

Real Estate Regulation and Development Law

Lesson 11

KEY CONCEPTS

■ Agreement for sale ■ Allottee ■ Promoter ■ Carpet area ■ Common areas ■ Planning area ■ Commencement certificate ■ Completion certificate

Learning Objectives

To understand:

- Registration of Real Estate Project
- Registration of Real Estate Agents
- Functions of real estate agents
- Functions of Promoter
- Obligation of Promoters
- Rights of Allottees
- Establishment of Real Estate Regulatory Authority
- Real Estate Appellate Tribunal

Lesson Outline

- Real Estate Project
- Registration of Real Estate Agents
- Functions and Duties of Promoter
- Duties of Allottees
- Real Estate Regulatory Authority
- Central Advisory Council
- Real Estate Appellate Tribunal
- Adjudication
- Offences & Penalties
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

INTRODUCTION

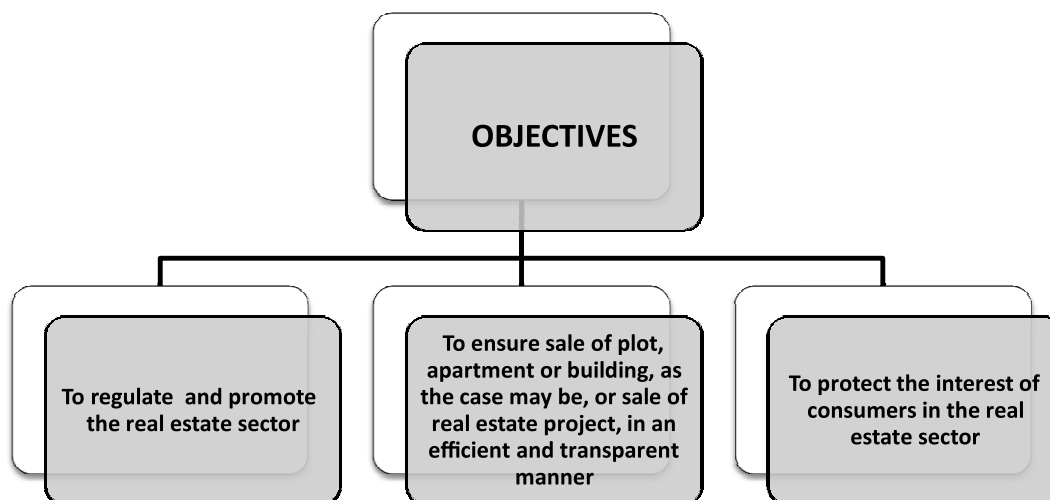
Real estate sector plays a catalytic role in fulfilling the needs and demand for housing and infrastructure in the country and is an important pillar of the economy. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation 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.

Importance of a house in a developing country like India can be gauged from the data which shows that about more than 77% of total assets of an average Indian household are held in real estate and it’s the single largest investment of an individual in his lifetime. The real estate in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financier as building projects collect money upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure. The amendment to the Insolvency and Bankruptcy Code, 2018 recognized the home buyers as financial creditors.

The objectives of the Act are as under:



In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors. Etc, Civil Appeal No(s). 6745-6749 of 2021 (Arising out of SLP (Civil) No(s). 3711-3715 of 2021) judgement dated 11th November, 2021 Supreme Court of India inter-alia observed that:

It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds & delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast track dispute resolution mechanism. It also proposes to induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run.

To meet out different nature of exigencies, it was noticed by the Parliament that Pan India, large number of real estate projects where the allottees did not get possession for years together and complaints being filed before different forums including under the Consumer Protection Act has failed to deliver adequate/satisfactory results to the consumer/allottees and their life savings is locked in and sizable sections of allottees had invested their hardearned money, money obtained through loans or financial institutions with the belief that they will be able to get a roof in the form of their apartments/flats/unit.

