

**Real Estate
(Regulation and Development)
Act, 2016
(RERA)**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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ICSI House, 22, Institutional Area, Lodi Road
New Delhi - 110 003

Phones : 45341000, 41504444 o Fax : 24626727

E-mail : info@icsi.edu; Website : www.icsi.edu

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PREFACE

Over the past decades, India has emerged as one of the few world economies with a combination of healthy economic perspective and successive growth at global platform, amidst the mood of cynicism and reservations of emerging economies. It is widely accepted that India is on its road to global growth and emerging as a prospective world leader registering sustainable development to all.

In a bid to ensure sustainable growth and development of the nation along with the welfare of entire populace the Government has directed thoughtful focus on each and every driver contributing to the growth of Indian economy. This perspective is well reflected in various government initiatives, such as, various economic reforms, legal transformations, implementing structural changes, and focusing on fundamental growth of various sectors: small, micro, medium and large.

Real Estate Sector, which seems to be one of the major contributors in the inclusive growth of the nation with the contribution of 8.53% of total GDP and growth rate to the tune of 30% is also clutching the share of its regulatory attention. Significant performance of Real Estate Industry with the significant rights and liabilities involved in the transactions has fetched the government attention for proper policy and regulation of real estate sector. This led to a deep-seated legal transformation in the form of Real Estate (Regulation and Development) Act, 2016.

The structure of the law with focus on regulation as well as development of the real estate sector including the capping on realization, establishment of RERAs and specialized Appellate Tribunals, Registration with Regulatory Authorities, Internal Audit and Valuations has enhanced the role of professionals in ensuring effective, oriented and directed implementation of this law in the country.

With a view to advance the knowledge and to build the capacity of professionals, stakeholders, members of the industry, experts in the Real Estate (Regulation and Development) Act, 2016, the Institute published this Publication.

I commend the dedicated efforts put in by Mr. Chittaranjan Pal, Assistant Director, and CS Pankila Bhardwaj, Consultant (Professional Development, Perspective Planning & Studies) for in preparing the manuscript and finalizing the publication under the guidance of CS Sonia Baijal, Director, ICSI. I am also thankful to CS Manoj Agrawal, Group

Company Secretary, Shristi Infrastructure and CS (Dr.) Sanjeev Kumar, Executive Director, Bajaj Hindustan Sugar Limited for their value addition made to the publication.

I am sure that this publication would certainly facilitate the understanding of the professionals, members and students on various facts and facets of Real Estate (Regulation and Development) Act, 2016 and would enrich their knowledge on this new legislation.

Place : New Delhi
Date : 18 July, 2017

CS (Dr.) Shyam Agrawal
President
The Institute of Company Secretaries of India

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INTRODUCTION

Currently, more and more researches are being conducted in relation to the promotion of the sustainable development in several areas to alleviate the relevant problem. Since 'sustainability' and 'sustainable development' encompasses economic security and growth, environmental quality and integrity, social cohesion and quality of life, empowerment and governance, hence, the role of the real estate sector in the promotion of the sustainable development become predominant, because it involves one of the basic pursuit of life, viz, roti, kapda and makan and thus has major impact on the state of socio-economic status. Since Real estate is inseparable from human economy in its social form, and all plans of social reform must be directed toward an appropriate distribution of economic goods including housing and infrastructure. There exists a huge demand for housing and infrastructure in the Indian scene. For achieving the goal of 'Housing for All', we need to build millions of houses both in urban and rural areas. The urban housing shortage is estimated at 18.78 million in 2015. Total rural housing shortage in India stood at 14.8 million as of 2015 and is expected to grow to 48.8 million by the end of 2017. Demand for residential space in Low Income Group category remained 40% whereas supply was much behind at 22% i.e. a demand supply gap of 18%. Similarly, demand-supply gap in Middle Income Group and High Income Group categories stood at 20% and 2% respectively. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP).

Real estate, as a general term, describes the built environment, which plays a vital role in every aspect of an economy, society and environment. Businesses and society can't function without the services of commercial property, including the provision of offices, shops, factories, malls and many other forms of real estate. The commercial property sector delivers and manages the infrastructure needed for entrepreneurship to thrive. It is therefore a fundamental source of employment and economic growth, and a major contributor in addressing two critical challenges of our time: providing liveable and functioning cities for a growing urban population and reducing the environmental footprint of the built environment.

The real estate has a catalytic role in fulfilling the demand for housing for the various socio-economic classes. Equally important is need to provide the back up infrastructure covering utility services such as water supply, sewerage, drainage, roads and transport requirements as well as social infrastructure like schools, health and recreation facilities, commercial infrastructure like markets/malls, office complexes, technology parks etc. The cumulative effect of these demands places the onus on the real estate and construction sector, providing an excellent opportunity for conferring social benefits which could act as a major vehicle for kick-starting the economy.

IBEF Report (2016) estimates that India's real estate sector's market size is expected to grow upto USD180 billion by 2020 from USD93.8 billion in 2014, that reflects an increase of 1.92 times. It is further estimated to be worth USD853 billion by 2028. Further, real estate sector is the fourth largest sector in terms of FDI inflows which is estimated to grow to USD25 billion by FY22. The number of Indians living in urban areas are increasing rapidly and are expected to be about 600 million in 2031.

The Indian economy experienced robust growth in the past decade and is expected to be one of the fastest growing economies in the coming years. It has also been estimated that real estate contribution to India's GDP is estimated to increase to about 13 per cent by 2028. Increasing share of real estate in the GDP would be supported by increasing industrial activity, improving income level, and urbanisation. The growth of real estate sector is not only driven by growing economy but policy support from government as well. For instance, Government plans to build 100 smart cities which would reduce the migration of people to metro and other developed cities. Government initiatives such as various urban development policies and programmes (e.g., JNNURM, Land Acquisition Act, Affordable Housing, Ease in housing finances, Widening the scope of real estate market, change in FDI Regulation) are expected to contribute to enhanced urbanisation. Urbanisation and growing household incomes are driving demand for residential real estate and growth in the retail sector. India's urban population as a percentage of total population was around 32.4 per cent in 2016 and is expected to rise to 40 per cent by 2030. Industry players, including realtors and property analysts, are rooting for the creation of "Special Residential Zones" (SRZs), along the lines of SEZs.

* * *

REGULATORY FRAMEWORK – REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Real estate sector plays a catalytic role in fulfilling the needs and demand for housing and infrastructure in the country and is an important pillar of the economy. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. It has no sectoral regulator like there are for other specific sectors like insurance, telecom, stock markets etc. History is witness to the fact that whenever sectoral regulators like SEBI, IRDAI, TRAI etc have been formed, they have helped in deepening the market and made it more robust. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, since more than a decade the need for regulating the sector was being emphasised in various forums.

In view of the above, Parliament enacted the Real Estate (Regulation and Development) Act, 2016 which aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

This Act will be put in operation just like the Motor Vehicles Act passed by the Central Government, pursuant to which respective State Governments (“SG”) and Union Territories (“UT”) are required to notify their own Rules, which would be in the lines of the Central Act and accordingly administer their own State Rules. Accordingly, every SG and UT are to required to promulgate their own Real Estate Rules which would be based on the lines of the central Real Estate (Regulation and Development) Act 2016, and establish a Real Estate Regulatory Authority (“RERA”) pursuant to the Rules, which will administer the respective Real Estate Rules of the State or UT. State Governements and UTs were required to notify and enforce RERA by 1st May 2017, which was the deadline set by the the Central Government. But a few State Governements have missed the deadline of 1st May 2017. It is expected that most of the State Governments would meet the second deadline of 31st July 2017, by which the ongoing projects are to be registered with RERA.

The objects and reasons for which the Act has been framed are :

- 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

Chronology of events leading to regulation of real estate sector including both residential and commercial segments

<i>S.No</i>	<i>Date</i>	<i>Event</i>
1.	May, 2008	Ministry of HUPA first prepared a Concept Paper on regulation of real estate sector and a model law for legislation by States/UTs
2.	2011	Conference of Ministers of Housing suggested a central law for regulation of real estate sector
3.	July, 2011	Ministry of Law & Justice too suggested central legislation for regulation
4.	June, 2013	Union Cabinet approved Real Estate Bill, 2013
5.	August, 2013	Real Estate Bill was introduced in Rajya Sabha and was referred to Standing Committee Report of Standing Committee was laid on the Tables of both Houses of Parliament
6.	February, 2014	Report of Standing Committee was laid on the Tables of both Houses of Parliament
7.	February, 2014	Attorney General upheld validity of central law for regulation of the sector
8.	April, 2015	Union Cabinet approved official amendments based on recommendations of Standing Committee
9.	May, 2015	Matter referred to the Select Committee of Rajya Sabha
10.	July, 2015	Report of Select Committee tabled in Rajya Sabha
11.	December, 2015	Real Estate Bill, 2015 incorporating several modifications based on Select Committee report and stakeholder consultations was approved by the Union Cabinet
12.	10 March, 2016	The Real Estate (Regulation & Development) Bill, 2016 passed by Rajya Sabha

13.	15 March, 2016	Lok Sabha passed the Bill as passed by Rajya Sabha
14.	25 March, 2016	President gives assent to the Bill
15.	15 April, 2016	59 Sections of the Act were notified making them effective from May 1, 2016 enabling preparation of Real Estate Rules, setting up of Regulatory Authorities and other infrastructure
16.	28 October, 2016	Real Estate Removal of Difficulties Order
17.	19 April, 2017	Remaining 32 Sections of the Act notified making them effective from May 1st this year requiring registration of projects within three months from tomorrow
18.	1 May, 2017	New era begins for development of real estate sector in an atmosphere of investor confidence Different States and Union Territories have notified their rules on different dates and some of the States are yet to notify the rules. On the date of going into publication, the latest of the state to notify the rules was Karnataka. On 10th July 2017, they have notified "Karnataka Real Estate (Regulation and Development) Rules, 2017.

