Form 4.

Whereas Regulation 4(a) of the said General Regulations provides that the annual report on statement of accounts shall be in the prescribed Form 5 (issued in accordance with the third proviso to section 4(2)(1) of RERA) which shall be duly certified and signed by the chartered accountant who is the statutory auditor of the Promoters enterprise.

Whereas there are various terms which are used in the certificates to be issued by Chartered Accountant whose meaning and interpretations need to be clarified in order to have uniformity in the basis on which the certificates can be issued by Chartered Accountants without any ambiguity for each of the projects being registered with MahaRERA.

Therefore, for the purpose of RERA, the rules and regulations there under:-

The expression “incurred” would mean amount of product or service received, creating a debt in favour of a seller or supplier and shall also include the amount of product or service received against the payment.

To determine the fair market value of the Acquisition Cost of Land or Development Rights or Lease Rights in the Real Estate Project, the Acquisition Cost shall be the “Indexed Cost of Acquisition”. Indexed Cost of Acquisition shall mean an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the Land or Development Rights or Lease Rights in the Real Estate Project is registered or the year in which the first Commencement Certificate is issued in respect of such Land, whichever is earlier, bears to the Cost Inflation Index for the first year in which such Land and Development Rights or Lease Rights in the Real Estate Project was owned or held by the Developer. Where the Land or Development Rights or Lease Rights became property of the Developer or became available to the Developer before 1st day of April, 2001, the cost of Acquisition would mean the ASR value of such Land or Development Rights or Lease Rights as on 1st day of April, 2001 and First year in which such Land or Development Rights or Lease Rights in the Real Estate Project is owned or held by the Developer shall be taken as 1st April, 2001. “Cost Inflation Index”, in relation to a year, means such index as the Central Government may, by notification in the Official Gazette, specify, in this behalf under Section 48 of the Income Tax Act.

The Acquisition Cost shall also include the amount of interest incurred on the borrowing done specifically for purchase of Land, or Acquiring Development Rights or Lease Rights.

Cost under Rehabilitation scheme or construction cost of rehabilitation buildings shall include cost incurred for construction of construction area, which is to be handed over to

- (i) Slum dwellers under slum rehabilitation scheme,
- (ii) Tenants under redevelopment of tenanted properties,
- (iii) Apartment owners of the building which is under redevelopment and who are to be provided with the alternative accommodation,
- (iv) Government or Concessionaire in Public Private Partnership project
- (v) Appropriate Authority under various schemes under Development Regulations.

All amounts payable to slum dwellers, tenants, apartment owners or appropriate authority or government or concessionaire which are not refundable and are incurred as cost and expenses of such rehabilitation scheme, shall be allowed as part of Land Cost under clause 1(i)(f)(iii) or

1(i)(f)(iv) of Form 3 under General Regulation 3 of MahaRERA. For example, maintenance deposits, corpus amount, concession premium or fees, shifting charges to name a few.

The amount of interest incurred on the borrowing done specifically for construction of rehabilitation component in rehabilitation scheme shall be included in the interest payable to financial institutions etc. under the head of Land Cost. (Under Clause 1(i)(a) of Form 3 of General Regulation 3 of MahaRERA).

The increase in construction cost due to execution of extra/additional items as certified by the Engineer in Annexure A, of the Form 2 of the General Regulation 3 of MahaRERA, shall be allowed to be included in the On-site expenditure for development of entire site etc. under clause 1(ii)(a)(iii) of the Form 3 of the General Regulation 3 of MahaRERA.

While uploading the details of project cost on the website at the time of registration in the "Project Cost" Tab, List of values, wherein "Principal sum and interest payable" is sought, the Principal Sum of the Loan shall not be entered and only interest amount shall be uploaded. However, in the certificate to be issued by the Chartered Accountant, as per Form 3 of the General Regulation of MahaRERA, the principal sum of Loan shall be reflected in the brackets and shall not be added in the sub-total of Development Cost.

The expression "Amount withdrawn till date of the certificate as per Books of Accounts and Bank Statement" appearing at clause 7 of Form 3 of General Regulation 3 of MahaRERA means the amounts withdrawn from the Separate Bank Account as per the Books of Accounts and Bank Statement of that Separate Bank Account.

