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**An overview of The Real Estate (Regulation and Development) Act, 2016**

**Ms. Tina Blossom Francis Research Scholar**  
**BAM College Thuruthicad PO Thiruvalla (Dist)**  
**Pathanamthitta**  
**Kerala-689597 India**

**Dr. Ebby Joseph Idiculla Assistant Professor**  
**PG Dept of Commerce and Research center**  
**BAM College Thuruthicad PO**  
**Thiruvalla (Dist) Pathanamthitta**  
**Kerala-689597 ndia**

**Abstract:** *The real estate sector is one of the most globally recognised sectors. In India, real estate is the second largest employer after agriculture and is slated to grow at 30 per cent over the next decade. The Indian real estate market is expected to touch US\$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP). In the period FY08-20, the market size of this sector is expected to increase at a Compound Annual Growth Rate (CAGR) of 11.2 per cent. It is thus very clear that the sector is a very promising one, with huge prospects of growth and returns. But the reality is that there are huge hindrances that affect the growth of the industry severely-like the ever increasing property scams and fraudulent projects. In order to preserve and foster the growth, the government has taken initiatives to revive the sector by reinforcing the legal shield by amending the Real Estate (Regulations and Development) Act, 2016. **With a Formal Body to govern and conduct, the real estate sector would witness its rebirth to a more organised sector.** The Act is intended to regulate the players of the sector to ensure a hazzle free interaction that would contribute positively to the nation at large.*

**Key Words:** Real Estate, Act, Allotee, Developer, Agent, Authority.

**Objective of study**

The study is intended to have an understanding about the amended RealEstate (Regulations and Development) Act, 2016 and to throw light to the significant areas of the provisions of the Act. The highlights have been studied and discussed to have an overview of the whole Act.

**Research Methodology**

A descriptive study has been undertaken with the help of secondary data to study the Act in detail and to bring forth a brief overview of the same.

**Introduction**

The real estate sector is one of the most globally recognised sectors. In India, real estate is the second largest employer after agriculture and is slated to grow at 30 per cent over the next decade. The Indian real estate market has become one of the most preferred destinations in the Asia Pacific, as overseas funds accounted for more than 50 per cent of all investment activity in India in 2014, compared with just 26 per cent in 2013. The real estate sector comprises four sub sectors - housing, retail, hospitality, and commercial. The growth of this sector is well complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations. The construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy. It is also expected that this sector will incur more non-resident Indian (NRI) investments in both the short term and the long term. Bengaluru is expected to be the most favoured property investment destination for NRIs, followed by Ahmedabad, Pune, Chennai, Goa, Delhi and Dehradun.

### Real Estate Market Size

The Indian real estate market is expected to touch US\$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP). In the period FY08-20, the market size of this sector is expected to increase at a Compound Annual Growth Rate (CAGR) of 11.2 per cent. Retail, hospitality and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs. During the first nine months of 2015, PE funds invested about US\$ 2.4 billion in the real estate sector, across 53 transactions compared US\$ 1.3 billion across 57 transactions in the same period last year. Deal sizes have also increased in 2015, and residential projects both luxury and affordable have attracted a substantial amount of capital. Private Equity (PE) funds and Non-Banking Financial Companies (NBFCs) in India are seen increasingly investing jointly in real estate projects, in order to hedge risk and undertake bigger transactions. Mumbai is the best city in India for commercial real estate investment, with returns of 12-19 per cent likely in the next five years, followed by Bengaluru and Delhi-National Capital Region (NCR). Also, Delhi-NCR was the biggest office market in India with 110 million sq ft, out of which 88 million sq ft were occupied. Sectors such as IT and ITeS, retail, consulting and e-commerce have registered high demand for office space in recent times. India's office space absorption stood at 35 million sq ft during 2015, which is the second highest figure in the India's history after 2011, and was driven by corporates implementing their growth plans. India had the strongest activity in office leasing space in Asia and accounted for half of Asia's total office leasing in third quarter of 2015, with Delhi being the most active market. Delhi's Central Business District (CBD) of Connaught Place has been ranked as the sixth most expensive prime office market in the world with occupancy costs at US\$ 160 per sq ft per annum.

### Towards the topic

It is thus very clear that the sector is a very promising one, with huge prospects of growth and returns. But the reality is that there are huge hindrances that affect the growth of the industry severely-like the ever increasing property scams and fraudulent projects. In order to preserve and foster the growth, the government has taken initiatives to revive the sector by reinforcing the legal shield by amending the Real Estate (Regulations and Development) Act, 2016. The Act is intended to regulate the players of the sector to ensure a hassle free interaction that would contribute positively to the nation at large.

### Background of the Act

The Real Estate (Regulations and Development) Act, 2016 came into force on 25<sup>th</sup> March 2016. This Act has 92 Sections spread over 10 Chapters. After a lot of opposition, deliberation and several amendments, the Rajya Sabha has, on 10 March 2016, approved the Real Estate (Regulation and Development) Bill, 2016 which substantially amends the original Real Estate (Regulation and Development) Bill, 2013.