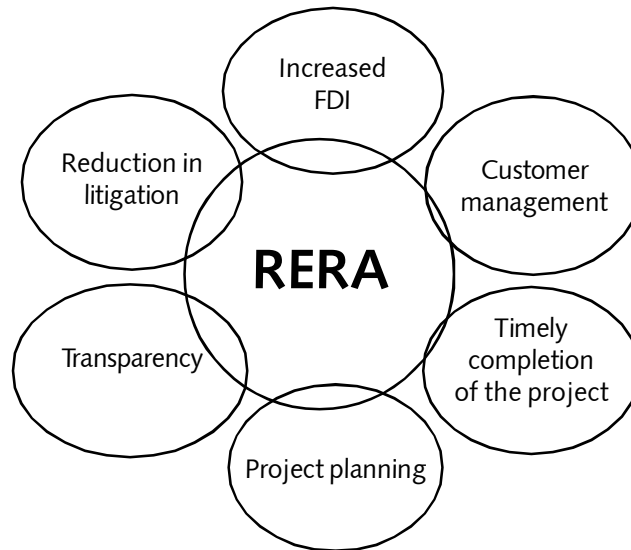
Salient Features of the Real Estate (Regulation and Development) Act, 2016

- Establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector
- Ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner
- Ensure protect the interest of consumers in the real estate sector
- 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 (RERA)
- Regulates transactions between buyers and promoters of residential real estate projects
- Establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs)
- Residential real estate projects, with some exceptions, need to be registered with RERAs
- Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs
- Registration, the promoter must upload details of the project on the website of

the RERA. These include the site and layout plan, and schedule for completion of the real estate project

- Amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount
- Right to Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioners
- Imposes stringent penalty on promoter, real estate agent and also prescribes imprisonment.

Advantages of RERA (Real Estate Development and Regulation Act)



RERA has brought in uniformity in definitions for important components of real estate, like, "carpet area", "common areas" etc which will prevent malpractices like changes in area, specifications etc. Some of the important definitions are reproduced below:

Important Definitions

"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;

"Agreement for sale" means an agreement entered into between the promoter and the allottee;

"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;

"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;

"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;

"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.— 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;

"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;

"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;

"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;

"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;

"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;

"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;

"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;

"Development works" means the external development works and internal development works on immovable property;

"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;

"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;

"Family" includes husband, wife, minor son and unmarried daughter wholly dependent on a person;

"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;

"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;

"Interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—

- (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;

"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;

"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;

"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;

"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;

"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;

"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.— 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 there under;

"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;

"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;

"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;

"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;

'Appropriate Government'

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.

Responsibilities of the appropriate Government

- (a) As per section 84 of the Act 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 of the Act 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 of the Act 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 of the Act 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 of the Act 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'.

* * *

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

Many developers across India follow a common practice of pre-launching a project without securing requisite approvals for the project from the local authorities, which is termed as “soft launch”, “pre-launch” etc. Buyers also lap into this opportunity as they get discounted prices during the pre-launches period. But if it is from a developer who is unscrupulous or a fly by night operator, then it carries a great risk. Hence, to plug this gap, registration of every project with the regulatory authority has been mandatory before it is launched for sale and for registration the basic pre-requisite is that the developer must have all the requisite approvals. Thus the buyer is protected as the project is ring-fenced from the vagaries of non-approvals or delays in approvals which are one of the major causes of delay for the project. The gist of relevant provisions for registration as ascribed in sections 3, 4 and 5 of the Act are stated below:

Prior Registration of Real Estate project with Real Estate Regulatory Authority

A promoter shall not 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 .

The 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.

Authority 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 there under, shall apply to such projects from that stage of registration 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.

Projects exempt from the ambit of the Act

The following projects do not require to be registered under the Act:

Area of land <u>does not exceed</u> 500 Sq. Meters
No. of apartments <u>does not exceed</u> 8
In case of Renovation/ Repair/Re-development

- (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;

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.

Application for Registration of real estate projects

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 specified by the regulations made by the Authority.

Step 1	Step 2	Step 3
Applicant has to file an application for registration with RERA in prescribed form along with prescribed fees and documents	Application for registration must be either approved or rejected within a period of 30 days from the date of application by the RERA	On successful registration, the promoter of the project will be provided with a registration number, a login id and password for the applicant

The promoter shall enclose the following documents along with the application, 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:

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. 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 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.

The promoter shall take all the pending approvals on time, from the competent authorities and furnished such other documents as may be prescribed by the rules or regulations made under.

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.

Granting of Registration by the Authority

On receipt of the application, the Authority shall within a period of thirty days-

- (a) grant registration subject to the provisions of the Act and the rules and regulations made thereunder. 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. Application shall not be rejected unless the applicant has been given an opportunity of being heard in the matter.

If the Authority fails to grant the registration or reject the application, as the case may be, 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.

The 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.

Extension of registration

Delay in handing over of projects by the developer within the stipulated time frame has been a major woe of the buyers and hence has been a major trigger for promulgation of this act. Hence, at the time of registration, a developer has to specify a time line during which he will complete and handover the project to the buyer. The timeline is very sacrosanct because if he fails to do so within the stated time, then there are rigorous provisions in the Act as prescribed in section 7 & 8 whereby his registration would be revoked and his project would be usurped by the Regulator. Though as per section 6, an extension of registration may be granted at the sole discretion of the regulator due to Force Majeure conditions or if there are reasonable circumstances which merit extension.

The registration granted may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority.

"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.

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.

Application for extension of registration shall not be rejected unless the applicant has been given an opportunity of being heard in the matter.

Revocation of registration

The Authority may, on receipt of a complaint or suomotu in this behalf or on the recommendation of the competent authority, revoke the registration granted, 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 there under;
- (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.

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.

The registration granted to the promoter 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.

The Authority may, instead of revoking the registration, 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.

The Authority, upon the revocation of the registration-

- 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;
- Facilitate the remaining development works to be carried out in accordance with the provisions of section 8;
- Direct the bank holding the project back account 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;

- To protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

Obligation of Authority consequent upon lapse of or on revocation of registration (Section 8)

Upon lapse of the registration or on revocation of the registration under the 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.

The direction, decision or order of the Authority shall not take effect until the expiry of the period of appeal provided under the provisions of the Act:

In case of revocation of registration of a project under the Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

Registration of real estate agents

Real estate broking is one of the easiest business in India as there are no specific qualification or experience requirements and also there is no code of practice which sets accountability, transparency and professional benchmarks. Hence, there are thousands of non-professional agents/ brokers in every city operating without any accountability. Hence, to bring in transparency and accountability, agents have also been covered under the ambit of RERA and registration requirement has been mandatory for them as per section 9 of the Act.

Without obtaining registration, real estate agent shall not 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, being sold by the promoter in any planning area.

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.

The Authority shall, within such period, in such manner and upon satisfying itself of the fulfilment 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 there under:

Application shall not be rejected unless the applicant has been given an opportunity of being heard in the matter.

Whereon the completion of the period prescribed under the act, 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.

Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made there under, 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.

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.

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 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 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.

Functions of real estate agents

Every real estate agent which is not registered with the Authority 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 in any planning area. So, firstly they require to register themselves with the authority.

Every real estate agent maintain and preserve such books of account, records and documents as may prescribed.

Every real estate agent 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—
 - falsely represents that the services are of a particular standard or grade;
 - represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - 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.

Every real estate agent shall 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 and discharge such other functions as may be prescribed.

FUNCTIONS AND DUTIES OF PROMOTER

The most important duty of the promoter which has been mandated by the Act is to provide complete details of the project so that a layman who does not even know the legal requirements is able to check the legal sanctity of the project. The promoter has also been debarred from advertising and selling his project until he has procured the requisite approvals from the authorities and got his project registered with RERA.

Functions and duties of promoter

The promoter shall, upon receiving his Login Id and password, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project 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.

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.

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.

The promoter shall—

- (a) be responsible for all obligations, responsibilities and functions under the provisions of the 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 therefore 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;

The promoter may cancel the allotment only in terms of the agreement for sale: However 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.