The Promoter to deposit the Pass Through Charges (amount collected for and on behalf of Legal Entity or Apex Body or any Statutory Authority or Local Body) should be deposited preferably in a designated bank account opened just for the purpose of depositing such Pass Through Charges or in any other bank account of the promoter and should not be deposited in the separate bank account. However, Promoter shall be required to give account of the monies collected as Pass Through Charges to the Legal Entity or Apex Body.

The indirect taxes collected by the Promoter from the Allottees in the nature of GST/Service Tax/VAT etc can also be deposited in a bank account, other than the Separate Bank Account and shall be dealt with as per the provisions of the statute governing such indirect taxes.

It may be noted that Income Tax paid by the promoter of a Real Estate Project, shall not be allowed to be claimed as cost of the Real Estate Project.

The Separate Account opened in accordance with the provisions of section 4(2)(1)(D) of RERA, shall be a no lien account and withdrawal from such separate account shall always be in accordance with the provisions of RERA, Rules, Regulations and circulars issued by MahaRERA from time to time. The excess monies lying in the Separate Bank Account can be put in fixed deposits with the bank operating the Separate Bank Account and which has to be a no lien Fixed Deposit and no loan can be obtained against or on such Fixed Deposit nor any charge can be created on such Fixed Deposit.

The Chartered Accountant shall verify and certify that 70% of the amount collected from Allottees (other than Pass Through Charges and Indirect Taxes) are deposited in the separate account. In case of ongoing project, where estimated cost to complete the project is higher than the estimated value of sales revenue, the Chartered Accountant shall verify and certify that 100% of the amount collected from the Allottees (other than Pass Through Charges and Indirect Taxes) after the date of registration of the project are deposited in the separate account.

In case of Fixed Deposit being made from the monies lying in the Separate Account, then the Chartered Accountant shall verify and certify that there is no lien or charge on such fixed deposit. The promoter and/or the chartered accountant shall obtain the no lien/ charge certificate in respect to such fixed deposit, from the bank once every three months.

The Authority recommends that the amount withdrawn from the separate account should preferably be utilized for the purpose of completion of Real Estate Project. However, there is no end use restriction on the amount which is withdrawn from the separate account, in accordance with the provisions of the Act, Rules, Regulations and circulars.

Cancellation amount(s), if any, to be paid by the Promoter to the Allottees on cancellation of booking / allotment of the Apartment, should be treated as cost incurred for the project and the same can be withdrawn from the Separate Bank Account, to the extent of 70% of the amounts to be paid to the Allottee on cancellation of the booking / allotment, since only 70% of the amounts realized from the Allottee would have been deposited in the Separate Bank Account. However, the Compensation / interest paid by the Promoter to the Allottees should be treated as cost incurred for the project and hence the entire sum required to be paid by way of compensation / interest to the Allottees can be withdrawn from the Separate Bank Account.

Clause 4 of Form 3 of the General Regulations of MahaRERA refers to percentage completion of Construction Work as per Project Architect's Certificate. This clause shall be required to be filled only in the final certificate when 100% of the construction work has been completed. In all the prior

certificates, this field is not mandatory to be filled and certified by Chartered Accountant, as this information is been detailed in Form 1 provided by Architect.

With respect to an Ongoing Project, at the time of registration of the Real Estate Project the Estimated Land Cost and Development Cost/ Cost of Construction to be certified as per Form 3 of the General Regulations of MahaRERA, shall be for the cost of the real estate project, since its inception and not the balance Estimated Land Cost and Development Cost/ Cost of Construction to complete the project. That is, the total Incurred Cost of the Real Estate Project shall be the aggregate of the Incurred Land Cost and Development Cost / Cost of Construction of the project, since its inception till the date of the issuance of the certificate and the estimated Land Cost and Development Cost / Cost of construction shall be for the entire project from the inception till completion. Also in respect of an Ongoing Project, in the first certificate to be issued by a Chartered Accountant at the time of registration and for the first withdrawal post registration, at clause 7 of Form 3, the "Amount withdrawn till date of this certificate as per Books of Accounts and Bank Statements" shall be either "100% of the amount received towards consideration of the sale of apartment of the Real Estate Project till date of Registration" or "amount of project cost incurred as reflected at clause number 3 of the certificate of chartered accountant issued (Form No. 3) at the time of registration", whichever is lower.