### Major definitions

As per the Act, "*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.

**"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.

**"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.

### Objectives of the Act

- To establish an **authority** called the Real Estate Regulatory Authority for regulation and promotion of the real estate sector.
- To ensure the efficiency and transparency of **transactions** happening in the sector.
- To protect the interest of the **consumers** of the sector.
- To establish an **adjudicating mechanism** for speedy dispute redressals.
- To establish an **appellate tribunal** to look over the functions of regulatory authorities and adjudicating officers.

### Highlights of the Act

1. It establishes a Regulatory Authority for that particular state, as the government body to be approached, for redressal of grievances against any builder. This will happen once every state ratifies this Act and establishes a state authority in line with the law.
2. This law vests authority on the real estate regulator to govern both residential and commercial real estate transactions.
3. This Act obliges the developer to park 70% of the project funds in a dedicated bank account. This will ensure that developers are not able to invest in numerous new projects with the proceeds of the booking money for one project, thus delaying completion and handover to consumers.
4. This law makes it mandatory for developers to post all information on issues such as project plan, layout, government approvals, land title status, sub contractors to the project, schedule for completion with the State Real Estate Regulatory Authority (RERA) and then in effect pass this information on to the consumers.
5. The current practice of selling on the basis of ambiguous super built-up area for a real estate project will come to a stop as this law makes it illegal. Carpet area has been clearly defined in the law.

6. Currently, if a project is delayed, then the allottees does not suffer in any way. Now, the law ensures that any delay in project completion will make the developer liable to pay the same interest as the EMI being paid by the consumer to the bank, back to the consumer.
7. The maximum jail term for a developer who violates the order of the appellate tribunal of the RERA is three years , with or without a fine.
8. The buyer can contact the developer in writing within one year of taking possession to demand after sales service, if any deficiency in the project is noticed.
9. The developer cannot make any changes to the plan that had been sold, without the written consent of the buyer. This puts an end to a common and unpopular practice, by developers, to increase the cost of projects.
10. Lastly, every project measuring more than 500 square metres or more than eight apartments will have to be registered with the RERA.

### **Benefits to the Buyers**

- **With a Formal Body to govern and conduct, the real estate sector would witness its rebirth to a more organised sector.**
- **The hard earned money of the buyers are expected to be safer with the entry of the clause mandating that 70 % money to be set apart exclusively for destined purposes.**
- **Timely completion of projects will become a necessity to the developers in order to be free from penalties and punishments for breach of trust.**
- Disclosure of accurate information will become mandatory for sellers to disclose all information like project layout, approval, land status, contractors, schedule and completion of project with customers as well as the RERA.
- If the developer fails to hand-over the property to the buyer on time, then he would be liable to pay same amount as interest which he is charging from the buyer on delay in payment. Also, the property cannot be sold on the basis of 'super area' which includes both flat area and common area. If the developer violates the orders of appellate tribunal, then he/she can get a jail term of up to three years or penalty.
- It has been made mandatory to set-up an allottees association within three months of the allotment of major units/properties so that the residents can manage common facilities like a library and a common hall. Also, if the buyer finds any structural deficiency in the property, then he/she can contact the developer for after-sales service within one year of possession. The promoters or developers cannot make any changes to the plan without consent of the buyer, as per the Act.

### **Special areas of the Act**

#### ***The Regulatory Authority***

The government of a state should appoint a Regulatory Authority within one year of the commencement of the Act. More than one State or Union Territories may join, to form a single Regulatory Authority for all the mentioned states or UTs. Likewise, a State may form more than one Regulatory Authorities, if the Government finds it necessary. In case the state is unable to appoint the authority, then a special authority or officer, preferably a Secretary of the Housing department, should be designated by order.

The Regulatory Authority shall consist of a Chairperson and not less than two whole time members appointed by the appropriate state governments. The questions that come before the authority shall be sorted out as expeditiously as possible within a period of 60 days from the date of application.

Any aggrieved person may file a complaint against a promoter, allottee or agent for any contravention or violation of the Act, Rules or Regulations. Here, person may include an association of allottees or voluntary forums of consumers. The Authority may make recommendations to the appropriate government to facilitate growth and promotion of a healthy, efficient and competitive real estate sector.

***Functions of the Authority shall include***

1. To register and regulate the projects and agents registered under the act.
2. To maintain a website that has all relevant information of the projects registered with the authority, that can be viewed by the public.
3. To publish details of defaulter developers including photographs, defaulted projects, punishments granted etc, for public viewing.
4. To maintain a database of real estate agents registered with the authority as well as defaulting agents.
5. To fix the fees to be charged on developers, allottees or agents depending on the jurisdiction.
6. To ensure compliance of rules and regulations to be followed by the developers, allottees and agents.
7. To ensure compliance of its regulations or orders or directions made in exercise of its powers.
8. To perform such other functions entrusted by the government to carry out the provisions of the Act.

