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**REAL ESTATE SECTOR -  
GOVERNMENT PRESCRIBES  
FORMAT OF AGREEMENT FOR  
SALE**

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**REAL ESTATE SECTOR - GOVERNMENT PRESCRIBES FORMAT OF AGREEMENT FOR SALE**

**I. BACKGROUND**

The real estate sector which is notorious for incomplete projects and long delays in handing over possession, increasing super built areas and payment without the consent of the buyers, one sided agreements with unreasonable provisions in favour of the real estate developers are finally being regulated. The Ministry of Housing and Urban Poverty Alleviation has, on October 31, 2016, notified Real Estate (Regulation and Development) (Agreement for Sale) Rules, 2016 ("**Rules**"), for each of the five Union Territories of Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu, Lakshwadeep and Chandigarh.

These Rules (read with the Real Estate (Regulation and Development) Act, 2016 ("**Real Estate Act**") essentially mean that an agreement for sale between a promoter (i.e. the builder/developer) and an allottee (i.e. the buyer) now has to be in the format prescribed by the Rules ("**Sale Agreement**"), in the aforesaid Union Territories.

The Central Government is reportedly also set to launch similar rules for National Capital Region of Delhi. We may add that under Section 84(2)(h) of the Real Estate Act, each of the State Government was required to formulate rules in relation to the form and particulars of an agreement for sale between the promoter and the allottee, within a period of 6 months (which deadline has already elapsed).

**II. CERTAIN KEY ASPECTS OF THE SALE AGREEMENT**

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- (i) Delivery of Possession: The Sale Agreement contemplates delivery of possession of the apartment/plot to the allottee by the promoter by a specific date (which is to be mentioned upfront in the agreement), unless there is a delay due to *Force Majeure* events. In the event it becomes impossible for the promoter to implement the project due to *Force Majeure* conditions, the allotment will stand terminated and the promoter will refund to the allottee the entire amount received within 45 days from the termination date.
- (ii) Cancellation by Allottee: Allottees have been given rights under the Sale Agreement to cancel the allotment as per the Real Estate (Regulation and Development) Act, 2016 ("**Real Estate Act**"). The Sale Agreement also makes it clear that if an allottee cancels an allotment on no fault of the promoter, even then the promoter can forfeit only the booking amount paid and has to refund the balance amount paid within 45 days of cancellation.
- (iii) Compensation: The promoter is also required to compensate the allottee in accordance with the provisions of the Real Estate Act, in case any loss is caused to the allottee on account of defective title of the land. Further, the claim for interest and compensation is not barred by limitation under applicable laws.

Except in case of *Force Majeure* event, if the promoter fails to deliver possession in accordance with the Sale Agreement or due to discontinued business on account of suspension/revocation of his registration or for any other reason; and the allottee wishes to withdraw from the project, then the promoter is required to refund the total amount received along with interest including compensation in the manner provided under the Real Estate Act.

Where an allottee chooses not to withdraw, the promoter is required to pay interest to the allottee for every month of delay till possession is handed over.

- (iv) Defaults by Promoter and Remedies: Subject to *Force Majeure* provision, upon promoter's failure to provide possession within the specified time period or discontinuance of the promoter's business as a developer on account of suspension/revocation of his registration, the allottee has the right to:
- stop making further payments, until completion of the construction milestones; or
  - terminate the agreement in which case the promoter will have to refund the entire money paid along with interest (as prescribed under the relevant rules) within 45 days of receiving the termination notice.
  - If an allottee does not terminate the agreement, then the allottee will be paid interest at the prescribed rate for every month of delay till the handing over of possession.

III. **CONCLUSION**

Prescription of this Sale Agreement format (which focuses on protection of real estate consumers *inter alia* from delays and defaults by promoters), is a significant development, as sale agreements between promoter and allottee typically tend to be lopsided in favour of the promoter.

Even the courts have initiated a strict enforcement drive against the promoters for delay in handing over possession and non-payment of interest to the allottee for long periods of delay. Recently, in a case before the National Consumer Disputes Redressal Commission ("**NCDRC**"), the NCDRC, while deciding an execution application regarding a dispute between an allottee and a builder, the NCDRC ordered the arrest of the Director and the General Manager of the builder company for failure to appear before the relevant court and to comply with the order of the subordinate court related to delay in possession of flats.

With the introduction of the widely anticipated Real Estate Act, followed by notification of rules pursuant thereto in certain states and Union Territories, the real estate sector is set to become one of the highest regulated sectors in the country and rightly so due to the continued arbitrary and irrational conduct of the promoters for long.

**Feedback**

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