The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

Obligations of promoter regarding veracity of the advertisement or prospectus

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 the Act.

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 the Act.

No deposit or advance to be taken by promoter without first entering into agreement for sale

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.

The agreement for sale 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.

Adherence to sanctioned plans and project specifications by the promoter

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.

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:

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.

"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.

It may be noted that 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.

Structural Defect

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 the Act.

Obligations of promoter in case of transfer of a real estate project to a third party

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:

However 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.

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.

On the transfer or assignment being permitted by the allottees and the authority, the intending promoter shall be required to independently comply with all the pending obligations under the provisions of the 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:

Any transfer or assignment permitted 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.

Obligations of promoter regarding insurance of real estate project

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.

The promoter shall be liable to pay the premium and charges in respect of the insurance and shall pay the same before transferring the insurance to the association of the allottees.

The insurance 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. On formation of the association of the allottees, all documents relating to the insurance shall be handed over to the association of the allottees.

Transfer of title

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 or 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.

After obtaining the occupancy certificate and handing over physical possession to the allottees, it shall be the responsibility of the promoter to handover 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, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Return of amount and compensation

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.

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 subsection shall not be barred by limitation provided under any law for the time being in force.

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.

Functions and duties of promoter

Sl. No. Obligation/Duty/Section

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 in any planning area, without registering the real estate project with the Real Estate Regulatory Authority. **Section 3(1)**

 2. Every promoter shall make an application to the Authority for registration of the real estate project in prescribed form and manner. **Section 4(1)**

 3. The promoter shall enclose the prescribed documents along with the application. **Section 4(2)**

 4. The promoter shall also enclose a prescribed declaration along with application. **Section 4(2)(I)**

 5. The promoter shall keep 70% of the amount received from allottees in a separate bank account in a scheduled bank. **Section 4(2)(I)(D)**

 6. 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. **Section 4(2)(I)(D)**

 7. The promoter shall withdraw the amounts from the separate account after it is certified by an engineer, an architect and a chartered accountant in practice and the withdrawal is in proportion to the percentage of completion of the project. **Section 4(2)(I)(D)**

 8. The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice. **Section 4(2)(I)(D)**

 9. The promoter shall furnish a statement of accounts duly certified and signed by auditor verifying 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. **Section 4(2)(I)(D)**

 10. The promoter shall obtain 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. **Section 5(2)**

 11. The promoter shall file application for extension of registration in prescribed form and manner before the Authority if the project could not be completed within time due to force majeure. **Section 6**
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12. The promoter shall comply with anything required by or under the Act or the rules or the regulations. **Section 7(1)(a)**
-
13. The promoter shall not violate any of the terms or conditions of the approval given by the competent authority. **Section 7(1)(b)**
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14. The promoter shall not be involved in any kind of unfair practice or irregularities. **Section 7(1)(c)**
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15. The promoter shall respond to the Notice of Revocation, if any, issued by the Authority. **Section 7(2)**
-
16. The promoter shall follow any further terms and condition imposed by Authority permitting the registration to remain in force, instead of revoking the registration under Section 7(1). **Section 7(3)**
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17. The promoter shall follow the directions issued by the Authority upon revocation of registration, unless right of appeal is exercised. **Section 7(4)**
-
- 17A. The promoter shall use the services of only registered real estate agents for sale of apartment, plot or building of any registered project. **Section 9(1)**
-
18. The promoter shall create his web page on the website of the Authority and enter all the prescribed details of the proposed project in all the fields for public viewing. **Section 11(1)**
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19. The promoter shall mention prominently the website address of the Authority in all advertisements or prospectus issued or published. **Section 11(2)**
-
20. The promoter shall be responsible to make available to the allottee, all the prescribed information at the time of the booking and issue of allotment letter. **Section 11(3)**
-
21. The promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations. **Section 11(4)(a)**
-
22. The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority. **Section 11(4)(b)**
-
23. The promoter shall be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land. **Section 11(4)(c)**
-
24. The promoter shall be responsible for providing and maintaining the essential services, on reasonable charges. **Section 11(4)(d)**
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25. The promoter shall enable the formation of an association or society or co-operative society of the allottees. **Section 11(4)(e)**
-
26. The promoter shall execute a registered conveyance deed of the apartment, plot or building in favour of the allottee. **Section 11(4)(f)**
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27. The promoter shall execute a registered conveyance deed of the undivided proportionate title in the common areas to the association of allottees or competent authority. **Section 11(4)(f)**
-
28. The promoter shall pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees. **Section 11(4)(g)**
-
29. The promoter shall be liable for the cost of any legal proceedings which may be taken up by authority or person for recovery of outstanding outgoings, if not paid by the promoter. **Section 11(4)(g) Proviso**
-
30. The promoter shall not mortgage or create a charge on any apartment, plot or building after execution of an agreement for sale. **Section 11(4)(h)**
-
31. The promoter may cancel the allotment only in terms of the agreement for sale. **Section 11(5)**
-
32. The promoter shall prepare and maintain all details as may be specified, from time to time, by regulations made by the Authority. **Section 11(6)**
-
33. The promoter shall be liable to pay compensation to the allottee where he 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 and sustains any loss or damage by reason of any incorrect, false statement. **Section 12**
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34. The promoter shall enter into an agreement for sale and register the same before he accepts a sum more than ten per cent of the cost of the apartment, plot, or building. **Section 13(1)**
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35. The promoter shall ensure that the agreement for sale is in prescribed form and contain specified particulars. **Section 13(2)**
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36. The promoter shall develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. **Section 14(1)**
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37. The promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and

-
- amenities in any apartment, plot or building without the previous consent of the allottee(s) concerned. **Section 14(2)(i)**
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38. The promoter shall not make 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. **Section 14(2)(ii)**
-
39. The promoter shall be obliged to rectify without further charge, within thirty days, 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 brought to the notice by allottee within a period of five years from the date of handing over possession. **Section 14(3)**
-
40. The promoter shall be responsible to pay to the aggrieved allottees appropriate compensation in prescribed manner if he fails to rectify 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. **Section 14(3)**
-
41. 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 and without the prior written approval of the Authority. **Section 15(1)**
-
42. The promoter shall obtain all such insurances in respect of title and construction, as may be notified by the appropriate Government. **Section 16(1)**
-
43. The promoter shall be liable to pay the premium and charges in respect of the insurance. **Section 16(2)**
-
44. The promoter shall transfer all benefits of insurance to allottees and/or the association of allottees at the time of promoter entering into an agreement for sale with the allottee. **Section 16(3)**
-
45. The promoter shall hand over all documents relating to the insurance to the association of the allottees on its formation. **Section 16(4)**
-
46. The promoter shall execute a registered conveyance deed in favour of the allottee. **Section 17(1)**
-
47. The promoter shall execute a registered conveyance deed of undivided proportionate title in the common areas to the association of allottees or the competent authority. **Section 17(1)**
-
48. The promoter shall hand over the physical possession of the plot, apartment of building to the allottee. **Section 17(1)**
-

49. The promoter shall handover or physical possession of the common areas to the association of allottees or the competent authority. **Section 17(1)**
-
50. The promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority. **Section 17(2)**
-
51. The promoter shall on demand by the allottees, return the amount received by in respect of that apartment, plot, building with interest and compensation. **Section 18(1)**
-
52. The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land. **Section 18(2)**
-
53. The promoter shall be liable to pay compensation if he fails to discharge any other obligations imposed on him under this Act or the rules or regulations. **Section 18(3)**
-
54. The promoter shall be obliged to furnish in writing such information or explanation relating to its Affairs, as the Authority may require from time to time. **Section 35(1)**
-
55. The promoter shall be responsible to comply with any directions issued by the Authority unless he makes an appeal against such directions. **Section 37**
-
56. The promoter shall be liable to pay penalty or interest imposed by the Authority unless he makes an appeal. **Section 38(1)**
-
57. The promoter shall be shall be liable to a penalty, which may extend up to ten per cent. of the estimated cost of the real estate project, if he contravenes provisions of section 3. **Section 59(1)**
-
58. The promoter shall be liable to be punished 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 if he does not comply with the orders, decisions or directions issued under Section 3(1). **Section 59(2)**
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59. The promoter shall be liable to a penalty, which may extend up to five per cent of the estimated cost of the real estate project, if he provides false information or contravenes the provisions of Section 4. **Section 60**
-
60. The promoter shall be shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project, if he contravenes any other provisions of this Act. **Section 61**
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61. The promoter 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, if any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority. **Section 63**

62. The promoter 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 if any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal. **Section 64**

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RIGHTS AND DUTIES OF ALLOTTEES

Though the Act is pro-consumer, yet it has struck a balance by specifying the duties of the Allottees. Allottees who do not pay their instalments, maintenance dues in time will also be subjected to the rigours of this act.

Rights and duties of allottees

Section 20 provides for the various rights and duties of the allottees.