The third proviso to section 4(2)(1)(d) of RERA read with Regulation 4(a) of the Regulations requires the promoter to get his accounts audited within six months after the end of every financial year by the statutory auditor of the Promoter's enterprise, and produce report on statement of accounts on project fund utilization and withdrawal by Promoter in Form – 5 in accordance with General Regulation 4 of MahaRERA. Since the report is to be prepared under third proviso to section 4(2)(1)(d) of RERA, the said certificate is only in respect of the amount to be deposited and withdrawn from the Separate Bank Account. Thus Chartered Accountant is required to certify that Promoter has utilized 70% of the amount collected for the project only and not for the entire amount collected for the project. However, it may be 100% of the balance receivables from the Allottees in case of an Ongoing Project, where the proviso to Rule 5(1)(ii) applies. The Chartered Accountant shall further certify that the withdrawal from the Separate Bank Account of the said project had been in accordance with the proportion to the percentage of completion of the project.

In case of Development of Real Estate Project being implemented by Promoter and co-promoters, the agreement between the promoter and each of the co-promoters shall clearly lay down the entity which is principally or primarily responsible for completion of the real estate project. In case of shared responsibility between the promoter and co-promoter for achieving

completion of the project, the agreement shall clearly lay down the responsibility assumed by promoter and each of the co-promoter. The copy of such agreement or arrangement is required to be uploaded at the time of registration of the Real Estate Project.

Projects already registered or applied for registration with MahaRERA before issuance of this circular, may not have factored in the clarification points. For such projects, MahaRERA does not expect the estimated costs to be reworked or certificates to be issued. However, in subsequent certificates and while reporting incurred amount in the quarterly updates, the abovementioned considerations should be taken into account.

This circular will be effective from the date RERA has come into effect.

By the approval of Chairperson/MahaRERA

(Dr. Vasant Prabhu)
Secretary/MahaRERA

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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Circular No.:- 08/2017

No.MahaRERA/Secy/File No.27/132/2017

Dated:-17/07/2017

Subject:- Standard Operating Procedure for Updating Registered Projects and Revising/Correcting Information with respect to Registered Projects and Registered Real Estate Agents

Whereas, the Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under section 25 of the Real Estate (Regulation and Development) Act, 2016(RERA).

Whereas, Section 11(1) of RERA requires every promoter of a registered real estate project to carry out quarterly updates of the registered project on the MahaRERA website.

Therefore, it was felt necessary to lay down a standard operating procedure (SOP) which shall be followed for updating registered projects and correcting information with respect to registered projects and registered real estate agents.

This SOP shall be followed with immediate effect.

The software application for updating the details of project, in the MahaRERA portal, has gone live last week. As per MahaRERA Order vide MahaRERA / Secretary/Order/15/2017 dated 17th April 2017, annual fees of Rs.500 shall be levied on promoters for online project update facility. This fee shall be valid for one year from the date of fees payment.

As a first step towards updating the project details, the promoters will have to use their login ids that they used for registering their projects and pay the annual fees. Post successful payment, the project update facility shall become active. The details of fields which shall be editable are provided in Annexure 'A'.

The promoter should ensure that project details are updated on regular basis, as and when there are updates and at least once in ninety days. The website shall contain a field on "Project Last Updated on" for public view. If it is brought to notice of MahaRERA, that data has not been updated for more than 90 days, in spite of progress in project, then necessary action, as deemed necessary, shall be taken by MahaRERA.

The original Application submitted by the promoter shall also be available on the website for stakeholder's reference.

The documents once uploaded by the promoter, during registration or project update, cannot be deleted. However, promoters can add additional documents in each of these upload sections.

For Revision / Correction in the digitally signed certificate of registration and for revising/correcting fields which were not provided in Project Update, the promoter shall have to make a separate request for Revision /Correction through the MahaRERA portal. Even Real Estate Agents can make such a request for revision / correction of their digitally signed certificate through the MahaRERA portal. This software application will be available from 1st of September 2017 and a fee of Rs. 5000/- plus taxes will be applicable for this purpose. The details of fields which shall be editable by the promoters themselves and those that can be requested to MahaRERA for revision / correction, are detailed in Annexure A for Real Estate Projects and Annexure 'B' for Real Estate Agents.

