



Wednesday, 24 May 2017

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 COMES INTO EFFECT

The Act primarily seeks to improve transparency and accountability in the real estate sector, by providing mechanisms to facilitate transactions relating to commercial or residential units or projects. It also makes provisions for ensuring timely completion of projects by the promoters. It makes mandatory for the promoters to register their projects with the regulatory authority. The Act covers not only promoters and allottees/purchasers, but also real estate brokers.

Ahead of the Act coming into force, Ministry of Housing & Urban Poverty Alleviation has formulated and circulated Model Real Estate Regulations for adoption by the Regulatory Authorities in the States/UTs. Under these Regulations, developers are required to display sanctioned plans and layout plans of at least 3 feet X 2 feet size at all marketing offices, other offices where properties are sold, all branch offices and head office of the promoters in addition to the site of project. Real Estate Regulatory Authorities may take decisions on all issues preferably through consensus failing which through voting with Chairman using Casting Vote in case of a tie. There shall be quorum for the meetings of the

Regulatory Authorities and if a meeting is adjourned due to lack of such quorum, such meeting can take place without quorum. Members of Regulatory Authorities shall declare interest if any in the matters coming up for discussion and shall not participate there in.

MAJOR PROVISIONS:

- 1) The promoter has to maintain a separate account for each of their projects. A minimum of 70 percent of the money from investors and buyers will have to be deposited. This money can be used for the construction of the project and the cost borne towards the land.
- 2) The promoter is entitled to withdraw the amounts from the separate accounts, to cover the cost of the project, in proportion to the percentage of completion of the project. But such withdrawal can only be made after it is certified by an engineer, architect or a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project
- 3) The promoter must get his accounts audited within 6 months after the end of every

Wednesday, 24 May 2017

financial year by a practicing chartered accountant. Such chartered accountant must verify the following

- 1) The amounts collected for a particular project have been utilised for the project.
- 2) The withdrawal has been in compliance with the portion to the percentage of completion of the project.
- 4) The Act provides that builders can sell units only on carpet area, which means the net usable floor area of an apartment. This excludes the area covered by the external walls, areas under services shafts, exclusive balcony or veranda area, but includes the area covered by internal partition walls of the apartment.
- 5) The developers must inform the buyers of their other projects.
- 6) The builders have to submit original approved plans for their ongoing projects and the alterations they have made later.
- 7) They must also submit details of revenue collected from the allottees, how the funds were utilized etc.
- 8) In addition to this, they are also required to furnish details of time line for construction, completion and delivery which is certified by an engineer, architect or a practicing CA.
- 9) Both developers and buyers have to pay the same penal interest of SBI's Marginal Cost of Lending Rate plus 2% in case of delays;
- 10) Liability of developers for structural defects shall be for five years; and

- 11) Imprisonment of up to three years for developers and up to one year in case of agents and buyers for violation of orders of Appellate Tribunals and Regulatory Authorities.

REGULATORY AUTHORITY

Under the Act, each state and Union Territory will have its own regulator and shall set rules for the internal functioning of the Regulator.

- 1) The regulatory authority will be set up within one year from the date of coming into force of the Act. In the mean while, the appropriate government has to designate any officer as the Regulatory Authority.
- 2) The states are also required to set up Appellate Tribunals.
- 3) The promoters must register their project with the Regulatory Authority before booking, selling or offering apartments for sale in such projects. In case a project is to be promoted in phases then each phase is to be considered as a standalone project, and the promoter shall obtain registration for each phase.
- 4) The developers cannot advertise, sell or offer any plot, flat or house or any commercial building or investment in projects before registering it with the regulatory authority. After registration, every such advertisement must indicate the unique RERA registration number. The registration number will be provided for each project.

Wednesday, 24 May 2017

WHICH PROJECTS ARE COVERED?

The Act covers existing buyers of real estate properties, both residential and commercial who have not yet got possession of their properties. In other words, all those projects which have not received the completion certificate before the commencement of the Act comes under the ambit of the Act.

The developers have been given a time frame of 3 months from the date of commencement of this Act for the under-Construction projects to be

registered. For projects where the completion certificate has already been issued, the developers need not go for its registration.

However, coverage to existing projects is not uniform across India since, states such as UP and Gujarat have excluded ongoing projects. Similarly, Haryana excludes in the draft rules all real estate projects for which the builders have applied for occupancy certificates or part-completion certificates if the same is granted by the authority within three months of application.

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