



# Real Estate (Regulation and Development) Act, 2016

Along with

UT without Legislature Real Estate (Regulation and Development) (General) Rules, 2016

&

UT without Legislature Real Estate (Regulation and Development) (Agreement for Sale) Rules, 2016

Ministry of Housing & Urban Poverty Alleviation  
Government of India

28<sup>th</sup> March, 2017



# Real Estate Act – Important Dates and Timelines

- The Real Estate (Regulation and Development) Bill was **passed by the Rajya Sabha on 10th March, 2016 and by the Lok Sabha on 15th March, 2016**
- The Bill as passed by the Parliament was **assented to by the Hon'ble President on 25th March, 2016**
- The Real Estate (Regulation and Development) Act, 2016 was **published in the Official Gazette on 26th March, 2016 for general information**
- Section 2, sections 20 – 39, sections 41 – 58, sections 71 – 78 and sections 81 – 92 **notified with effect from 1<sup>st</sup> May, 2016**
- **Remaining sections of the Act to come into effect from 1<sup>st</sup> May, 2017**

# Real Estate Act – Salient Features

- Act extends to residential and commercial real estate
- **Registration of Real Estate Projects with Regulatory Authority** - 500 square meters and above or 8 apartments and above
- **Registration of Real Estate Agents** who intend to sell any plot, apartment or building - which is required to be registered with the Regulatory Authority
- **Promoter to make disclosure of all relevant project information** for public view such as -
  - details of promoters, layout plan, plan of development works, land status, status of the statutory approvals, number of parking, time period for project completion etc.
  - proforma of agreements to be entered into with the buyers
  - names and addresses of agents, contractors, architect, engineer etc.

# Real Estate Act – Salient Features

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- **Promoter also comply with the following -**
  - adherence to approved plans and project specifications
  - obligations regarding authenticity of the advertisement or prospectus
  - rectify structural defects
  - refund money in cases of default
  - compulsory deposit of 70% of the amount realized from allottees in a separate account to cover the cost of construction and land cost
- Act provides for **establishment of Regulatory Authority** in each State/UT, or one Authority for two or more States/UT, by the Appropriate Government for implementation of Act
- Act provides for **appointment of one or more adjudicating officers by Regulatory Authority**, based upon need - to settle disputes and impose compensation and interest

# Real Estate Act – Salient Features

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- **Regulatory Authority to -**
  - act as the nodal agency towards implementation of the Act
  - co-ordinate efforts regarding development of sector; and
  - render necessary advice to the appropriate Government
- Act provides for **establishment of Appellate Tribunal** to hear appeals from the orders of the Authority & adjudicating officer
- **Act provides for establishment of Central Advisory Council** to advise the Central Government on -
  - implementation of the Act
  - major questions of policy
  - protection of consumer interest
  - growth and development of the sector

# Responsibilities of Appropriate Government under Act

- **Section 20: Regulatory Authority**
  - **Establishment of Regulatory Authority maximum by 30th April, 2017**
  - Designate an officer (preferably Housing Secretary) as interim Regulatory Authority
  - Appointment of Regulatory Authority based on recommendations of Selection Committee - Constitute Selection Committee
- **Section 28 - Appoint officers and other employees of Regulatory Authority in consultation with the Authority**
- Identification of office space etc. and other infrastructure
- **Section 41 – Establishment of Central Advisory Council by Central Government**

- **Section 43 – Appellate Tribunal**
  - **Establish Appellate Tribunal by maximum 30th April, 2017**
  - Designate an existing Tribunal under any other law as interim Appellate Tribunal
  - Appointment of Chairperson of Appellate Tribunal in consultation with Chief Justice of High Court
  - Appointment of Members of Appellate Tribunal based on recommendations of Selection Committee
- **Section 51 - Appoint officers and other employees of Appellate Tribunal**
- **Section 75 – Constitute a ‘Real Estate Regulatory Fund’**
- **Section 84 – Make Rules maximum by 31<sup>st</sup> October 2016**

# Important Responsibilities of Regulatory Authority under Act

- **Section 34 - Responsibility of the Authority to maintain a website of records for public viewing of –**
  - all projects registered with the authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website
  - details of promoters with photographs of promoters
  - details of projects in case of revocation of registration or where any project penalized under the Act
  - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked
- **Section 71 - Authority to appoint ‘adjudicating officer’ in consultation with appropriate Government for dispute resolution between buyer and seller**
- **Section 85 – RA make Regulations within 3 months of establishment**