- (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 the 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.
- (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 the 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 the 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, 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.

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- (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.

THE REAL ESTATE REGULATORY AUTHORITY

As stated earlier, though this sector has seen unprecedented growth since Independence, it has remained unregulated till now. We have witnessed that whenever a regulator is appointed for a sector, like SEBI, IRDAI, TRAI etc, it widens the sectors. Accordingly, this act mandates that RERA would be established by each of the State and UT for administering the real estate sector in the respective State/UT. A state can have more than one RERA or two states can have the same authority. All States and UTs were to appoint RERA by 1st May 2017 but few States have missed the deadline but it is expected that will appoint RERA in their respective states by 31st July 2017 as it is the last date by which the ongoing projects have to be registered by the developer with RERA.

Establishment and incorporation of Real Estate Regulatory Authority

The appropriate Government shall 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 the Act.

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority. Further, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be.

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 the Act. 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.

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 the 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.

Composition of Authority

The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

Qualifications of Chairperson and Members of Authority

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:

It may be noted 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. Further, 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.

Term of office of Chairperson and Members

- (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.

Salary and allowances payable to Chairperson and Members

- (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) 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.

Administrative powers of Chairperson

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.

Removal of Chairperson and Members from office in certain circumstances

Section 26 deals with Removal of Chairperson and Members from office in certain circumstances. Sub-section(1) states that 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 sub-section (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.

Restrictions on Chairperson or Members on employment after cessation of office

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:

However 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 the 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.

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.

Officers and other employees of Authority

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 the Act who would discharge their functions under the general superintendence of the Chairperson.

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 shall be such as may be prescribed.

Meetings of Authority

- (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:

However 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.

Filing of complaints with the Authority or the adjudicating officer

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 the Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

It may be noted that "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

Functions of Authority for promotion of real estate sector

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,—

- protection of interest of the allottees, promoter and real estate agent;

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- creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
 - creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
 - measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
 - measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;
 - measures to encourage grading of projects on various parameters of development including grading of promoters;
 - 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;
 - measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
 - to render advice to the appropriate Government in matters relating to the development of real estate sector;
 - any other issue that the Authority may think necessary for the promotion of the real estate sector.

Advocacy and awareness measures

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.

The opinion given by the Authority shall not be binding upon the appropriate Government in formulating such policy or laws.

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.

Functions of Authority

The functions of the Authority shall include—

- to register and regulate real estate projects and real estate agents registered under the Act;
- 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;

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- 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;
 - 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;
 - 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;
 - 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;
 - to ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act;
 - 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 the Act.

Powers of Authority to call for information, conduct investigation

Where the Authority considers it expedient to do so, on a complaint or suomotu, relating to the 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.

Notwithstanding anything contained in any other law for the time being in force, while exercising the powers, 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.

Power to issue interim orders

Where during an inquiry, the Authority is satisfied that an act in contravention of the

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.

Powers of Authority to issue directions

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.

Powers of Authority

- (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 suo motu, make reference in respect of such issue to the Competition Commission of India.

Rectification of orders

The Authority may, at any time within a period of two years from the date of the order made under the 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.

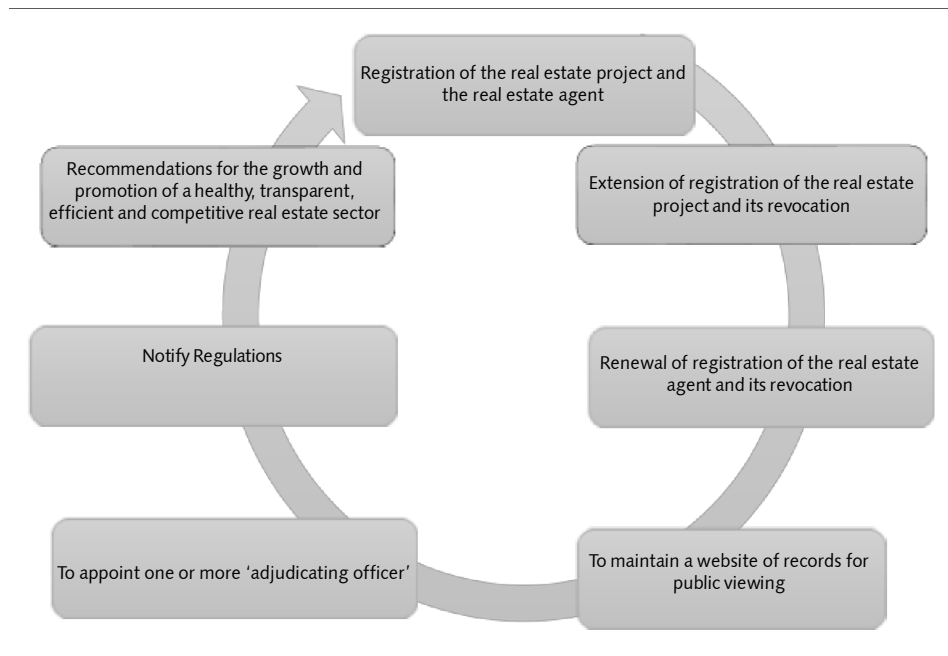
It may be noted that no such amendment shall be made in respect of any order against which an appeal has been preferred under the Act:

Recovery of interest or penalty or compensation and enforcement of order, etc.

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 arrear of land revenue.

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.

Responsibilities of the 'Regulatory Authority'



CENTRAL ADVISORY COUNCIL

Establishment of Central Advisory Council

- (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.

Functions of 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.

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THE REAL ESTATE APPELLATE TRIBUNAL

Real Estate Appellate Tribunal (REAT) is to be formed by appropriate government to ensure faster resolution of disputes. Parties aggrieved by the RERA order can appeal before REAT and REAT has to adjudicate such cases within 60 days. Civil Courts have been prevented from exercising jurisdiction on such matters. If any of the parties is not satisfied with the REAT order they can file an appeal against the REAT order to the High Court within 60 days.

Establishment of Real Estate Appellate Tribunal

- (1) The appropriate Government shall, 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.
- (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

It may be noted 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.

"Person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

Application for settlement of disputes and appeals to Appellate Tribunal

Section 44 of the Act deals with Application for settlement of disputes and appeals to Appellate Tribunal. It provides that:

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.

Every appeal made to the Appellate Tribunal 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.

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.

On receipt of an appeal, the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

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.

The appeal 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.

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 disposing of such appeal and make such orders as it thinks fit.

Composition of Appellate Tribunal

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

Qualifications for appointment of Chairperson and Members

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.

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.

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.

Term of office of Chairperson and Members

- (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:

It may be noted 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.

However 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.

Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office

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 the 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.

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.

Powers of Tribunal

- (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.

Right to legal representation

Section 56 deals with Right to legal representation. It provides that

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.

Orders passed by Appellate Tribunal to be executable as a decree

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.

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.

Appeal to High Court

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.

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.

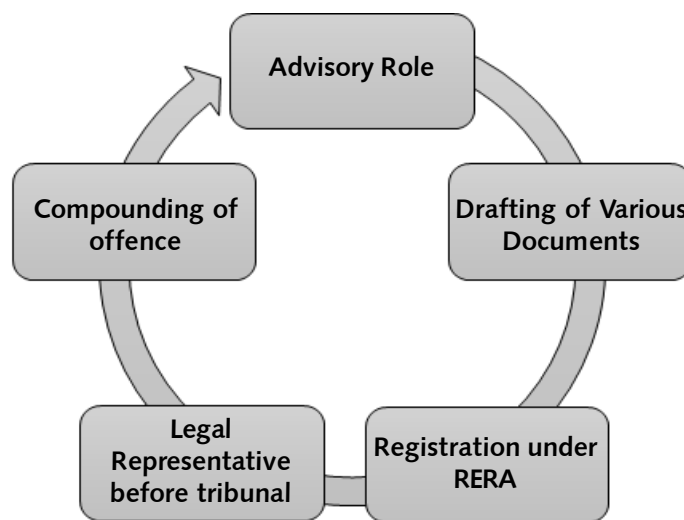
Explanation.— "High Court" means the High Court of a State or Union territory where the real estate project is situated.

No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Real Estate Regulatory Authority and Appellate Tribunal

- 
- **Real Estate Regulatory Authority regulate transactions related to both residential and commercial projects**
 - **Appellate Tribunals be required to adjudicate cases in 60 days**
 - **Regulatory Authorities has to dispose of complaints in 60 days**

ROLE OF COMPANY SECRETARIES



India is witnessing a phenomenal growth and expansion in the corporate sector. The growing demand for specialists in almost every sphere of the corporate functions has led to emergence of professionals who can perform specialized skills with near perfection in their respective fields. A company secretary is one such professional who is responsible for efficient management of the corporate sector. He ensures compliance of various company legislations and advises directors on statutory requirements of the company. Apart from carrying out these functions, he also looks after finance, accounts, legal, secretarial, personnel and administrative functions in private as well as public sectors.