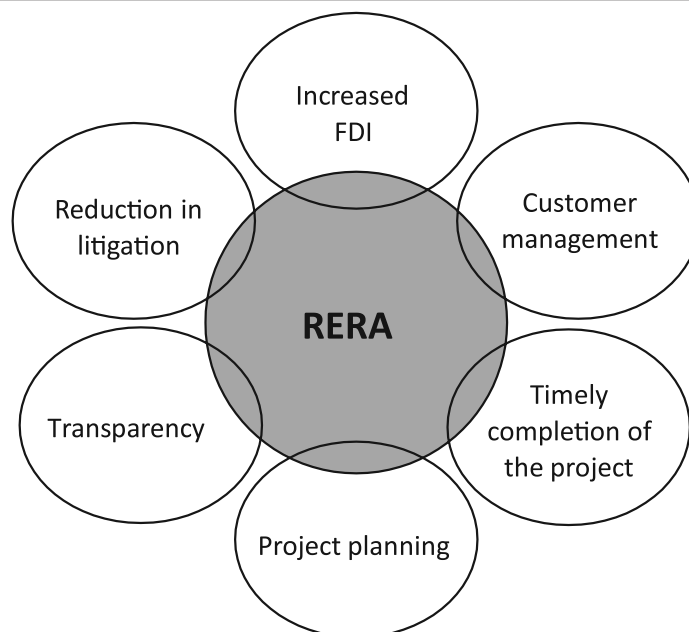
At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest.

SALIENT FEATURES OF THE ACT

- 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 protection 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 of the project, 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.

- 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 REGULATION & DEVELOPMENT ACT)



IMPORTANT DEFINITIONS

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.

In this Act, Section 2 provides following definitions with opening words...unless the context otherwise requires:-

“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 as plot, building or apartment or to make advances or deposits for such purposes. {Section 2(b)}

“Agreement for sale” means an agreement entered into between the promoter and the allottee. {Section 2(c)}

“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. {Section 2(d)}

In Pioneer Urban Land and Infrastructure Limited vs. Union of India, the Supreme Court upheld the constitutional validity of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, which included ‘real estate allottees’ within the definition of ‘financial creditors’ under Section 5(8)(f) of the Insolvency and Bankruptcy Code.

“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. *{Section 2(e)}*

“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. *{Section 2(j)}*

“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. *{Section 2(k)}*

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. *{Section 2(m)}*

“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. *{Section 2(n)}*

“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. *{Section 2(o)}*

“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. *{Section 2(p)}*

“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. {Section 2(q)}

“Interest” means the rates of interest payable by the promoter or the allottee, as the case may be. {Section 2(za)}

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. {Section 2(zb)}

“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. {Section 2(zc)}

“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. {Section 2(zf)}

“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;

any such other entity as the appropriate Government may, by notification, specify in this behalf. {Section 2(zg)}

“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. {Section 2(zh)}

“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. {Section 2(zi)}

“Appropriate Government”

Section 2(g) of the Act defines ‘Appropriate Government’ to mean as follows:

For the Union territory without Legislature,	<ul style="list-style-type: none"> ● Central Government;
For the Union territory of Puducherry,	<ul style="list-style-type: none"> ● Union Territory Government;
For the Union territory of Delhi,	<ul style="list-style-type: none"> ● Central Ministry of Urban Development;
For the State,	<ul style="list-style-type: none"> ● 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.
- (b) As per section 20 of the Act, the appropriate Government is required to establish the Regulatory Authority.
- (c) As per section 43 of the Act, the appropriate Government is required to establish the Appellate Tribunal.
- (d) 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.
- (e) 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.
- (f) As per section 41, the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- (g) 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 gets tapped 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 made 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.

Prior Registration of Real Estate project with Real Estate Regulatory Authority (Section 3)

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 under section 20 of the Act.