## **Power to Make Rules – provisions of Act, commencement etc.**

- **Section 84 provides that the appropriate Government shall within 6 months of commencement of the Act make Rules**
- **Section 2(g) defines “appropriate Government” as follows:**
  - the Union territory without Legislature, the Central Government
  - the Union territory of Puducherry, the Union territory Government
  - the Union territory of Delhi, the Central Ministry of Urban Development
  - **the State, the State Government**
- **Date of commencement of specified provisions of the Act including section 84 – 1<sup>st</sup> May, 2016**
- **Date within which Rules needed to be notified by the appropriate Government – 31<sup>st</sup> October, 2016**
- **As per section 84(2) rules need to be made on 31 issues & Rules need to be made on assurances made in Parliament**

# Outlay of the **General Rules for UT's without Legislature – notified** by Mo/HUPA on 31<sup>st</sup> October, 2016

1. **Chapter 1 – Preliminary** (Short title and commencement, Definitions)
2. **Chapter 2 – Real Estate Project** (Information and documents to be furnished by the promoter for registration of project, Additional disclosure by promoters of ongoing projects, Grant or rejection of registration of the project, Extension of registration of project, Revocation of registration of the project)
3. **Chapter 3 – Real Estate Agent** (Application for registration, grant & renewal of registration, revocation of registration, maintenance of books of accounts, other functions)
4. **Chapter 4 – Details to be published on the website of the Authority**
5. **Chapter 5 – Interest payable by promoter / allottee & timelines for refund**
6. **Chapter 6 – Real Estate Regulatory Authority**
7. **Chapter 7 – Recommendations of Central Advisory Council**
8. **Chapter 8 – Real Estate Appellate Tribunal**
9. **Chapter 9 – Offences and penalties** (terms and conditions and the fine payable for compounding of offence)
10. **Chapter 10 – Filing of complaint with authority and adjudicating officer**
11. **Chapter 11 – Budget and Annual Report**

## Chapter 2 of Rules – Real Estate Project

- **Information and documents to be furnished by the promoter for registration of project - In addition to documents provided in Act – Rule 3**
- PAN Card, annual report (P&L account, BS, cash flow statement, directors report, auditors report), number of parking areas, copy of land title, details of encumbrances etc.
- File details as per Form 'A' with Authority
- Pay application fees –
  - = Group Housing Project – Rs. 5 / Rs. 10 for 1000 sqm / above 1000 sqm, maximum 5 lakhs
  - = Mixed Development – Rs. 10 / Rs. 15 for 1000 sqm / above 1000 sqm, maximum 7 lakhs
  - = Commercial Projects – Rs. 20 / Rs. 25 for 1000 sqm / above 1000 sqm, maximum 10 lakhs
  - = Plotted Development - Rs. 5 per sqm, maximum 2 lakhs
- Declaration to be submitted as per section 4(2)(I) – time for completion of project, deposit funds in separate account etc. – as per Form 'B'
- Declaration to be given that promoter shall not discriminate on any grounds whatsoever – as part of Form 'B' (Parliament Assurance)

- **Additional disclosure by promoters of ongoing projects – Rule 4 (Disclosure in addition to those under Rule 3) (Parliament Assurance)**
  - Original sanctioned plan, layout plan etc. including modifications and existing plans
  - Money collected – spent on project and balance lying with promoter
  - Status of project – extent of development, original time to complete, time period required to complete etc.
  - Promoter disclose size of apartment based on carpet area - but shall not affect validity of agreement to that extent
  - In case of plotted development disclose area of plot
  - Deposit 70 % of funds collected (minus the amount already spent on land & construction) in separate account
- **Grant or rejection of registration of the project – Rule 5 – provides for forms in which registration shall be granted or rejected – Form ‘C’ and ‘D’**

# Chapter 2 & 3 of Rules – Real Estate Project & Real Estate Agent

- **Extension of the project – Rule 6**
  - Extension of registration shall be granted on an application before 3 months of expiry of registration – Form ‘E’ and ‘F’ – Extension fees of half the registration fee – along with explanatory note, however, where due to force majeure no extension fees
- **Revocation of registration of the project – Rule 7** – Provides for form in which revocation is to be communicated – Form ‘D’
- **Real Estate Agent**
  - **Application for registration – Rule 8** – apply with details such as - enterprise details, PAN, photographs, address for business etc. – Form ‘G’ - **Fees** – rs. 10 thousand for individual, 50 thousand for other than individual
  - **grant of registration – Rule 9** - to be issued in a particular form, valid for 5 years – Form ‘H’
  - **renewal of registration – Rule 10** - submit afresh all documents, pay fees, renewal for 5 yrs. – renewal only if agent in compliance with Act and rules – Form ‘J’ and ‘K’ - **Fees** – rs. 5 thousand for individual, 25 thousand for other than individual
  - **revocation of registration – Rule 11** – provides for form for intimation – Form ‘I’
  - **maintenance of books of accounts – Rule 12** - as provided under Income Tax Act
  - **other functions – Rule 13** – provide assistance to promoter and buyer