The Companies Act, 2013 confers a special status to Company Secretary as the key managerial personnel and has bracketed him along with Managing Director (MD) or Chief Executive Officer (CEO) or Manager, Whole-time director(s) or Chief Financial Officer (CFO). Every listed company and every other public company having a paid up share capital of ten crore rupees or more has to appoint a whole time Key Managerial Personnel. Whole time Company Secretary is also required to be appointed in other companies which have a paid up share capital of five crore rupees or more.

Almost every kind of organization whose affairs are conducted by boards, councils or other corporate structures, be it a company, trust, association, federation, authority, commission or the like find it useful to appoint a person who holds the qualification of Company Secretaryship in key administrative position. Practising Company Secretaries have been authorized to issue Certificate regarding compliance of conditions of Corporate

Governance. Practising Company Secretaries have also been recognized to appear before various Tribunals such as NCLT, NCLAT, Securities Appellate Tribunal, Competition Commission of India, Telecom Disputes Settlement and Appellate Tribunal, Consumer Forums, Tax Tribunals etc. Reserve Bank of India has also recognized the Practising Company Secretaries to undertake Diligence Report for Banks.

The rapid Change in Indian Legislative has brought about a sea change in the role and profile of a company secretary. They are now being seen as corporate development planners. Besides embarking upon traditional areas of practice, Company Secretaries in Practice are increasingly required to advise and guide on legal aspects of business which intimately concern areas such as registration under RERA, production, drafting of various documents, sales, marketing and administration for identifying expansion opportunities, issuing due diligence or comfort certificate, arranging foreign collaborations, amalgamations, mergers, acquisition, takeovers, setting up of subsidiaries and joint ventures within and outside India etc. The new opportunities offered by the growing capital markets and financial services have greatly contributed to the development of the practice side of the profession.

Company Secretaries - One Stop Professional Advisory Services for Real Estate Projects

Company Secretaries holding Certificate of Practice by becoming an expert in the act can indulge in providing advice in respect of :

- Financial Advisory Services
- Various applicable provision particular on real estate project
- Registration and extension procedure of real estate project with competent authority
- Various obligation, functions and duties of promoter in a real estate project
- Penal Provisions under the act
- Funding Options for Real Estate Project
- Taxation aspects for Real Estate Project
- Legal & Regulatory Compliances

Company Secretaries – As a Legal Representative

As per Section 56 of the act, a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can –

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before any other competent authority for any other purpose under Real Estate (Regulation and Development) Act, 2016.

Dress Code for a CS appearing before Judicial/Quasi – Judicial bodies and Tribunals like NCLT – NCLAT, etc.

The Council has approved the following Guidelines for Professional Dress Code for Company Secretaries to appear before judicial / quasi-judicial bodies and tribunals like NCLT- NCLAT, SAT, etc.

S. No. Guidelines

1. For Male Members:
 - a. Navy Blue Suit (Coat & Trouser), with CS logo, Insignia
OR
Navy Blue Blazer over a sober colored Trouser
 - b. Neck Tie (ICSI)
 - c. White full sleeve Shirt
 - d. Formal Black Leather Shoes (Shined)
2. For Female Members:
 - a. Navy Blue corporate suit (Coat & Trouser), could be with a neck tie/
Insignia
OR
 - b. Saree/ any other dress of sober colour with Navy Blue Blazer with CS Logo
 - c. A sober footwear like Shoes/ Bellies/ Wedges, etc (shined)
3. Members in Employment – As prescribed in 1 or 2 above

Members are advised to strictly adhere to the Dress Code prescribed by the Council.

OFFENCES, PENALTIES AND ADJUDICATION

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.

Penalty for contravention of section 4(Application for registration of real estate projects)

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.

Penalty for contravention of other provisions of the Act

If any promoter contravenes any other provisions of the 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.

Penalty for non-registration and contravention under sections 9 and 10

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.

Penalty for failure to comply with orders of Authority by promoter

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.

Penalty for failure to comply with orders of Appellate Tribunal by promoter

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.

Penalty for failure to comply with orders of Authority by real estate agent

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.

Penalty for failure to comply with orders of Appellate Tribunal by real estate agent

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.

Penalty for failure to comply with orders of Authority by allottee

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.

Penalty for failure to comply with orders of Appellate Tribunal by allottee

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.

Offences by companies

Where an Offence under the 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 -

However nothing contained in this sub-section, shall render any such person liable to any punishment under the 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.

Where an offence under the 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.-

- (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.

Compounding of offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, if any person is punished with imprisonment under the 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.

However the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Power to adjudicate

For the purpose of adjudging compensation under sections 12, 14, 18 and section 19 (Section 12 deals with obligations of promoter regarding veracity of the advertisement or prospectus, Section 14 deals with Adherence to sanctioned plans and project specifications by the promoter, Section 18 deals with Return of amount and compensation, Section 19 deals with Rights and duties of allottees), 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.

Any person whose complaint in respect of matters covered under section(s) 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 the 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.

The application for adjudging compensation 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. 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.

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 i.e., sections 12, 14, 18 and section 19, 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.

Bar of jurisdiction

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 the 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 the Act.

* * *

SPECIMEN AGREEMENT FOR SALE TO BE EXECUTED BETWEEN THE PROMOTER AND THE ALLOTTEE

This Agreement for Sale ("Agreement") executed on this __ (Date) day of _____ (Month), 20____,

By and Between

[If the promoter is a company]

_____, (CIN no. _____), a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at _____ and its corporate office at _____ (PAN _____), represented by its authorized signatory _____ (Aadhar no. _____) authorized vide board resolution dated _____ hereinafter referred to as the "Promoter" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns).

[OR]

[If the promoter is a Partnership firm]

_____, a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of business at _____, (PAN _____), represented by its authorized Partner _____, (Aadhar no. _____) authorized vide _____, hereinafter referred to as the "**Promoter**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/their assigns).

[OR]

[If the promoter is an Individual]

Mr. / Ms. _____, (Aadhar no. _____) son / daughter of _____, aged about _____, residing at _____, (PAN _____), hereinafter called the "**Promoter**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/her heirs, executors, administrators, successors-in-interest and permitted assigns).

AND

[If the Allottee is a company]

_____, (CIN no. _____) a company incorporated under the provisions of the

Companies Act, [1956 or 2013, as the case may be], having its registered office at _____, (PAN _____), represented by its authorized signatory, _____, (Aadhar no. _____) duly authorized vide board resolution dated _____, hereinafter referred to as the "Allottee" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns).

[OR]

[If the Allottee is a Partnership]

_____, a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of business at _____, (PAN _____), represented by its authorized partner, _____, (Aadhar no. _____) authorized vide _____, hereinafter referred to as the "Allottee" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/their assigns).

[OR]

[If the Allottee is an Individual]

Mr. / Ms. _____, (Aadhar no. _____) son / daughter of _____, aged about _____, residing at _____, (PAN _____), hereinafter called the "Allottee" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/her heirs, executors, administrators, successors-in-interest and permitted assigns).

[OR]

[If the Allottee is a HUF]

Mr. _____, (Aadhar no. _____) son of _____ aged about _____ for self and as the Karta of the Hindu Joint Mitakshara Family known as _____ HUF, having its place of business / residence at _____, (PAN _____), hereinafter referred to as the "**Allottee**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and the members or member for the time being of the said HUF, and their respective heirs, executors, administrators and permitted assigns).

[Please insert details of other allottee(s), in case of more than one allottee]

The Promoter and Allottee shall hereinafter collectively be referred to as the "Parties" and individually as a "**Party**".

DEFINITIONS]

For the purpose of this Agreement for Sale, unless the context otherwise requires, -

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

- (b) "appropriate Government" means the Central Government;
- (c) "Rules" means the Real Estate (Regulation and Development) (General) Rules, 2016 made under the Real Estate (Regulation and Development) Act, 2016;
- (d) "Regulations" means the Regulations made under the Real Estate (Regulation and Development) Act, 2016;
- (e) "section" means a section of the Act.