It may be noted that –

“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. {Section 2(zk)}

The very purpose and object of enacting the Act, 2016 was to safeguard the interest of the home buyers from the project which was launched by the promoter and was not completed in time. The legislature does not leave any individual, association, or organization as an exception to the word ‘promoter’. The use of the word ‘a person’ at the outset of the definition clause of the word ‘promoter’ clearly signifies that it embraces all types of individuals, associations, corporations, and authorities dealing in the real estate sector and does not exclude any organization though it may be “no profit no loss” organization but is registered under the Act. (Air Force Naval Housing Board Air Force Station vs. U.P. RERA and others)

“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. {Section 2(zn)}

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:

- (a) area of land proposed to be developed does not exceed 500 Sq. Meters or No. of apartments proposed to be developed does not exceed eight inclusive of all phases:

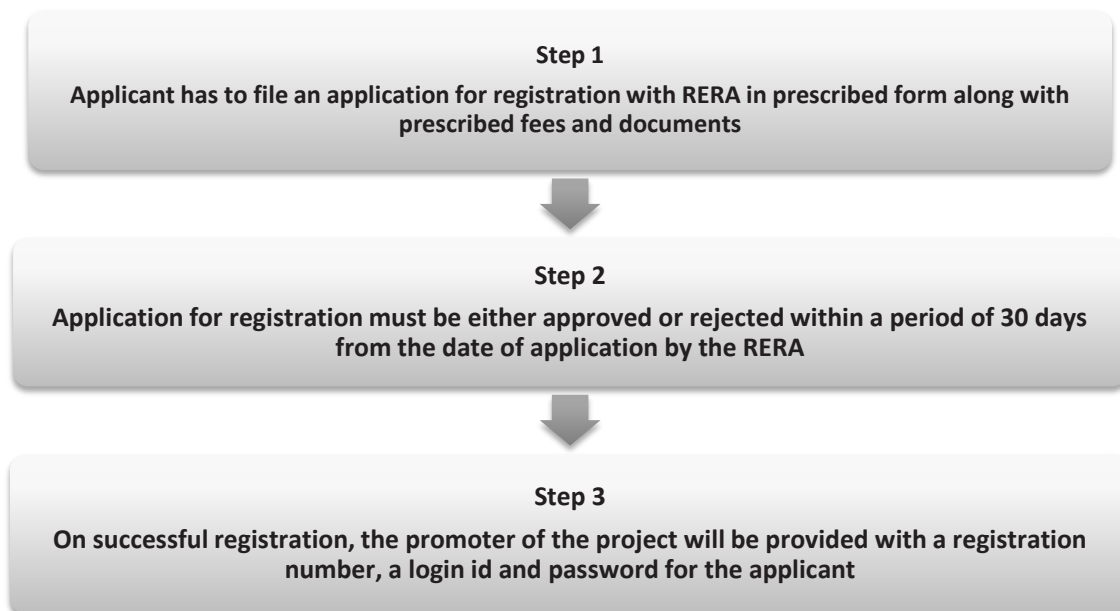
Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. etc, Civil Appeal No(s). 6745-6749 of 2021 [Arising out of SLP (Civil) No(s). 3711-3715 of 2021] Supreme Court of India inter-alia observed that from the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.

Application for Registration of Real Estate Projects (Section 4)

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.



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 firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas 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 (Section 5)

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 provided above, 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, provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

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 (Section 6)

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 (Section 7)

The Authority may, on receipt of a complaint or *suo moto* 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 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. {Section 2(zm)}

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 of 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 (Section 10)

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 under section 9 of the Act.

Every real estate agent maintains and preserves such books of account, records and documents as may prescribed. Every real estate agent not to 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 (Section 11)

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 (Section 12)

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under 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

According to Section 13, 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

According to Section 14, 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—

- (a) 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.

- (b) 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.

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.

It may be noted that –

“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. {Section 2(zq)}

Structural Defect

Section 14 provides 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 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

Section 15 of the Act provides that 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

Section 16 casts an obligation on the promoter to 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 (Section 17)

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 (Section 18)

Section 18(1) provides that 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.

The Hon'ble Supreme Court of India while interpreting Section 18 of the Act, in the case of Imperia Structures Ltd. Vs. Anil Patni and Another [2020(10) SCC 783] held that in terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

RIGHTS AND DUTIES OF ALLOTTEES

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.

Section 19 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.
 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.

