

An Update on the Real Estate (Regulation and Development) Act, 2016



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As you may be aware, the Real Estate (Regulation and Development) Act, 2016 (“**Act**”), came into force on May 1, 2016 and only 69 sections of the Act were notified at that time.

It may be pertinent to bring to your attention that on **April 19, 2017**, the Union Ministry of Housing And Urban Poverty Alleviation notified sections 3-19, 40, 59-70, 79 and 80 of the Act. Though notified on April 19, 2017 the said sections have finally come into force from **May 1, 2017**.

These provisions relate to functions and duties of promoters, rights and duties of allottee(s), prior registration of real estate projects with the real estate regulatory authority, recovery of interest on penalties, enforcement of orders, offences, penalties and adjudication, taking cognizance of offences etc.

Please note that, as per this notification, the following sections would be applicable to developers/promoters of real estate projects:

A. Registration with the Regulatory Authority

Section 3 to Section 19 of the Act pertains to the various obligations a promoter has to fulfill, to register the said real estate project with the regulatory authority. The same are listed herein below:

- a. The promoter has to register their project (residential as well as commercial) with the regulatory authority before booking, selling or offering apartment, plot or building for sale in such projects. In case a project is to be promoted in phases, then each phase shall be considered as a standalone project, and the promoter shall obtain registration for each phase.

- b. The application for registration must disclose the following information:
- i. Details of the promoter (such as its registered address, type of enterprise such proprietorship, societies, partnership, companies, competent authority);
 - ii. A brief detail of the projects launched by the promoter, in the past five years, whether already completed or being developed, as the case may be, including the current status of the projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
 - iii. An authenticated copy of the approval and commencement certificate received from the competent authority and where the project is proposed to be developed in phases, an authenticated copy of the approval and commencement certificate of each of such phases;
 - iv. The sanctioned plan, layout plan and specifications of the project, plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof and the locational details of the project;
 - v. Proforma of the allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees;
 - vi. Number, type and carpet area of the apartments and the number and areas of garages for sale in the project;
 - vii. The names and addresses of the promoter's real estate agents, if any, and contractors, architects, structural engineers affiliated with the project; and
 - viii. A declaration by the promoter supported by an affidavit stating that he has a free and legal title to the land, the time period under which he undertakes to complete the project/phase and that 70% of the amounts realized from the allottees shall be deposited into separate bank account to cover the cost of construction and the land.

B. Functions & Duties of Promoters

Section 11 of the Act assigns some key functions and duties to the promoters, some of which have been listed herein below:

- i. To get the proposed project registered with the regulatory authority;
- ii. Not to deal with property in any manner before the registration of the same;
- iii. Creation of a web page and providing necessary information on the same in the public domain; and
- iv. To make certain documents available through the various stages of allotment of a real estate project.

C. Recovery of interest or penalty or compensation and enforcement of order, etc.

Section 40 of the Act states that the interest, penalty or compensation imposed on a promoter or an allottee or a real estate agent, by the adjudicating officer or the regulatory authority or the appellate authority can be recovered as arrears of land revenue.

D. Offences and Penalty

Section 59 to Section 70, inter-alia, impose monetary penalties on the promoter of up to 5% of the estimated cost of the project for disclosure related defaults, and up to 10% for other defaults, along with a maximum imprisonment of 3 years. Allottees are liable to a fine of up to 10% of the apartment cost or imprisonment up to 1 year for non-compliance with orders of the Real Estate Appellate Tribunal.

E. Bar on jurisdiction and Cognizance of offences

As per Section 79 and 80, civil courts shall have no jurisdiction in the matters covered under the Act. Further, the court shall not take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, except on a complaint in writing made by the authority or by any officer of the Authority duly authorized for this purpose.

Hence, based on this notification, the entire Act has now come into force. It is pertinent to note that as per the Act, states are directed to enact state specific Rules to compliment the Central Act. However, as of date, only 7 states namely, Gujarat, Uttar Pradesh, Madhya Pradesh, Karnataka, Maharashtra, Andhra Pradesh, Odisha and 4 Union Territories, namely, Chandigarh, Daman & Diu, Andaman & Nicobar and Lakshadweep have enacted the same. Further, the remaining states have now been directed by the centre to pass the same at the earliest.

The Act is still its nascent stages and the practical applicability of the same, especially in the states where the regulatory authority has not been established as of date, is yet to be seen. Though putting the provisions of the Act into practice will see some major challenges in the initial period, over a longer period, it has the potential to develop the market in an organized and phased manner. It is our considered view that the stringent provisions of the law would result in streamlining of the industry as a whole.