By the approval of Chairperson/ MahaRERA

(Dr. Vasant Prabhu)
Secretary MahaRERA

Annexure 'A' (REAL ESTATE PROJECTS)

FIELD	Project Update by Promoters	Request for Revision/ Correction
Promoter Details		
Name		Yes
PAN Number		Yes
Organization Type		Yes
Description For Other Type Organization		Yes
Do You have any Past Experience?		Yes
Promoter's Office Address Details		
Block Number	Yes	
Building Name	Yes	
Street Name	Yes	
Locality	Yes	
Land Mark	Yes	
State	Yes	
Division	Yes	
District	Yes	
Taluka	Yes	
Village	Yes	
Pin Code	Yes	
Organization Contact Details		
Name of Contact Person	Yes	
Designation of Contact Person	Yes	
Mobile Number	Yes	
Office Number	Yes	
Fax Number	Yes	
Email ID	Yes	
Secondary Mobile Number	Yes	
Website URL	Yes	
Past Experience Details		
Project Name	Yes	
Type of Project	Yes	
Others	Yes	
Land Area(In Sqmtrs)	Yes	

Address	Yes	
Total Cost	Yes	
Plot Bearing No/CTS No/Survey No/Final Plot No.	Yes	
Number of Buildings/Plot	Yes	
Number of Apartments	Yes	
Original Proposed Date of Completion	Yes	
Actual Date of Completion	Yes	
Member Information		
Members Name	Yes	
Designation	Yes	
PAN No	Yes	
VIEW	Yes	
Document Name		
PAN Card	Yes	
Copy of legal title report	Yes	
Details of encumbrances	Yes	
Copy of Layout Approval(In case of layout)	Yes	
Proforma of the allotment letter and agreement for sale	Yes	
Declaration in FORM B	Yes	
Certificates of Architect (Form 1) (Mandatory for only ongoing project)Yes		
Certificates of Architect(Form 4)Yes		
Certificates of CA (Form 3)Yes		
Certificates of CA (Form 5)Yes		
Certificates of Engineer (Form 2) (Mandatory for only ongoing project)	Yes	
Commencement Certificates	Yes	
Commencement Certificates	Yes	
Building Plan Approval (IOD)	Yes	
Project		
Project Name		Yes
Project Status		Yes
Proposed Date of Completion		Yes
Revised Proposed Date of Completion		Yes
Litigations related to the project?	Yes	

Project Type		Yes
Are there any Co-Promoters (as defined by MahaRERA Order) in the project?	Yes	
Plot Bearing No/CTS No/Survey No/Final Plot No		Yes
Boundaries East	Yes	
Boundaries West	Yes	
Boundaries North	Yes	
Boundaries South	Yes	
State	Yes	
Division	Yes	
District	Yes	
Pin code	Yes	
Area (In Sqmtrs)		Yes
Total Building Count		
Sanctioned Buildings Count	Yes	
Proposed But Not Sanctioned Buildings Count	Yes	
Aggregate area(in sqmtrs) of recreational open space	Yes \$	Yes &
FSI Details		
Built-up-Area as per Proposed FSI (In Sqmts) (Proposed but not sanctioned) (As soon as approved, should be immediately updated in Approved FSI)	Yes *	Yes #
Built-up-Area as per Approved FSI (In sqmts)	Yes *	Yes #
Total FSI	Yes *	Yes #
Bank Details		
Bank Name	Yes	
Bank A/c Number	Yes	
IFSC Code	Yes	
Branch Name	Yes	
Bank Address	Yes	
Co-Promoter Details		
Promoter Name	Yes	
Promoter Type	Yes	
Block Number	Yes	
Building Name	Yes	
Street Name	Yes	
Locality	Yes	