Establishment and Incorporation of Real Estate Regulatory Authority (Section 20)

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. (Section 21)

Qualifications of Chairperson and Members of Authority (Section 22)

The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration.

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 (Section 23)

1. The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.
2. Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

Filing of Complaints with the Authority or the Adjudicating Officer (Section 31)

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 (Section 32)

The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on,—

- protection of interest of the allottees, promoter and real estate agent;
- 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 (Section 33)

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 (Section 34)

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;
- 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 (Section 35)

Where the Authority considers it expedient to do so, on a complaint or *suo motu*, 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 (Section 36)

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 (Section 37)

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Powers of Authority (Section 38)

1. The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.
2. The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.
3. Where an issue is raised relating to agreement, action, omission, practice or procedure that—
 - (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or
 - (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

Rectification of Orders (Section 39)

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. (Section 40)

Section 40(1) states that if a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

According to Section 40(2) if any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

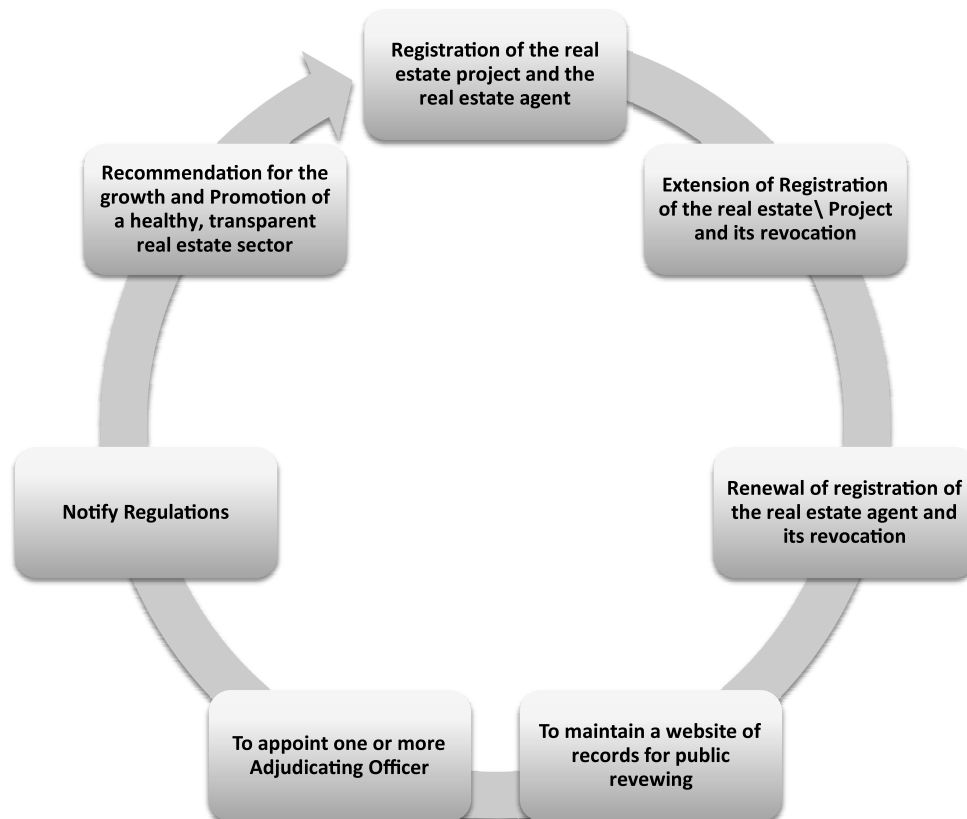
Whether the authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?

In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc, Civil Appeal No(s). 6745-6749 of 2021 (Arising out of SLP(Civil) No(s). 3711-3715 OF 2021) judgement dated 11th November, 2021, Supreme Court of India held that:

“It is settled principle of law that if the plain interpretation does not fulfil the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonising the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self-explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act.”

