

The Real Estate (Regulation & Development) Act, 2016

Presented by
Girish Godbole
(Advocate)

Assisted by
Shruti Tulpule
(Advocate)

SCOPE, EXTENT, PROVISIONS III

Force

- Enacted by Parliament, but entire Act not yet brought into force. Only following Sections are presently brought **in force w. e. f. 1st May, 2016.**
- Section 2(Definitions)
- Chapter V Sections 20-39 (The Real Estate Regulatory Authority), Section 40 not brought in force yet.
- Sections 41-58 (The Central Advisory Council)
- Sections 71-78 (Powers of Adjudicating Officer and Finance, Accounts, Audits And Reports)
- Sections 81-92 (Powers of State Government to Make Rules, Authority to make Regulations, Power to Pass order for Removal of Difficulties and Section 92 which repeals M. H. (R. & D.) Act, 2012, which is no longer in force.
- **Certain important provisions of Chapter II Registration Of Real Estate Project, Chapter III Functions and Duties of Promoter, Chapter IV Rights and Duties of Allottees and Chapter VIII Offences, Penalties and Adjudication are not yet brought in force and the Central Government may bring into force remaining provisions of the Act on different dates in future by a Notification. These dates are uncertain today.**

New Concepts in RERA, 2016

Compulsory Registration of Individual Real Estate Project, including every phase; and creation of a web page on the website of the Real Estate Regulatory Authority even before issuing any advertisement or accepting any advance. **(Section 3)**

An elaborate Application for Registration of the project or phase containing all particulars relating to title, sanctions and permissions, location, numbers, types and carpet area of the apartments including balconies and terraces and garages, designated real estate agents for the project, particulars of contractors/architects/structural engineer and other concerned persons, and a declaration of the promoter on affidavit regarding title of land, time of proposed completion of the project or phase and restriction to maintain an escrow account with withdrawal of only 30% proportionate to the stage of completion with certification of engineer, architect and CA in practice and restriction to utilise the sale proceeds only for that project/phase with obligation to take all pending approvals from Competent Authorities on time **(Section 4)**

- **Grant, Extension & Revocation of Registration by the Authority** with revocation resulting in debarring the promoter from accessing the website with display of the names of the defaulters and communication to other Real Estate Authorities in India, taking over of the project by the authority to complete the remaining project, freezing of bank accounts of the project followed by taking over and de-freezing for completion **(Sections 5-7)**
- Concept of **taking over of incomplete projects by Authority or by Association of Allottees** or in any other manner with first right of refusal to association of Allottees **(Section 8)**
- **Registration & Functions of Real Estate Agents** with obligation to ensure that he does not facilitate the sale of tenements in an unregistered project **(Sections 9 & 10)**

Section 11

- Responsibility to update the Web Page of Real Estate Project with all details including number of bookings, list of approvals received, list of pending approvals.
- Responsibility to make available all sanctioned plans, stage wise time schedule of development for inspection to consumers.
- Responsibility towards formation of association of allottees and executing conveyance in favour of such association
- Responsibility for structural defects even after execution of conveyance deed.

- Obligation to obtain completion certificate and/or occupation certificate
- Responsibility to pay all outgoings till physical possession is transferred
- Obligation to not create a charge on allotted/sold apartment
- Right to cancel allotment in terms of agreement for sale; however, corresponding right to allottee to refer the dispute to the Authority

(Section 12)

- Obligation of the Promoter regarding veracity of advertisement and the right to allottee to refer the dispute to Authority for compensation for the loss arising from the misrepresentation

- **(Section 13) Advance not exceeding 10%** of the price to be accepted unless registered agreement is executed and execution of **agreement specifying all particulars of project**, specifications of apartment and internal and external development works related to the layout, **equal rate of interest payable by and to the promoter**
- **(Section 14) No deviation from sanctioned plans & specifications with provision for making changes due to architectural and structural reasons recommended by architect/engineer with intimation to allottee and prohibition to make alterations and additions** in the plans/layout and specifications and common areas **without consent of 2/3rd Allottees** (excluding promoter and his family members/associates/group concerns)