Landmark	Yes	
State	Yes	
Division	Yes	
District	Yes	
Taluka	Yes	
Village	Yes	
PIN	Yes	
Name of the contact person	Yes	
Contact designation	Yes	
Mobile Number	Yes	
Office Number	Yes	
Fax number	Yes	
Email Id	Yes	
Type of Co-promoter	Yes	
Bank name	Yes	
Branch name	Yes	
IFSC Code	Yes	
Bank A/c number	Yes	
Bank Address	Yes	
Documents		
Agreement/MOU	Yes	
Declaration in FORM B	Yes	
Building Details		
Project name	Yes	
Name	Yes	
Number of Basements	Yes	
Number of Plinth	Yes	
Number of Podiums	Yes	
Number of slab of Super Structure	Yes	
Number of Stilts	Yes	
Number of Open Parking	Yes	
Number of Closed Parking	Yes	
Apartment Type	Yes	
Carpet Area(In sq. mts)	Yes	
Number of Apartment	Yes	
Number of Booked Apartment	Yes	

Tasks/Activity		
Excavation X number of Basement(s) and Plinth X number of podiums Stilt Floor X number of slabs of Super Structure Internal walls, Internal Plaster, Floorings within Flats/Premises, Doors and Windows to each of the Flat/Premises Sanitary Fittings within the Flat/Premises, Electrical Fittings within the Flat/Premises Staircases, Lifts Wells and Lobbies at each Floor level connecting Staircases and Lifts, Overhead and Underground water Tanks. The external plumbing and external plaster, elevation, completion of terraces with waterproofing of the Building/Wing Installation of lifts, water pumps, Fire Fighting Fittings and Equipment as per CFO NOC, Electrical Fittings to Common Areas, electro, mechanical equipment, Compliance to conditions of environment/CRZ NOC, Finishing to entrance lobby/s, plinth protection, paving of areas appurtenant to Building/Wing, Compound Wall and all other requirements as may be required to obtain Occupation/Completion Certificate	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	
Development Work		
Common areas and Facilities, Amenities Internal Roads& Footpaths: Water supply: Sewerage (Chamber, Lines, Septic Tank, STP): Storm Water Drains: Landscaping & Tree Planting: Street Lighting: Community Buildings: Treatment and Disposal of Sewage and Sullage Water: Solid Waste Management and Disposal: Water conservation, Rain water Harvesting: Energy Management:	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	

Fire Protection and Fire Safety Requirements:	Yes	
Electrical Meter Room, Sub-Station, Receiving Station:	Yes	
Aggregate area of recreational Open Space	Yes	
Open Parking:	Yes	
Available	Yes	
Percent	Yes	
Details	Yes	
Project Professional Information		
Professional Name	Yes	
Aadhar Number	Yes	
Professional Type	Yes	
Contact	Yes	
Sddress	Yes	
Litigation Details		
Name of the court	Yes	
Type of case	Yes	
Petition	Yes	
Case Number	Yes	
Year	Yes	
Whether any Interim/Preventive/ Injunction order passed	Yes	
Present Status	Yes	
Cost Details		
Incurred Cost		
Land Cost:	Yes	
Acquisition Cost of Land or Development Rights, lease Premium, lease rent, interest cost incurred or payable on Land Cost and legal cost	Yes	
Amount of Premium payable to obtain development rights, FSI, additional FSI, fungible area, and any other incentive under DCR from Local Authority or State Government or any Statutory Authority	Yes	
Acquisition Cost of TDR (If Any)	Yes	
Amounts payable to State Government or competent authority of the State or Central Government, towards stamp duty, transfer charges,	Yes	

registration fees etc; and		
Land Premium payable as per annual statement of rates(ASR) for redevelopment of land owned by public authorities	Yes	
Estimated construction cost of rehab building site development and infrastructure for the same as certified by Engineer. Actual Cost of construction of rehab building incurred as per the books of accounts as verified by the CA	Yes	
Cost towards clearance of land of all or any encumbrances including cost of removal of legal/illegal occupants, cost for providing temporary transit accommodation or rent in lieu of Transit Accommodation, overhead cost	Yes	
Cost of ASR linked premium, fees, charges and security deposits or maintenance deposit, or any amount whatsoever payable to any authorities towards and in project of rehabilitation	Yes	
Development Cost/Cost of Construction		
Estimated Cost of Construction as certified by the Engineer	Yes	
Actual Cost of construction incurred as per the books of accounts as verified by the CA minimum of (i) and (ii) has to be considered.	Yes	
On-site expenditure for development of entire project excluding cost of construction as per (a) above, i.e. salaries, consultants fees, site overheads development works, cost of services (including water, electricity, sewerage), cost of machineries and equipment including its hire and maintenance costs, consumables, etc. All costs directly incurred to complete the construction of the entire phase of the project registered	Yes	
Payment of taxes, cess, fees, charges, premiums, interest, etc. to any Statutory Authority	Yes	
Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction	Yes	