Taking into consideration the scheme of the Act what is to be returned to the allottee is his own life savings with interest on computed/quantified by the authority becomes recoverable and such arrear becomes enforceable in law. There appears some ambiguity in Section 40(1) of the Act that in our view, by harmonising the provision with the purpose of the Act, is given effect to the provisions is allowed to operate rather running either of them redundant, noticing purport of the legislature and the above stated principle into consideration, we make it clear that the amount which has been determined and refundable to the allottees/home buyers either by the authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act.

Responsibilities of the ‘Regulatory Authority’



CENTRAL ADVISORY COUNCIL

Establishment of Central Advisory Council (Section 41)

1. The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.
2. The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.
3. The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.
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 (Section 42)

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.

The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on above matters.

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 (Section 43)

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 or 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.

Whether the condition of predeposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc, Civil Appeal No(S). 6745 6749 of 2021 (Arising out of SLP(Civil) No(s). 37113715 of 2021) judgement dated 11th November, 2021, Supreme Court of India held that:

“To safeguard the interests of the parties, on being decided by the regulatory authority/adjudicating officer, it is always subject to appeal before the Tribunal under Section 43(5) provided condition of pre-deposit being complied with can be further challenged in appeal before the High Court under Section 58 of the Act and, thus, the legislature has put reasonable restriction and safeguards at all stages. In our considered view, the obligation cast upon the promoter of predeposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of predeposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”

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

Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on Employment after Cessation of Office (Section 50)

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 (Section 53)

1. The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
2. Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
3. The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
4. The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;

- (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examinations of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application for default or directing it ex parte; and
 - (g) any other matter which may be prescribed.
5. All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right to Legal Representation (Section 56)

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 (Section 57)

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 (Section 58)

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



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. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole -time company secretary.

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 compliance 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.

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

If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty, under section 60 of the Act, 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 (Section 61)

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 (Section 62)

If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

Penalty for failure to comply with orders of Authority by Promoter (Section 63)

If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.

Penalty for failure to comply with orders of Appellate Tribunal by promoter (Section 64)

If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

Penalty for failure to comply with orders of Authority by real estate agent (Section 65)

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

Penalty for failure to comply with orders of Appellate Tribunal by real estate agent (Section 66)

If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or

with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

Penalty for failure to comply with orders of Authority by allottee (Section 67)

If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

Penalty for failure to comply with orders of Appellate Tribunal by allottee(Section 68)

If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the plot, apartment or building cost, as the case may be, or with both.

Offences by companies (Section 69)

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 (Section 70)

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 (Section 71)

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 any be, as he thinks fit in accordance with the provisions of any of those sections.

Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc, Civil Appeal No(S). 6745 6749 of 2021 (Arising out of SLP (Civil) No(s). 37113715 OF 2021) judgement dated 11th November, 2021 Supreme Court of India held that:

“The legislature in its wisdom has made a specific provision delineating power to be exercised by the regulatory authority/adjudicating officer. “Refund of the amount” and “compensation” are two distinct components which the allottee or the person aggrieved is entitled to claim if the promoter has not been able to hand over possession with a nature of enquiry and mechanism provided under the Act. So far as the claim with respect to refund of amount on demand under Sections 18(1) and 19(4) of the Act is concerned, it vests within the jurisdiction of the regulatory authority. Section 71 carves out the jurisdiction of the adjudicating officer to adjudge compensation under Sections 12, 14, 18 and 19 after holding enquiry under Section 71(3) of the Act keeping in view the broad contours referred to under Section 72 of the Act.

From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

Factors to be taken into account by the adjudicating officer (Section 72)

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:— (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

MISCELLANEOUS**Bar of Jurisdiction (Section 79)**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Adjudicating officer or the Appellate Tribunal is empowered by or under 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.

Cognizance of Offences (Section 80)

No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Delegation (Section 81)

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?

In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc., Civil Appeal No(S). 6745 6749 of 2021 (Arising out of SLP(Civil) No(s). 3711-3715 of 2021) judgement dated 11th November, 2021 Supreme Court of India held that:

“Section 81 of the Act 2016 empowers the authority, by general or special order in writing, to delegate its powers to any member of the authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. What has been excluded is the power to make regulations under Section 85, rest of the powers exercised by the authority can always be delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act.