- **(Section 15) Restriction on transfer** or assignment **of majority rights** in the project to a third party without written **consent of 2/3rd allottees** and prior approval of authority
- **(Section 16)** Insurance of (a) title of land and building (b) construction, with obligation to pay premium and transfer the insurance to the Association of Allottees
- **(Section 17) Transfer of title to the Association of Allottees or Competent Authority** within time specified by *local laws*

Author's note – which can be specified by the promoter in the agreement u/s 10 of MOFA, 1963

- **(Section 19) Duties of Allottees** including payment of interest for delay, participation in formation of association and taking possession within 2 months of occupation certificate
- **Chapter V** Establishment of **Real Estate Regulatory Authority** to be headed by experts, **filing of complaints** before Authority or adjudicating officer of authority **(Section 31)**, power to conduct investigations, issue interim orders and directions, impose penalty or interest and recovery thereof **(Sections 35 to 40)**

- **Chapter VII** - Constitution of **Real Estate Appellate Tribunal** – with precondition of **deposit of 30% of penalty** or entertaining appeal which tribunal to be headed by a serving/retired judge of high court with power to decide cases summarily with a **Second Appeal only in the High Court**
- **Bar of jurisdiction of Civil Court** to entertain any dispute under the Act – (**Section 79**)
- **Penalties** for non-registration u/s 3, contravention of Section 4 and other provisions; non-registration of agents etc.
- The **Repeal of MH(R&D)A 2012**, which may not be sustainable in the constitutional set up (**Section 92**)

Section 2 - Definitions

- **2(b) "advertisement"** means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.

***Author's Note:-** Section 11(2) – Advertisement must provide website address of the Authority which will display the registration number & all such details.*

Care to be taken to coordinate between Architects, Sales Team and Media Team while preparing Brochures, Print/Electronic Media Ads, with riders regarding proposed future development of Layout Yet to be Sanctioned, but having potential of sanction.

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

Author's Note- Allottee also includes Transferee from the original Allottee.

- **2(k) "carpet area"** means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.
- Explanation — ... Not reproduced
- **Author's note:** *In the event of conflict between this definition and the definition of the term 'carpet area' in Section 2(d) of MOFA 1963, the definition in Section 2(k) of RERA will prevail on account of Section 89 of RERA*

- **2(m) "commencement certificate"** means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan
- *Author's note: This definition enriches the scope beyond the 'commencement certificate' contemplated by MRTP Act, 1966*

2(n) "common areas" mean—

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

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

- **2p) "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
- **2(v) "estimated cost of real estate project"** means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges

- **2(w) "external development works"** includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws

Author's note: Due care will have to be taken while filing an application for registration u/s 4

- **2(za) "interest"** means the rates of interest payable by the promoter or the allottee, as the case may be.
- Explanation.—For the purpose of this clause—
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid
- ***Author's note: In case of interest payable by Allottee, it is payable at simple interest, whereas the interest payable by the Promoter is compound interest***

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

- 2(zk) "promoter" means,—
- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon;...
- Author's note: This definition is broadly similar to the definition of 'promoter' u/s 2(c) of MOFA, but now, authorities like CIDCO, MHADA, MMRDA etc. who construct and sell tenements are covered by the definition.

- 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

Registration of Real Estate Project – Section 3

New Real Estate Project

- Compulsory Registration prior to advertisement, marketing, booking or selling any flat

On-going Real Estate Project

- Compulsory Registration within 3 months from the date of commencement of the Act

Contravention of Section 3

- Promoter is liable for penalty u/s 59 up to 10% of project cost. Further non-compliance with orders may lead to further fine of 10% of project cost or imprisonment upto 3 years.