Estimated Cost		
Land Cost:		
Acquisition Cost of Land or Development Rights, Lease Premium, lease rent, interest cost incurred or payable on land cost and legal cost		Yes
Amount of Premium payable to obtain development rights, FSI, additional FSI, fungible area, and any other incentive under DCR from Local Authority or State Government or any Statutory Authority		Yes
Acquisition cost of TDR (if any)		Yes
Amounts payable to State Government or competent authority or any other statutory authority of the State or Central Government, towards stamp duty, transfer charges, registration fees etc; and		Yes
Land Premium payable as per annual statement of rates (ASR) for redevelopment of land owned by public authorities		Yes
Estimated construction cost of rehab building including site development and infrastructure for the same as certified by Engineer. Actual cost of construction of rehab building incurred as per the books of accounts as verified by the CA		Yes
Cost towards clearance of land of all or any encumbrances including cost of removal of legal/illegal occupants, cost for providing temporary transit accommodation or rent in lieu of Transit Accommodation, overhead cost		Yes
Cost of ASR linked premium, fees, charges and security deposits or maintenance deposit, or any amount whatsoever payable to any authorities towards and in project of rehabilitation		Yes
Development Cost/Cost of Construction		
Estimated Cost of Construction as certified by Engineer		Yes
Actual cost of construction incurred as per the books of accounts as verified by the C.A minimum of (i) and (ii) has to be considered		Yes
On-site expenditure for development of entire project excluding cost of construction as per (a) above, i.e. salaries, consultant fees, site overheads development works, cost of services (including water, electricity,		Yes

sewerage), cost of machineries and equipment including its hire and maintenance costs, consumables etc. All costs directly incurred to complete the construction of the entire phase of the project registered.		
Payment of Taxes, cess, fees, charges, premiums, interest, etc. to any statutory Authority		Yes
Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction		Yes
Revision in Certificate		Yes

* - Can be decreased but cannot be increased

- Can be increased only through application for revision

@ - Co-PromoterDetails cannot be deleted but new Co-Promoters can be added

\$ - Can be increased but cannot be decreased

& - Can be decreased only through application for revision

Annexure 'B' (REAL ESTATE AGENTS)

<u>Individual</u>	
Field	Request for Revision/Correction
First Name	Yes
Middle Name	Yes
Last Name	Yes
Father Full Name	Yes
Address For Official Communication	
Division	Yes
District	Yes
Taluka	Yes
Village	Yes
Pin Code	Yes
<u>Organization</u>	
Name	Yes
Address Details	
District	Yes
Taluka	Yes
Village	Yes
Pin Code	Yes

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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No. MahaRERA/Secy/File No.27/143/2017

Date: July 24, 2017

Circular No: 09/2017

Subject: Standard Operating Procedure (S O P) for handling complaints

Whereas, the Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under section 25 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

Whereas, Rule 6 of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal, etc.) Rules, 2017 read with Section 31 of RERA details the manner of filing complaints with MahaRERA and the manner of holding an enquiry by MahaRERA.

Therefore, it was felt necessary to lay down a standard operating procedure (SOP) for handling the complaints filed with MahaRERA.

This SOP shall be followed with immediate effect.

Standard Operating Procedure (SOP) for handling complaints against registered projects is annexed to this Circular as Part A and for Source Information on projects, which ought to have been registered but have not registered, is annexed as Part B.