It is a well-established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose. Section 81 of the Act positively empowers the authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act. As a consequence, except the power to make regulations under Section 85 of the Act, other powers

and functions of the authority, by a general or special order, if delegated to a single member of the authority is indeed within the fold of Section 81 of the Act.

That scheme of the Act, 2016 provides an inbuilt mechanism and any order passed on a complaint by the authority under Section 31 is appealable before the tribunal under Section 43(5) and further in appeal to the High Court under Section 58 of the Act on one or more ground specified under Section 100 of the Code of Civil Procedure, 1908, if any manifest error is left by the authority either in computation or in the amount refundable to the allottee/home buyer, is open to be considered at the appellate stage on the complaint made by the person aggrieved.

In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be de hors the mandate of law.”

Application of other laws not barred (Section 88)

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Act to have overriding effect (Section 89)

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Protection of action taken in good faith (Section 90)

No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

LESSON ROUND-UP

- On and from the coming into force of the RERA, all real estate projects (as defined) would first have to be registered with the real estate regulatory authority, which, before registering such projects, would look into all relevant details, including delay in completion of other projects by the developer.
- Importantly, the promoter is now to make a declaration supported by an affidavit, that he undertakes to complete the project within a certain time period, and that 70% of the amounts realised for the project from allottees, from time to time, shall be deposited in a separate account, which would be spent only to defray the cost of construction and land cost for that particular project.
- Registration is granted by the authority only when it is satisfied that the promoter is a bona fide promoter who is likely to perform his part of the bargain satisfactorily.
- Registration of the project is only for a certain period and can only be extended due to force majeure events for a maximum period of one year by the authority, on being satisfied that such events have, in fact, taken place.

- Registration once granted, may be revoked if it is found that the promoter defaults in complying with the various statutory requirements or indulges in unfair practices or irregularities. Importantly, upon revocation of registration, the authority is to facilitate the remaining development work, which can then be carried out either by the competent authority as defined by the RERA or by the association of allottees or otherwise.
- The promoter at the time of booking and issue of allotment letters has to make available to the allottees information, inter alia, as to the stage-wise time schedule of completion of the project.
- Deposits or advances beyond 10% of the estimated cost as advance payment cannot be taken without first entering into an agreement for sale. Importantly, the agreement for sale will now no longer be a one-sided contract of adhesion, but in such form as may be prescribed, which balances the rights and obligations of both the promoter and the allottees.
- Under section 18, if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, he must return the amount received by him in respect of such apartment etc. with such interest as may be prescribed and must, in addition, the agreement for sale. In addition, all allottees are to be responsible for making necessary payments in instalments within the time specified in the agreement for sale and shall be liable to pay interest at such rate as may be prescribed for any delay in such payment.
- Under section 31, any aggrieved person may file a complaint with the authority or the adjudicating officers set up by such authority against any promoter, allottee or real estate agent, as the case may be, for violation or contravention of the RERA, and rules and regulations made thereunder.
- Also, if after adjudication a promoter, allottee or real estate agent fails to pay interest, penalty or compensation imposed on him by the authorities under the RERA, the same shall be recoverable as arrears of land revenue.
- Appeals may be filed to the real estate appellate tribunal against decisions or orders of the authority or the adjudicating officer. From orders of the appellate tribunal, appeals may thereafter be filed to the High Court. Stiff penalties are to be awarded for breach and/or contravention of the provisions of the RERA.
- Importantly, under section 72, the adjudicating officer must first determine that the complainant has established default on the part of the respondent, after which consequential orders may then follow.
- Under section 88, the provisions of RERA are in addition to and not in derogation of the provisions of any other law for time being in force and under section 89, RERA is to have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Define following:
 - (i) Carpet Area
 - (ii) Occupancy certificate
2. When is registration of real estate project not required under the Act?
3. What happens if the Authority fails to grant the registration or reject the application within a period of thirty days on receipt of the application for registration of the project under the Act?