WHEREAS

- A. The Promoter is the absolute and lawful owner of [khasra nos./ survey nos.] [Please insert land details as per local laws] _____ totally admeasuring _____ square meters situated at _____ in Tehsil & District _____ ("**Said Land**") vide sale deed(s) dated _____ registered as documents no. _____ at the office of the Sub-Registrar;

[OR]

_____ ("Owner") is the absolute and lawful owner of [khasra nos./ survey nos.] [Please insert land details as per local laws] _____ totally admeasuring _____ square meters situated at _____ in Tehsil & District _____ ("**Said Land**") vide sale deed(s) dated _____ registered as documents no. _____ at the office of the Sub-Registrar. The Owner and the Promoter have entered into a [collaboration /development / joint development] agreement dated _____ registered as document no. _____ at the office of the Sub-Registrar;

- B. The Said Land is earmarked for the purpose of building a [commercial/residential/ any other purpose] project, comprising _____ multistoried apartment buildings and [insert any other components of the Projects] and the said project shall be known as ' _____ ' ("**Project**");

[OR]

The Said Land is earmarked for the purpose of plotted development of a [commercial/residential/any other purpose] project, comprising _____ plots and [insert any other components of the Projects] and the said project shall be known as ' _____ ' ("**Project**"):

Provided that where land is earmarked for any institutional development the same shall be used for those purposes only and no commercial/residential development shall be permitted unless it is a part of the plan approved by the competent authority;

- C. The Promoter is fully competent to enter into this Agreement and all the legal formalities with respect to the right, title and interest of the Promoter regarding the Said Land on which Project is to be constructed have been completed;
- D. The _____ [Please insert the name of the concerned competent authority] has granted the commencement certificate to develop the Project vide approval dated _____ bearing registration no. _____;

- E. The Promoter has obtained the final layout plan, sanctioned plan, specifications and approvals for the Project and also for the apartment, plot or building, as the case may be, from _____ [*Please insert the name of the concerned competent authority*]. The Promoter agrees and undertakes that it shall not make any changes to these approved plans except in strict compliance with section 14 of the Act and other laws as applicable;
- F. The Promoter has registered the Project under the provisions of the Act with the _____ (Name of Union Territory) Real Estate Regulatory Authority at _____ on _____ under registration no. _____;
- G. The Allottee had applied for an apartment in the Project vide application no. _____ dated _____ and has been allotted apartment no. _____ having carpet area of _____ square feet, type _____, on _____ floor in [tower/block/building] no. _____ ("**Building**") along with garage/covered parking no. _____ admeasuring _____ square feet in the _____ [*Please insert the location of the garage/covered parking*], as permissible under the applicable law and of pro rata share in the common areas ("**Common Areas**") as defined under clause (n) of Section 2 of the Act (hereinafter referred to as the "Apartment" more particularly described in **Schedule A** and the floor plan of the apartment is annexed hereto and marked as **Schedule B**);

[OR]

The Allottee had applied for a plot in the Project vide application no. _____ dated _____ and has been allotted plot no. _____ having area of _____ square feet and plot for garage/covered parking admeasuring _____ square feet (*if applicable*) in the _____ [*Please insert the location of the garage/covered parking*], as permissible under the applicable law and of pro rata share in the common areas ("**Common Areas**") as defined under clause (n) of Section 2 of the Act (hereinafter referred to as the "**Plot**" more particularly described in **Schedule A**);

- H. The Parties have gone through all the terms and conditions set out in this Agreement and understood the mutual rights and obligations detailed herein;
- I. _____ [*Please enter any additional disclosures/details*];
- J. The Parties hereby confirm that they are signing this Agreement with full knowledge of all the laws, rules, regulations, notifications, etc., applicable to the Project;
- K. 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;
- L. 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) as specified in para G.

NOW THEREFORE, in consideration of the mutual representations, covenants, assurances, promises and agreements contained herein and other good and valuable consideration, the Parties agree as follows:

1. TERMS:

1.1 Subject to the terms and conditions as detailed in this Agreement, the Promoter agrees to sell to the Allottee and the Allottee hereby agrees to purchase, the [Apartment/Plot] as specified in para G.

1.2 The Total Price for the [Apartment/Plot] based on the carpet area is Rs. _____ (Rupees _____ only ("**Total Price**") (Give break up and description):

Block/Building/Tower no. _____ Rate of Apartment per square feet*

Apartment no. _____

Type _____

Floor _____

Total price (in rupees) _____

*Provide break up of the amounts such as cost of apartment, cost of exclusive balcony or verandah areas, cost of exclusive open terrace areas, proportionate cost of common areas, preferential location charges, taxes, maintenance charges as per para 11 etc., if/as applicable.

[AND] [if/as applicable]

Garage/Covered parking - 1 Price for 1

Garage/Covered parking - 2 Price for 2

Total price (in rupees) _____

[OR]

Plot no. _____ Rate of Plot per square feet*

Type _____

Total price (in rupees) _____

*Provide break up of the amounts such as cost of plot, proportionate cost of common areas, taxes, maintenance charges as per para 11 etc., if/as applicable.

[AND] [if/as applicable]

Garage/Covered parking - 1 Price for 1

Garage/Covered parking - 2 Price for 2

Total price (in rupees) _____

Explanation:

(i) The Total Price above includes the booking amount paid by the allottee to the Promoter towards the [Apartment/Plot];

- (ii) The Total Price above includes 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 the Project payable by the Promoter, by whatever name called) up to the date of handing over the possession of the apartment/plot to the allottee and the project to the association of allottees or the competent authority, as the case may be, after obtaining the completion certificate:

Provided that in case there is any change / modification in the taxes, the subsequent amount payable by the allottee to the promoter shall be increased/reduced based on such change / modification:

Provided further that if there is any increase in the taxes after the expiry of the scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, if any, granted to the said project by the Authority, as per the Act, the same shall not be charged from the allottee;

- (iii) The Promoter shall periodically intimate in writing to the Allottee, the amount payable as stated in (i) above and the Allottee shall make payment demanded by the Promoter within the time and in the manner specified therein. In addition, the Promoter shall provide to the Allottee the details of the taxes paid or demanded along with the acts/rules/notifications together with dates from which such taxes/levies etc. have been imposed or become effective;
- (iv) The Total Price of [Apartment/Plot] includes recovery of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges as per para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided within the [Apartment/Plot] and the Project.

- 1.3 The Total Price is escalation-free, save and except increases which the Allottee hereby agrees to pay, 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 from time to time. The Promoter undertakes and agrees that while raising a demand on the Allottee for increase in development charges, cost/charges imposed by the competent authorities, the Promoter shall enclose the said notification/order/rule/regulation to that effect along with the demand letter being issued to the Allottee, which shall only be applicable on subsequent payments. Provided that if there is any new imposition or increase of any development charges after the expiry of the scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, if any, granted to the said project by the Authority, as per the Act, the same shall not be charged from the allottee.

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- 1.4 The Allottee(s) shall make the payment as per the payment plan set out in Schedule C ("Payment Plan").
- 1.5 The Promoter may allow, in its sole discretion, a rebate for early payments of installments payable by the Allottee by discounting such early payments @ ____ % per annum for the period by which the respective installment 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.
- 1.6 It is agreed that the Promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described herein at Schedule 'D' and Schedule 'E' (which shall be in conformity with the advertisement, prospectus etc., on the basis of which sale is effected) in respect of the apartment, plot or building, as the case may be, without the previous written consent of the Allottee as per the provisions of the Act. 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 per the provisions of the Act.
- 1.7 [*Applicable in case of an apartment*] The Promoter shall confirm to 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. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate prescribed 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, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule C. All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.
- 1.8 The Promoter agrees and acknowledges, the Allottee shall have the right to the [Apartment/Plot] as mentioned below:
- (i) The Allottee shall have exclusive ownership of the [Apartment/Plot];
 - (ii) The Allottee shall also have undivided proportionate share in the Common Areas. Since the share / interest of Allottee in the Common Areas is undivided and cannot be divided or separated, the Allottee shall use the Common Areas along with other occupants, maintenance staff etc., without causing any inconvenience or hindrance to them. It is clarified that the promoter shall hand over the common areas to the association of allottees after duly obtaining the completion certificate from the competent authority as provided in the Act;
 - (iii) That the computation of the price of the [Apartment/Plot] includes recovery

of price of land, construction of [not only the Apartment but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges as per para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided within the [Apartment/Plot] and the Project;

(iv) The Allottee has the right to visit the project site to assess the extent of development of the project and his apartment/plot, as the case may be.

1.9 It is made clear by the Promoter and the Allottee agrees that the [Apartment/Plot] along with ___ garage/covered parking shall be treated as a single indivisible unit for all purposes. It is agreed that the Project is an independent, self-contained Project covering the said Land and is not a part of any other project or zone and shall not form a part of and/or linked/combined with any other project in its vicinity or otherwise except for the purpose of integration of infrastructure for the benefit of the Allottee. It is clarified that Project's facilities and amenities shall be available only for use and enjoyment of the Allottees of the Project.

1.10 The Promoter agrees to pay all outgoings before transferring the physical possession of the apartment to the Allottees, which it 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). If the Promoter fails to pay all or any of the outgoings collected by it from the Allottees or any liability, mortgage loan and interest thereon before transferring the apartment to the Allottees, the Promoter agrees 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.

1.11 The Allottee has paid a sum of Rs. ___ (Rupees _____ only) as booking amount being part payment towards the Total Price of the [Apartment/Plot] at the time of application the receipt of which the Promoter hereby acknowledges and the Allottee hereby agrees to pay the remaining price of the [Apartment/Plot] as prescribed in the Payment Plan [Schedule C] as may be demanded by the Promoter within the time and in the manner specified therein:

Provided that if the allottee delays in payment towards any amount which is payable, he shall be liable to pay interest at the rate prescribed in the Rules.