PART A**Standard Operating Procedure (S O P) for handling complaints against registered projects:-**

Steps	Description	Details
Step 1	Complainant files complaint online through MahaRERA portal https://maharera.mahaonline.gov.in /Login/Login	Complaints can only be filed against registered projects by aggrieved persons having interest in the said registered project
Step 2	Once complaint is received online, it is assigned automatically by the software to Chairperson, Member 1 and Member 2 respectively	Chairperson, Member 1 and Member 2 shall each be assigned a legal officer. Incase if a person seeks compensation, then as per sections 12,14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016, the case can be transferred to the adjudicating officer for hearing - if there are numerous complaints based on same facts and for the same relief received against the same promoter, then these complaints can be clubbed and assigned to any one bench for hearing.
Step 3	An email will be sent to the complainant notifying him/her about receipt of his/her complaint	The draft email is enclosed as Annexure 1. Along with the email, checklist (Annexure 2) shall also be sent to complainant.
Step 4	Complainant shall submit one hard copy of documents to the concerned MahaRERA office (Mumbai, Nagpur or Pune) along with declaration that copy of the Complaint has been duly served upon the respondent, within 45 days of filing of online complaint	The complaint shall be deemed to be received, only after these documents are received from the complainant. The authority shall endeavor to hear and dispose of the complaint within 60 days thereafter
Step 5	Complaint-related documents (hard copies) will be received on the 2nd floor of MahaRERA Mumbai office. Locations for Nagpur and Pune office to be decided in due course	The documents required to be submitted, along with the checklist, will be verified by the concerned receiving clerk. The person who accepts the documents shall put up the same before Legal Advisor, MahaRERA for further assignment.

Step 6	First hearing date will be scheduled and communicated to the parties (complainant and respondent) by legal wing of MahaRERA	- Notice of hearing to parties (complainant and respondent) shall be issued. (Annexure 4) - Hearings shall be scheduled with staggered timings, starting from 10:30 am.
Step 7	After hearing, Ruling of the authority shall be uploaded and mailed to the parties	- the orders shall be uploaded online against the respective registered projects
Step 8	In case, hearing is adjourned, step 6 and 7 shall be repeated	

Part B

Source Information on projects, which ought to have been registered but have not been registered:-

For project, which ought to be registered but have not been registered, the Authority shall request information from citizens in the following manner:

- Citizens shall be requested to email, details of the said projects to MahaRERA email id:sourcedetails@maharera.mahaonline.gov.in
 - Information shall be requested in Format as in Annexure 5
 - On the basis of information received, Authority shall undertake necessary action

By the Approval of Chairperson/MahaRERA

Sd/-
(Dr. Vasant Prabhu)
Secretary/MahaRERA

Annexure 1 : Acknowledgement of Complaint

No. Office of
Maharashtra Real Estate Regulatory Authority
Date:

To

Subject:- Your complaint no.....dated

Sir/ Madam

With reference to above subject, you are hereby informed that your aforesaid complaint dated..... against.....is registered by this authority vide Complaint No..... You are requested to serve copy/copies of complaint along with all documents to each Respondent individually through Registered Post Acknowledgement Due (RPAD)/ Speed Post and to submit one set of hard copies along with your declaration stating that the copy / copies of Complaint has been duly served upon the Respondent/Respondents, within forty-five days from the date of receipt of this letter. Kindly ensure the required compliances as per the attached checklist. On receipt of hard copies and declaration in respect of service of your Complaint, the matter will be listed for hearing before the Hon'ble Maharashtra Real Estate Regulatory Authority.

You are requested to submit the hard copies along with your declaration in respect of service to Respondent in the office of MahaRERA at _____

Please note that the stipulated period of sixty days for disposal of complaint will start from the date on which you will submit the hard copies of complaint along with declaration of service in our office. When matter will be listed for hearing the scheduled date of hearing will be communicated to you through E-mail.

Please note that, in the event of your failure to comply with the aforesaid directions, the complaint will be up before the Hon'ble Authority for appropriate order.

Yours faithfully,
Legal Advisor,
MahaRERA

Note: Please ensure that along with hard copies of complaint the list of documents is duly enclosed and the copies of documents submitted by you are legible.

Annexure 2: Checklist for Complainant

Date:

Kindly ensure the following compliances:

- 1) 1 Hard copy with index for the documents attached
- 2) Declaration in respect of due service to the respondent in attached format in Annexure 3
- 3) Copies are legible and appropriately paged
- 4) Each page of complaint and enclosures bears signature of the Complainant
- 5) If complaint is filed through advocate, then the vakalatnama should bear appropriate court fees stamp and it should be duly signed with address and contact information
- 6) All the documents enclosed to the complaint should be self-certified Xerox copies

Note: You are requested to note that checklist is provided for your convenience. You should enclose all the required documents so as to enable the Authority to hear the complaint expeditiously.