Registration

- (a) where the land area does not exceed five hundred sq. mtrs. or apartments do not exceed eight inclusive of all phases
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Disclosures & Declarations at the time of Registration

- Section 4 read with Rules (when enacted) by the appropriate State Government u/s 84 (2) (a) provides the details of disclosures & declarations that ought to be given along with the Application Form.

Contravention of Section 4

- Penalty u/s 60 up to 5% of project cost

(a) **brief details of his enterprise** including its name, registered address, type of enterprise, and the particulars of registration, and the **names and photographs of the promoter**;

(b) **brief details 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

[**Author's note**: full disclosure regarding FSI to be used in each phase & max. FSI to be used in the entire project]

(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

Declarations

(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;

Declarations

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act

Escrow Account

(D) Declaration 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:

Proviso 1

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

Proviso 2

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:

Section 5 – Grant of Registration by Authority

- (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.
- (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or
- (b) reject the application for reasons to be recorded in writing

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

Author's Note: It would be prudent to provide a much longer period following the period within which the Promoter expects to complete the project in order to avoid any liability including penal liability for any delay in the project.

Section 8

- Section 8 – Consequence of lapse or revocation of registration

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

Section 15

- (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority
- Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter. Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

- (2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:
- Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

Author's Note:

Whether dissolution of a Partnership Firm in accordance with the Indian Partnership Act, 1932 or Limited Liability Partnership Act, 2000 and take over of an on-going project by some of the partners would attract Section 15?

Whether transfer of shares in a private limited company to a third party would attract Section 15?

Whether, in case of a listed Limited Company, would it be considered as a majority shareholding of a Promoter?

Section 16 – Obligations regarding Insurance

- (1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —
 - (i) title of the land and building as a part of the real estate project; and (ii) construction of the real estate project.
- (2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

- (3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.
- (4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.
- **Author's note** - Issues which arise
- Presently there is no policy available regarding title of land and building
- The payment of premium and the quantum of premium may be substantially high considering possibility of litigation

Section 17

Transfer of Title

Author's Note:

Section 17 provides for transfer of title which is similar to Section 11 of MOFA 1963. However, subsection (1) refers to local laws. MOFA 1963 is the local law. Section 11 of MOFA provides that Conveyance will be executed by the Promoter in accordance with the Agreement executed u/s 4 and hence the period specified in the Agreement would be a period within which Conveyance will have to be executed u/s 17 (1) of the Act.

Section 18 – Liability of promoter for return of amount & compensation

- Failure to give possession as agreed in the terms of agreement to sell
- Loss caused to allottee on account of defective title
- Failure to discharge any other obligations under the Act and the agreement to sell

Contravention of aforementioned obligations

- Section 61

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Liabilities imposed on the Allottee – Section 19

- Liability to make necessary payments towards consideration and other charges as prescribed
- Liability to pay interest in case of delay in payment
- Obligation to participate in formation of association
- Obligation to take possession within 2 months from issue of occupancy certificate
- Obligation to participate in the registration of conveyance deed

Section 31

Filing of complaints with the Authority or Adjudicating Officer by
“any aggrieved person”

Section 79

Bar of Jurisdiction of Civil Courts

Section 35
On a complaint or suo motu, power
of Authority to call for information &
conduct investigations



Section 37
Power to issue Directions to promoters/
allottees/ real estate agents



Section 43 (5)
Appeal from order of
Authority/Adjudicating officer before the
Appellate Tribunal subject to deposit of
30% of the penalty

Section 36
Power of Authority to issue interim
orders



Section 38
Power to impose penalty or interest, Power to refer to
Competition Commission of India
Section 40
Power to recover penalty/interest/compensation as an
arrear of land revenue



Section 58
Appeal to the High Court from a
decision/order of the Appellate Tribunal

MOFA 1963, MOF Rules, 1964,
Maharashtra Apartment Ownership Act,
1970 & Maharashtra Apartment Rules
1971 continue to apply. In the event of
inconsistency, provisions of RERA, 2016
will prevail

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