2. MODE OF PAYMENT

Subject to the terms of the Agreement and the Promoter abiding by the construction milestones, the Allottee shall make all payments, on written demand by the Promoter, within the stipulated time as mentioned in the Payment Plan

[Schedule C] through A/c Payee cheque/demand draft/bankers cheque or online payment (as applicable) in favour of ' _____ ', payable at _____.

3. COMPLIANCE OF LAWS RELATING TO REMITTANCES

- 3.1 The Allottee, if resident outside India, shall be solely responsible for complying with the necessary formalities as laid down in Foreign Exchange Management Act, 1999, Reserve Bank of India Act, 1934 and the Rules and Regulations made thereunder or any statutory amendment(s) modification(s) made thereof and all other applicable laws including that of remittance of payment acquisition/sale/transfer of immovable properties in India etc. and provide the Promoter with such permission, approvals which would enable the Promoter to fulfill its obligations under this Agreement. Any refund, transfer of security, if provided in terms of the Agreement shall be made in accordance with the provisions of Foreign Exchange Management Act, 1999 or the statutory enactments or amendments thereof and the Rules and Regulations of the Reserve Bank of India or any other applicable law. The Allottee understands and agrees that in the event of any failure on his/her part to comply with the applicable guidelines issued by the Reserve Bank of India, he/she may be liable for any action under the Foreign Exchange Management Act, 1999 or other laws as applicable, as amended from time to time.
- 3.2 The Promoter accepts no responsibility in regard to matters specified in para 3.1 above. The Allottee shall keep the Promoter fully indemnified and harmless in this regard. Whenever there is any change in the residential status of the Allottee subsequent to the signing of this Agreement, it shall be the sole responsibility of the Allottee to intimate the same in writing to the Promoter immediately and comply with necessary formalities if any under the applicable laws. The Promoter shall not be responsible towards any third party making payment/remittances on behalf of any Allottee and such third party shall not have any right in the application/allotment of the said apartment applied for herein in any way and the Promoter shall be issuing the payment receipts in favour of the Allottee only.

4. ADJUSTMENT/APPROPRIATION OF PAYMENTS

The Allottee authorizes the Promoter to adjust/appropriate all payments made by him/her under any head(s) of dues against lawful outstanding of the allottee against the [Apartment/Plot], if any, in his/her name and the Allottee undertakes not to object/demand/direct the Promoter to adjust his payments in any manner.

5. TIME IS ESSENCE

The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the [Apartment/Plot] to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be.

6. CONSTRUCTION OF THE PROJECT/ APARTMENT

The Allottee has seen the proposed layout plan, specifications, amenities and facilities of the [Apartment/Plot] and accepted the floor plan, payment plan and the specifications, amenities and facilities [annexed along with this Agreement] which has been approved by the competent authority, as represented by the Promoter. The Promoter shall develop the Project in accordance with the said layout plans, floor plans and specifications, amenities and facilities. Subject to the terms in this Agreement, the Promoter undertakes to strictly abide by such plans approved by the competent Authorities and shall also strictly abide by the bye-laws, FAR and density norms and provisions prescribed by the _____ [Please insert the relevant State laws] and shall not have an option to make any variation /alteration / modification in such plans, other than in the manner provided under the Act, and breach of this term by the Promoter shall constitute a material breach of the Agreement.

7. POSSESSION OF THE APARTMENT/PLOT:

- 7.1 *Schedule for possession of the said [Apartment/Plot]* - The Promoter agrees and understands that timely delivery of possession of the [Apartment/Plot] to the allottee and the common areas to the association of allottees or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the [Apartment/Plot] along with ready and complete common areas with all specifications, amenities and facilities of the project in place on _____, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the [Apartment/Plot], provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within 45 days from that date. The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement.
- 7.2 *Procedure for taking possession* - The Promoter, upon obtaining the occupancy certificate* from the competent authority shall offer in writing the possession of the [Apartment/Plot], to the Allottee in terms of this Agreement to be taken within two months from the date of issue of occupancy certificate. [Provided that, in the absence of local law, the conveyance deed in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate]. The Promoter agrees and undertakes to

indemnify the Allottee in case of failure of fulfillment of any of the provisions, formalities, documentation on part of the Promoter. The Allottee, after taking possession, agree(s) to pay the maintenance charges as determined by the Promoter/association of allottees, as the case may be after the issuance of the completion certificate for the project. The promoter shall hand over the occupancy certificate of the apartment/plot, as the case may be, to the allottee at the time of conveyance of the same.

7.3 *Failure of Allottee to take Possession of [Apartment/Plot]* - Upon receiving a written intimation from the Promoter as per para 7.2, 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 para 7.2, such Allottee shall continue to be liable to pay maintenance charges as specified in para 7.2.

7.4 *Possession by the Allottee* - After obtaining the occupancy certificate and handing over physical possession of the [Apartment/Plot] to the Allottees, it shall be the responsibility of the Promoter to hand over the necessary documents and plans, including common areas, to the association of 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, to the association of allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate].

7.5 *Cancellation by Allottee* – The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act:

Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within 45 days of such cancellation.

7.6 *Compensation* – The Promoter shall compensate the Allottee 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 the Act and the claim for interest and compensation under this provision shall not be barred by limitation provided under any law for the time being in force.

Except for occurrence of a Force Majeure event, if the promoter fails to complete or is unable to give possession of the [Apartment/Plot] (i) in accordance with the terms of this Agreement, duly completed by the date specified in para 7.1; or (ii) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act; or for any other reason; the Promoter 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 total amount received by him in respect of the [Apartment/Plot], with interest at the rate prescribed in the Rules including

compensation in the manner as provided under the Act within forty-five days of it becoming due. Provided that where if the Allottee does not intend to withdraw from the Project, the Promoter shall pay the Allottee interest at the rate prescribed in the Rules for every month of delay, till the handing over of the possession of the [Apartment/Plot], which shall be paid by the promoter to the allottee within forty-five days of it becoming due.

8. REPRESENTATIONS AND WARRANTIES OF THE PROMOTER:

The Promoter hereby represents and warrants to the Allottee as follows:

- (i) The [Promoter] has absolute, clear and marketable title with respect to the said Land; the requisite rights to carry out development upon the said Land and absolute, actual, physical and legal possession of the said Land for the Project;
- (ii) The Promoter has lawful rights and requisite approvals from the competent Authorities to carry out development of the Project;
- (iii) There are no encumbrances upon the said Land or the Project; [in case there are any encumbrances on the land provide details of such encumbrances including any rights, title, interest and name of party in or over such land]
- (iv) There are no litigations pending before any Court of law or Authority with respect to the said Land, Project or the [Apartment/Plot];
- (v) All approvals, licenses and permits issued by the competent authorities with respect to the Project, said Land and [Apartment/Plot] are valid and subsisting and have been obtained by following due process of law. Further, the Promoter has been and shall, at all times, remain to be in compliance with all applicable laws in relation to the Project, said Land, Building and [Apartment/Plot] 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 said 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 the Promoter shall handover lawful, vacant, peaceful, physical possession of the [Apartment/Plot] to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be;
- (x) The Schedule Property is not the subject matter of any HUF and that no part thereof is owned by any minor and/or no minor has any right, title and claim over the Schedule Property;

- (xi) The Promoter has duly paid and shall continue to pay and discharge all 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 till the completion certificate has been issued and possession of apartment, plot or building, as the case may be, along with common areas (equipped with all the specifications, amenities and facilities) has been handed over to the allottee and the association of allottees or the competent authority, as the case may be;
- (xii) 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 by or served upon the Promoter in respect of the said Land and/or the Project.

9. EVENTS OF DEFAULTS AND CONSEQUENCES:

9.1 Subject to the Force Majeure clause, the Promoter shall be considered under a condition of Default, in the following events:

- (i) Promoter fails to provide ready to move in possession of the [Apartment/Plot] to the Allottee within the time period specified in para 7.1 or fails to complete the project within the stipulated time disclosed at the time of registration of the project with the Authority. For the purpose of this para, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects including the provision of all specifications, amenities and facilities, as agreed to between the parties, and for which occupation certificate and completion certificate, as the case may be, has been issued by the competent authority;
- (ii) Discontinuance of the Promoter's business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.

9.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:

- (i) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter the Allottee be required to make the next payment without any interest; or
- (ii) The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate prescribed in the Rules within forty-five days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over of

the possession of the [Apartment/Plot], which shall be paid by the promoter to the allottee within forty-five days of it becoming due.

9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- (i) In case the Allottee fails to make payments for ___ consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;
- (ii) In case of Default by Allottee under the condition listed above continues for a period beyond ___ consecutive months after notice from the Promoter in this regard, the Promoter may cancel the allotment of the [Apartment/Plot] in favour of the Allottee and refund the money paid to him by the allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated. Provided that the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.