Annexure 3**DECLARATION**

I, _____ the complainant in Complaint bearing No: _____ do hereby state and declare that I have served the copy/copies of complaint along with all annexures to the Respondent/Respondents to the Complaint.

Hence this declaration

Complainant

Annexure 4 : Notice of Hearing

No. Office of Maharashtra Real Estate
Regulatory Authority

Date:

To,
(All Respondents and Complainants)
.....

Sub: Complaint No..... filed by Shri / Smt.....

Sir/Madam,

Whereas the Complainant/s above named has/have filed the complaint against respondents for the relief prayed therein. The Complainant/s has / have submitted the declaration dated.....to this office stating that the copy of complaint has been duly served upon respondents.

You are hereby requested to remain present either in person/ authorized representative/ Advocate.....in.....the.....office of.....on.....at.....for hearing along with your detailed reply.

Please note that on your failure to remain present for the hearing on the date and time mentioned hereinabove, the matter will proceed further and appreciate decision will be taken by the Authority on the basis of available documents and evidence on record.

Yours faithfully,

Legal Advisor
MahaRERA

Annexure 5:**Request for source information with respect to un-registered project.**

Citizens are requested to forward information on un-registered project which ought to have not registered to following email id: **sourcedetails@maharera.mahaonline.gov.in.**

You are kindly requested to provide as much information as possible, enabling MahaRERA to take appropriate measures in expeditious manner. Your support in this matter will be highly appreciated.

Citizens are requested to provide following details, as far as possible:

Details:

- 1) Name of the Promoter:
- 2) Contact details (Mobile Number/ email-id):
- 3) Name of Project:
- 4) Address of the Project:
- 5) Whether the building is occupied by allottees: Yes/No
- 6) Facts of the case:
- 7) Supporting Documents for proof of contravention.

Kindly note, your personal details shall not be disclosed to anyone and your identity shall be confidential.

Thanking you for your support.

Legal Advisor
MahaRERA



NAREDCO

Profile & Structure

Currently the Hon'ble Minister of State for Housing & Urban Affairs Govt. of India **Shri Hardeep Singh Puri ji** is the Chief Patron of NAREDCO.

NAREDCO has representation from public & private sector development companies, banks and professionals engaged in real estate development and finance, across the country. HUDCO, NHB, DDA, NBCC, HDFC, LIC and SBI are amongst its founder members

The governing Council of NAREDCO is comprised of five representatives from the government and one representative from the housing and real estate industry, each having been nominated by the Chief Patron on the Governing council Board of NAREDCO.

AIMS & OBJECTIVES

Important aims and objectives of NAREDCO are:

- i) To promote and encourage co-ordination and co-operation among all enterprises dealing with and engaged in various aspects of real estate development.
- ii) To promote and protect the interests of Members through appropriate measures conducive to the orderly and healthy growth of real estate development and allied activities.
- iii) To collect, collate and disseminate information and knowledge for the benefit of all interests engaged in the real estate business and allied activities, comprising enterprises of all scales, large, medium and small.
- iv) To encourage and conduct research for improvement of technology in relation to all aspects of real estate operations, and to encourage and promote utilisation of improved technology and materials.

- v) To promote excellence and high standards of operations based on just and equitable principles in transactions relating to various operations of real estate business.
- vi) To evolve criteria of real estate and construction industry and its various allied operations, and to formulate a Code of Ethics for observance by all real estate developers, builders and marketing operators, and to evolve a suitable ombudsman mechanism for investigating departures therefrom.
- vii) To render expert advice to Members on statutes and regulations relating to various aspects of real estate development.
- viii) To set up National Institute of Real Estate Development (NIRED) as a centre for studies and research.
- ix) To conduct high quality educational programmes and courses as well as training and research programmes in various disciplines of real estate.
- x) To establish data bank.
- xi) To organise meetings, symposia, workshops, seminars and conferences on issues relating to real estate, building construction and allied activities.
- xii) To promote and assist interaction with international bodies, to facilitate international exchange of information, and to maintain contact with international and other funding agencies for securing assistance wherever required.