



# The Real Estate (Regulation & Development) Act 2016- An Overview

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he enactment of the Real Estate Regulation and Development Act had been doing rounds and was a much-debated topic over the last couple of years, which started with the introduction of the Bill in the year 2013. The Bill was finally passed by both the houses of the Parliament and subsequently received the presidential assent on 25th of March 2016.

The object of the act is the establishment of a real estate regulatory authority for regulation and promotion of the real estate sector and to ensure the interest of the consumers in real estate is protected. Keeping in line with the spirit and object of the act, relevant provisions has been introduced to ensure that there is a fair and transparent dealing in the real estate transactions and protection of consumers interest has been given an utmost priority.

## **PROCEDURAL CHANGES**

The act also introduces mandatory procedural aspects, which needs to be completed even before the promoters can market and advertise the project or appoint brokers or channel partners for them. Not only this, even during the development of the project certain information needs to be updated on a periodic basis for information and updation of consumers.

The act introduces the establishment of an real estate regulatory authority which shall be responsible to regulate the real estate projects and agents, along with a duty to ensure that all the duties and obligations of the promoters under the act are complied with.

Section 3 of the Act makes it mandatory for the promoters to get their project registered with the authority. Only once the project is registered the promoter can proceed for advertising, marketing, booking or selling or invite persons for purchasing units, apartments and its projects. However, there is an exception to the registration of the projects, which provides exemption from registration if the proposed land to be developed does not exceed 500 m<sup>2</sup> or the apartments proposed to be developed does not exceed eight, inclusive of all phases. In effect, only the projects having an apartment less than eight in number or land area being less than 500 m<sup>2</sup> are exempted from registration.

Along with the application for registration, a declaration supported by an affidavit also needs to be given by a promoter stating among other details the following:

- a. Legal title to the land.
- b. Undertaking as to the time period for completion of the project
- c. 70% of the amount realized from the allottees is to be deposited in a separate account for covering the cost of construction.

d. All the pending approvals from the concerned authorities shall be taken.

In addition to the above declaration, restrictions have been imposed on utilization of the amount received from the allottees. 70% of the amount received shall be deposited in a separate account to cover the cost of land and the project. The promoter can withdraw the amount from account, to cover the cost of project, only in proportion to the percentage of completion of the project and only upon a certificate being issued by an engineer, an architect, and a chartered accountant in practice stating that the withdrawal is in proportion to the percentage of completion.

On receipt of the for registration the authority shall grant registration subject to the provisions of the act, which shall be limited to the period required for completion stated by the promoter in his declaration.

Moreover, apart from the projects to be registered the real estate agents shall also get themselves registered with the authority, and only once the registrations has been granted the agents can facilitate the sale and purchase of the projects registered with the Authority.

### HIGHLIGHTS OF THE ACT

Apart from the above procedural changes, some of the notable changes prescribed by the act can be summarized as follows:

- Upon registration of the project the promoter is web page on the website of

the Authority and enter the details of the proposed project for public viewing. The details will also include a quarterly up to date list of the number and type of apartments booked, list of number of garages booked, list of approvals taken and pending etc.

- In case of additions and alterations to be made in the sanction plan prior permission of people who have agreed to take the apartment or unit in the project shall be taken.

- In cases where additions alterations are required concerning the specification of the building or the common areas then prior consent of at least two thirds of the allottees, other than the promoter shall be required.

- It shall be mandatory for the promoter to obtain all insurance as may be notified including but not limited to the title of the land and construction of the project.

- In the unlikely event of the promoter considering the option of transferring or assigning his majority rights and liabilities in respect of the project, then prior written approval of the authority shall be required.

- If the allottee suffers any loss due to the defective title of the land or if the promoter fails to discharge its obligation as provided under the act then the allottee shall be entitled to compensation.

- Any aggrieved person may file a complaint with the authority, for



violation of any of the provisions of the act or the rules made thereunder against the concerned promoter, allottee or real estate agent.

- The directions or the decisions of the authority would be appealable before the Real Estate Appellate Tribunal, and shall be preferred within 60 days from the date of receipt of the direction of a copy. The Appellate Tribunal shall make all possible endeavors to dispose of the appeal within a period of 60 days from its receipt.

- The Appellate Tribunal shall have the power to regulate its own procedure and shall not be bound by the procedure laid down under Code of Civil Procedure 1908. The Tribunal shall have the same powers as that of a civil court for the purpose of discharging its function under the act.

- An appeal against the order of the Appellate Tribunal shall be made before the High Court within a period of 60 days from the date of communication of the decision or order of the Appellate Tribunal

## OVERVIEW

The provisions as contained in the act is in conformity and consonance with the

object of the act which focuses on protection of consumers in real estate transactions. Various rights have been provided to the consumers and the promoters have been made accountable for their projects. This being the primary aspect has been well taken care of. On the other hand introduction of new procedures has cast an additional responsibility on the promoters to comply with the provisions and procedures as provided by the Act. In order to fulfil the obligations and duties of the promoter, which per se also includes obtaining all the relevant approvals and clearances from the concerned authorities, there arises a need or a mechanism for expedient working among the authorities concerned. If proper coordination and timely grant of the clearances and approvals are not present and/or provided then it is ultimately the promoters who will be facing the consequences for non-completion of the projects on time. Taking this factor into consideration the act is to some extent detrimental to the interest of the promoters. However, one thing that can be surely anticipated is this Act will change the face of the real estate transactions and bring about more transparent dealings between the promoters and the consumers.



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