***Limit on receipt of advance payment***

A promoter shall not accept a sum more than 10% percent 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 of sale with such person and register the said agreement of sale, under any law for the time being in force.

***Restriction on addition and alteration in the plans***

1. The promoter cannot make any addition or alteration in the approved and sanctioned plans, structural designs, specifications and amenities of the apartment, plot or building without the previous consent of the allottee.
2. The promoter also cannot make any other addition or alteration in the approved and sanctioned plans, structural designs and specifications of the building and 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 a building.

***Structural defect***

In case any structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoters is brought to the notice of the promoter within a period of five years, by the allottee, from the date of handing over possession, the promoter shall rectify such defect without any further charge, within thirty days. If the promoter fails to rectify such defect within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided in the Act.

***Other relevant provisions***

1. The same rate of interest will be payable by the allottee and the promoter in the event of their respective defaults.
2. In the absence of any local laws, an association or society or cooperative society, as the case may be, of the allottees, shall be formed within a period of three months of the majority of

allottees who have booked their plot or apartment or building, as the case may be, in the project.

3. After the promoter executes an agreement for sale for any apartment, plot or building, no mortgage or charge can be created by the promoter on such apartment, plot or building. If any such mortgage or charge is 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.
4. The promoter may cancel the allotment only in terms of the agreement for sale. However, the allottee may approach the Regulatory 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, is unilateral and without any sufficient cause.
5. The promoter shall obtain insurance as may be notified by the appropriate Government, including but not limited to the title of the land and building and construction of the project. The promoter shall also be liable to pay the premium and charges in respect of the insurance.
6. The promoter shall execute a registered conveyance deed in favour of the (i) allottee in respect of the apartment, plot or building; and (ii) association of allottees of competent authority in respect of the undivided proportionate title in the common areas, and hand over possession of the same within the period as specified under the local laws. In the absence of any local law, such conveyance deed shall be carried out by the promoter within three months from date of issue of the occupancy certificate.
7. The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land in the manner as provided under the Act, and such claim for compensation shall not be barred by limitation provided under any law for the time being in force.
8. 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 buildings.
9. The Regulatory Authority shall make a recommendation to the appropriate Government on (i) creation of a single window system for ensuring time-bound project approvals and clearances for timely completion of the project; and (ii) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials.

#### ***Real Estate Appellate Tribunal***

- In addition to the establishment of the Regulatory Authority, the Bill also proposes to establish a Real Estate Appellate Tribunal (Appellate Tribunal) within one year from the date of commencement of the Act.
- Any person aggrieved by any direction or decision made by the Regulatory Authority or by an adjudicating officer, may make an appeal before the Appellate Tribunal within a period of 60 days from the date of receipt of a copy of the order or direction.
- The Appellate Tribunal shall deal with the appeal as expeditiously as possible and endeavour shall be made to dispose of the appeal within a period of sixty days from the date of receipt of appeal.
- The Appellate Tribunal shall have same powers as a civil court and shall be deemed to be a civil court. An appeal against the order of the Appellate Tribunal may be filed before the jurisdictional High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal.

#### ***Adjudicating Officer***

For adjudging the compensation to be paid by the promoter in accordance with the provisions of the Act, the Regulatory Authority shall appoint (in consultation with the appropriate Government) one or more judicial officers as deemed necessary, who is or has been a District Judge, to be an adjudicating officer for holding an inquiry in this regard. However, such an appointment will be made after giving any person concerned a reasonable opportunity of being heard.

### ***Offences and Penalty***

Stringent penal provisions have been prescribed under the Act against the promoter in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Regulatory Authority or the Appellate Tribunal which are the following:

- If promoter does not register its project with the Regulatory Authority – the penalty may be up to 10% of the estimated cost of the project as determined by the Regulatory Authority;
- If promoter does not comply with the aforesaid order of the Regulatory Authority - imprisonment of up to three years and a further penalty of up to 10% of the estimated cost, or both; and
- In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act – the penalty may be up to 5% of the estimated cost of the project or construction.

These penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the allottee.

If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Regulatory Authority, there may be a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the cost of the plot, apartment or building, as the case may be, as determined by the Regulatory Authority. Further, if any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, this may entail imprisonment up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

### ***Overriding effect***

The provisions of this Act shall have an overriding effect in case there is any inconsistency between the provisions contained in this Act and in any other law (including a state law) for the time being in force.

The Maharashtra Housing (Regulation and Development) Act 2012 has been repealed by the Central Government.

### **Conclusion**

From the above discussion it can be assumed that the players of the Real Estate sector will be under constant and rigid watch, to ensure that each one comply with all the regulation , rules and orders, in order to join hands with the nation, to build up a very rich sector that would stand as one of the mighty pillars to the formation of the Developed India.

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