

Real Estate (Regulation & Development) Act, 2016

Part 1

Procedures & Practices

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Contours of Real Estate (Regulation and Development) Act, 2016 - Part 1

The much awaited and widely anticipated Real Estate (Regulation and Development) Act, 2016 comes into force on May 1st, 2016 setting in motion the process of making necessary operational rules and creation of institutional infrastructure for protecting the interests of consumers and promoting the growth of real estate sector in an environment of trust, confidence, credible transactions and efficient and time bound execution of projects.

Currently only 69 sections out of 92 sections have been notified. These primarily relate to procedural aspects of setting up the regulatory authority and for framing of the rules. The balance and more important 22 Sections to be notified relate to functions and duties of promoters, rights and duties of allottees, prior registration of real estate projects with Real Estate Regulatory Authorities, recovery of interest on penalties, enforcement of orders, offences, penalties and adjudication, taking cognizance of offences etc.

Section 84 of the Act stipulates that “The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act.” Thereby several powers under the act have been given to the state to set up the Real Estate Regulatory Authorities with whom all real estate projects have to be registered and Appellate Tribunals for adjudication of disputes. Further it is also believed that the Central Government is also preparing a model set of rules which can be notified by the state governments without much modification. This would be the key for providing early relief and protection to the large number of buyers of properties.

However we believe till all the procedural requirements of setting up the authority and the enabling provisions are enacted machinery provisions of registrations and various compliances cannot be started.

Important issues to be kept in mind by Developers

1. Acquisition of Land

With the stringent provisions of restricted fund flow the land which is required to be obtained would need to be done before the project launch. We believe the concept of “soft launch” would be severely impaired and not a legal option since prior approvals of the project are required.

2. Design Finalisation

As per the provisions contained in the act the developer is not allowed to undertake changes in the design of the project unless the same is approved by the allottees. Hence the design with which the project is approved would hold the key and not be allowed to be modified easily later.

3. Marketing Gimmicks

The whole thrust of the act is to restrict the sales of projects based on false marketing. Hence the developers would be required to train their sales staff so as to pitch their sales within the framework of the actual services proposed at the site.

4. Financial Planning

The developers would be required to accurately predict their fund flow planning so as not to delay the project which would attract heavy penalties. Further the diversion of funds between different projects would not be possible which would further dry up the resources for a low selling project.

5. Project Execution, Monitoring and Delivery

Nearly all the small and medium sized developers currently are dependent on manual monitoring of the project. With stringent timelines for project completion the developers would need to adopt better reporting mechanism and maybe opt for smaller sized ERP / IT solutions for monitoring the progress.

Important Sections of the Act

Section	Verbatim Section	Our Remarks
Sec 1(2)	Extends to Whole of India except the State of Jammu & Kashmir	---
Sec 2(k) - Carpet Area	Means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal portion walls of the apartment.	Exclusive balcony and open terrace means a.) that area which can only be used by the specific allottee AND b.) Is belonging to the allottee
Sec 2(za) - Interest	The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any 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 day it is paid.	---
Sec 2(zk) - Promoter	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	The wordings "causes to be constructed" suggest the inclusion of land owners as promoters in the case of Joint

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	apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees	Development Agreements (JDA).
Sec 2(zn) – Real Estate project	means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;	Land as such being sold without plotting activity would not be within the definition hence not liable for registration under the act.
Sec 3(1) – Registration	<p>No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:</p> <p>Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:</p>	<p>No project can be advertised till the project has been registered with the Real Estate Regulatory Authority established under the act.</p> <p>Projects which are currently underway on the date this act is enacted would also be covered under the ambit of the act and within 3 months of the act being enacted would need to be registered with the authority established.</p> <p>The authority would be notified by the respective state governments within a period of one year from the day act is notified. However till it's not notified by the state the Secretary of the department dealing with housing may be designated as the authority.</p>
Sec 3(2) – No Registration required for	(a) where the area of land proposed to be developed does not exceed five hundred square meters OR the number of apartments proposed	

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	<p>to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;</p> <p>(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;</p> <p>(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.</p> <p>Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.</p>	<p>The respective state governments have been given power to ONLY reduce this threshold and cannot increase it. Therefore any project greater than 500 Sq Mtrs or more than 8 apartments shall be covered.</p> <p>The word “phase” has not been defined in the act hence would need to understand the same in common parlance.</p>
Sec 4(2) – Registration documents	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;	Among other requirements a promoter is also required to submit the details of his previous projects and if any in delays.
Sec 4(l)(D) – Fund restriction clause	<ul style="list-style-type: none"> • That seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose • Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project 	The wording “cost of construction” has not been defined in the act hence it would mean those costs which are directly attributable to the construction activities.

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	<ul style="list-style-type: none"> • Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project • Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project. 	<p>The amount from the account can only be withdrawn once all the three certify the completion percentage of the project. Further as per the reading it seems the amount can only be withdrawn post the expenses have been done and cannot be done beforehand.</p> <p>All the real estate projects registered under this regulation are required to prepare books of accounts and get the same audited.</p> <p>Note: This audit is separate from the audit undertaken under the provisions of the Income Tax and Companies Act and those audit threshold limits would not apply.</p>
Sec 6 – Extension of registration	<p>The registration granted under section 5 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:</p> <p>Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:</p> <p>Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.</p> <p>Explanation - For the purpose of this section, the expression "force majeure" shall mean a</p>	<p>The extension under the act for a project which gets delayed would only be given in case the delay has been due to war or any other natural calamity affecting the project area which affected the regular development of the project.</p> <p>However in cases where the delay has been due to reasonable causes apart those mentioned above the time extension may be given by the authority. Though this time extension shall not be beyond one year.</p>

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	<p>case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.</p>	
<p>Sec 7(1) – Revocation of registration</p>	<p>The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that</p> <p>(a) The promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;</p> <p>(b) The promoter violates any of the terms or conditions of the approval given by the competent authority;</p> <p>(c) The promoter is involved in any kind of unfair practice or irregularities.</p> <p>Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—</p> <p>(A) the practice of making any statement, whether in writing or by visible representation which,—</p> <p>(i) falsely represents that the services are of a particular standard or grade;</p> <p>(ii) represents that the promoter has approval or affiliation which such promoter does not have;</p> <p>(iii) makes a false or misleading representation concerning the services;</p> <p>(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;</p> <p>(d) The promoter indulges in any fraudulent practices.</p>	<p>Any of the following activities undertaken by a developers such as false standards of service depicted or absence of such amenities as advertised can lead to the registration of the developer being cancelled.</p>
<p>Sec 8 – Revocation of Registration</p>	<p>Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development</p>	<p>The authority has vested powers to continue the development of the remaining part in case the registration of an ongoing project is revoked</p>

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	works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:	midway. However the first right of refusal for completing the construction would be with the association of the allottees.
Sec 9 – Real Estate Agent	No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.	All the real estate agents also to seek registration under the act. The registration is to be single for that particular state. The registration number so obtained is to be quoted by the agent in all his sales. Further they are also required to maintain books and records.

To be continued in Part II...

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