10. CONVEYANCE OF THE SAID APARTMENT

The Promoter, on receipt of Total Price of the [Apartment/Plot] as per para 1.2 under the Agreement from the Allottee, shall execute a conveyance deed and convey the title of the [Apartment/Plot] together with proportionate indivisible share in the Common Areas within 3 months from the date of issuance of the occupancy certificate and the completion certificate, as the case may be, to the allottee. [Provided that, in the absence of local law, the conveyance deed in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate]. However, in case the Allottee fails to deposit the stamp duty and/or registration charges within the period mentioned in the notice, the Allottee authorizes the Promoter to withhold registration of the conveyance deed in his/her favour till payment of stamp duty and registration charges to the Promoter is made by the Allottee.

11. MAINTENANCE OF THE SAID BUILDING / APARTMENT / PROJECT

The Promoter shall be responsible to provide and maintain essential services in the Project till the taking over of the maintenance of the project by the association of allottees upon the issuance of the completion certificate of the project. The cost of such maintenance has been included in the Total Price of the [Apartment/Plot].

12. DEFECT LIABILITY

It is agreed that 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 5 (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 30 (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 the Act.

13. RIGHT TO ENTER THE APARTMENT FOR REPAIRS

The Promoter/maintenance agency/association of allottees shall have rights of unrestricted access of all Common Areas, garages/covered parking and parking spaces for providing necessary maintenance services and the Allottee agrees to permit the association of allottees and/or maintenance agency to enter into the [Apartment/Plot] or any part thereof, after due notice and during the normal working hours, unless the circumstances warrant otherwise, with a view to set right any defect.

14. USAGE

Use of Basement and Service Areas: The basement(s) and service areas, if any, as located within the _____ (project name), shall be earmarked for purposes such as parking spaces and services including but not limited to electric sub-station, transformer, DG set rooms, underground water tanks, pump rooms, maintenance and service rooms, fire fighting pumps and equipment's etc. and other permitted uses as per sanctioned plans. The Allottee shall not be permitted to use the services areas and the basements in any manner whatsoever, other than those earmarked as parking spaces, and the same shall be reserved for use by the association of allottees formed by the Allottees for rendering maintenance services.

15. GENERAL COMPLIANCE WITH RESPECT TO THE APARTMENT:

15.1 Subject to para 12 above, the Allottee shall, after taking possession, be solely responsible to maintain the [Apartment/Plot] at his/her own cost, in good repair and condition and shall not do or suffer to be done anything in or to the Building, or the [Apartment/Plot], or the staircases, lifts, common passages, corridors, circulation areas, atrium or the compound which may be in violation of any laws or rules of any authority or change or alter or make additions to the [Apartment/Plot] and keep the [Apartment/Plot], its walls and partitions, sewers, drains, pipe and appurtenances thereto or belonging thereto, in good and tenable repair and maintain the same in a fit and proper condition and ensure that the support, shelter etc. of the Building is not in any way damaged or jeopardized.

15.2 The Allottee further undertakes, assures and guarantees that he/she would not put any sign-board / name-plate, neon light, publicity material or advertisement material etc. on the face / facade of the Building or anywhere on the exterior of the Project, buildings therein or Common Areas. The Allottees shall also not change the colour scheme of the outer walls or painting of the exterior side of the windows or carry out any change in the exterior elevation or design. Further the Allottee shall not store any hazardous or combustible goods in the [Apartment/Plot] or place any heavy material in the common passages or staircase of the Building. The Allottee shall also not remove any wall, including the outer and load bearing wall of the [Apartment/Plot].

15.3 The Allottee shall plan and distribute its electrical load in conformity with the electrical systems installed by the Promoter and thereafter the association of allottees and/or maintenance agency appointed by association of allottees. The Allottee shall be responsible for any loss or damages arising out of breach of any of the aforesaid conditions.

16. COMPLIANCE OF LAWS, NOTIFICATIONS ETC. BY PARTIES:

The Parties are entering into this Agreement for the allotment of a [Apartment/Plot] with the full knowledge of all laws, rules, regulations, notifications applicable to the project.

17. ADDITIONAL CONSTRUCTIONS:

The Promoter undertakes that it has no right to make additions or to put up additional structure(s) anywhere in the Project after the building plan, layout plan, sanction plan and specifications, amenities and facilities has been approved by the competent authority(ies) and disclosed, except for as provided in the Act.

18. 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/Plot/Building] 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/Building].

19. APARTMENT OWNERSHIP ACT (OF THE RELEVANT STATE):

The Promoter has assured the Allottees that the project in its entirety is in accordance with the provisions of the _____ [Please insert the name of the state Apartment Ownership Act]. The Promoter showing compliance of various laws/regulations as applicable in _____.

20. 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 _____ (specify the address of the 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 30 (thirty) 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.

21. ENTIRE AGREEMENT

This Agreement, along with its schedules, 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.

22. RIGHT TO AMEND

This Agreement may only be amended through written consent of the Parties.

23. PROVISIONS OF THIS AGREEMENT APPLICABLE ON 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 [Apartment/Plot] and the Project shall equally be applicable to and enforceable against and by 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.

24. WAIVER NOT A LIMITATION TO ENFORCE

24.1 The Promoter may, at its sole option and discretion, without prejudice to its rights as set out in this Agreement, waive the breach by the Allottee in not making payments as per the Payment Plan [Annexure C] including waiving the payment of interest for delayed payment. It is made clear and so agreed by the Allottee that exercise of discretion by the Promoter in the case of one Allottee shall not be construed to be a precedent and /or binding on the Promoter to exercise such discretion in the case of other Allottees.

24.2 Failure on the part of the Parties to enforce at any time or for any period of time the provisions hereof shall not be construed to be a waiver of any provisions or of the right thereafter to enforce each and every provision.

25. 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 or 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.

26. 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 the

proportion which the carpet area of the [Apartment/Plot] bears to the total carpet area of all the [Apartments/Plots] in the Project.

27. 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.

28. 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 at _____ (specify the address of the Sub-Registrar). Hence this Agreement shall be deemed to have been executed at _____.

29. NOTICES

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 at their respective addresses specified below:

_____ Name of Allottee

_____ (Allottee Address)

M/s _____ Promoter name

_____ (Promoter Address)

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.

30. 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.

31. SAVINGS

Any application letter, allotment letter, agreement, or any other document signed by the allottee, in respect of the apartment, plot or building, as the case

may be, prior to the execution and registration of this 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 or under the Act or the rules or the regulations made thereunder.

32. 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 Act and the Rules and Regulations made thereunder including other applicable laws of India for the time being in force.

33. DISPUTE RESOLUTION

All or any disputes arising out or touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through the adjudicating officer appointed under the Act.

[Please insert any other terms and conditions as per the contractual understanding between the parties, however, please ensure that such additional terms and conditions are not in derogation of or inconsistent with the terms and conditions set out above or the Act and the Rules and Regulations made thereunder.]

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.

SIGNED AND DELIVERED BY THE WITHIN NAMED

Allottee: (including joint buyers)

(1) Signature _____
Name _____
Address _____

Please affix
photograph
and and sign
across the
photograph

(2) Signature _____
Name _____
Address _____

Please affix
photograph
and and sign
across the
photograph

SIGNED AND DELIVERED BY THE WITHIN NAMED

Promoter:

(1) Signature (Authorised Signatory) _____
Name _____
Address _____

Please affix
photograph
and and sign
across the
photograph

At _____ on _____ in the presence of:

WITNESSES:

1. Signature _____
Name _____
Address _____
2. Signature _____
Name _____
Address _____

SCHEDULE 'A' - PLEASE INSERT DESCRIPTION OF THE [APARTMENT/PLOT] AND THE GARAGE/COVERED PARKING (IF APPLICABLE) ALONG WITH BOUNDARIES IN ALL FOUR DIRECTIONS

SCHEDULE 'B' - FLOOR PLAN OF THE APARTMENT

SCHEDULE 'C' - PAYMENT PLAN

SCHEDULE 'D' – SPECIFICATIONS, AMENITIES, FACILITIES (WHICH ARE PART OF THE APARTMENT/PLOT)

SCHEDULE 'E' – SPECIFICATIONS, AMENITIES, FACILITIES (WHICH ARE PART OF THE PROJECT)

[The 'Schedules' to this Agreement for Sale shall be as agreed to between the Parties]

* * *

FAQ'S ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

CHAPTER I - PRELIMINARY

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.

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'.

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.

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".

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.

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.

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.

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.

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.

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 definitions are very broad and use 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.

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.

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.

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'.

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.

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.

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**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.

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'.

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.

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;

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.

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).

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.

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.

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.

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.

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.

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.

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.

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:

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.

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.

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'.

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.

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.

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.

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**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.

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.

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.

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.

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.

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.

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 form the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

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.

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.

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.

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

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

What is the timelines 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.

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.

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.

How can a complaint be filed 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.

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

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.

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

What is the timelines 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.

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.

Can an appeal be filed 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.

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.

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**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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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

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.

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.

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.

What is the timeline 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.

What is the timeline 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.

Are the Rules, Regulations etc. notified required to be 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.

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.

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.