# Chapter 4, 5, 6, 7, 8 of Rules – Website of Authority, Rate of interest, Authority, CAC, Tribunal

- **Details to be published on the website of the Authority – Rule 14**
  - Provides all details to be captured on the website vis-à-vis the project and the agent etc.
  - Prepare a monthly back up of all data
- **Rate of interest payable by promoter and allottee – Rule 15**
  - SBI highest Marginal Cost of Lending Rate (MCLR) + 2 percent
- **Timelines for refund – Rule 16 – within 45 days of amount due (PA)**
- **Real Estate Regulatory Authority – Rule 17 to Rule 23**
  - manner of selection, salary and allowances of members, administrative powers of chairperson, salary of employees, functioning of authority, additional powers of authority, manner of recovery of interest/penalty etc.
- **Manner of giving effect to recommendations of Central Advisory Council – Rule 24 – make rules to give effect**
- **Real Estate Appellate Tribunal – Rule 25 to 32**
  - form 'L' for filing appeal with fees of Rs. 5 thousand, manner of selection, salary and allowances to members, procedure for inquiry of charges, salary and allowances of employees, additional powers of tribunal, administrative powers of chairperson, functioning of Tribunal etc.

# Chapter 9, 10, 11 of Rules – Offences and Penalties, Filing Complaint, Finance

- **Offences and penalties – Rule 33** - terms and conditions and the fine payable for compounding of offence
  - Imprisonment for non-registration - compounding fee of 10 % of project cost
  - Imprisonment for non compliance of order of Tribunal by promoter - compounding fee of 10 % of project cost
  - Imprisonment for non compliance of order of Tribunal by agent - compounding fee of 10 % of apartment cost for which sale facilitated
  - Imprisonment for non compliance of order of Tribunal by allottee- compounding fee of 10 % of apartment cost purchased
  - Comply with reasons for punishment within 30 days of compounding
  - Compounding deemed to be acquittal of accused
- **Manner of filing complaint with authority and adjudicating officer provided – Rule 34 and 35** – Form ‘M’ and ‘N’ – fees payable Rs. 1000
- **Manner in which Authority shall prepare budget, maintain accounts and prepare annual statement provided – Rule 36** – Form ‘O’
- **Manner in which Authority shall prepare annual report – Rule 37** – Form ‘P’

# Agreement for Sale Rules for UT's without Legislature – notified by Mo/HUPA on 31<sup>st</sup> October, 2016

- **Chapter 1 – Preliminary** (Short title and commencement, Definitions)
- **Chapter 2 – Agreement for Sale**
  - Agreement to be in the form as per Annexure
  - Any application letter, allotment letter, or any other document etc. not to affect the Agreement for Sale
- **Annexure - Agreement for Sale provides for the following details:**
  - Duties and responsibilities of the promoter and the allottee
  - Details of cost of apartment / plot
  - Details of cost of garage / covered parking
  - Mode of payment
  - Matters relating to compliance of laws relating to remittances
  - Matters regarding adjustment/ appropriate of payments made by allottee
  - Time being of essence
  - Construction of the project as per plans etc.
  - Schedule of possession of apartment / plot
  - Representations and warranties of the promoter



## Annexure - Agreement for Sale

- Events of defaults and consequences by promoter / allottee
- Conveyance of apartment
- Maintenance of building / apartment / project
- Defect liability
- Right to enter the apartment for repairs
- Usage of the basement and service areas
- General Compliance with respect to apartment
- Compliance of laws, notifications etc. by parties
- Additional Construction
- Promoter not to mortgage or create a charge
- Provisions applicable on allottee / subsequent allottee
- Issue of notice - Dispute Resolution
- Promoter to provide description of apartment/plot and garage/covered parking; Provide the floor plan and the payment plan; Provide specifications, amenities, facilities forming part of apartment / plot; and Provide specification forming part of project

**Thank You**

