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CONSUMER, THE NEW KING - REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016

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Introduction

Real estate sector in India has lacked transparency, accountability, investor protection, and efficient handovers for long. On March 25, 2016, the President of India gave assent to the Real Estate (Regulation and Development) Act 2016 (hereinafter referred as "the Act"), thereby paving the way for the much needed regulation of the sector.

Credibility of the real estate sector is presently at an all-time low due to unprecedented delays in construction and completion of projects, diversion of investor funds to other projects, failure to handover completed properties, arbitrary increase in the super built up area and consequent levy of additional charges, unreasonable one sided contracts, reluctance to pay even the minimal delay penalty by promoters, etc. The Act regulates the hitherto unregulated real estate sector to plug the glaring gaps between consumer protection and abuse of power by the real estate lobby. Through this new Act, the Government has tried to not only put in place an effective regulatory mechanism for an orderly growth of the sector but to also minimise consumer exploitation and diversion of funds, streamline usage of funds, timely deliveries and enhance consumer confidence.

The good news is that the Act shall, in addition to be applicable on new projects, will also be applicable to projects that are in progress at the date of commencement of this Act i.e., the Act shall apply even to those projects for which the completion certificate has not been yet issued. Some of the key highlights of the Act and its benefit to the consumers are discussed below:

1) Establishment of a Regulatory Authority and an Appellate Tribunal:

The Act mandates the Central/State Government to establish within a year from enforcement of the Act, Real Estate Regulatory Authority ("**Regulatory Authority**") and Real Estate Appellate Tribunal ("**Appellate Tribunal**"). The primary function of the Regulatory Authority would be to protect the interests of allottees

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and regulate promoters and real estate agents. The Regulatory Authority has been mandated to ensure compliance with the regulations/orders/directions made by it for allottees/ promoters/real estate agents. The Act brings much needed exclusivity of jurisdiction for the Regulatory Authority and the Appellate Tribunal as the Act bars the jurisdiction of civil and criminal courts to entertain any matters falling within the ambit of the Act/Regulatory Authority/Appellate Tribunal.

2) **Registration of Real Estate Projects and Agents with Regulatory Authority:**

The Act mandates registration of real estate project with the Regulatory Authority, in which:

- i) the area of land proposed to be developed exceeds 500 sq. metre; and/ or
- ii) the number of apartments proposed to be developed exceeds eight (inclusive of all phases).

This registration needs to be done before any advertisement or marketing or booking or selling or offering for sale or inviting a person to purchase in any manner is undertaken by the promoter of the plot/apartment/building, etc., ("**Property**"). Moreover, the Act provides that where a project is to be executed in a phased manner, each phase shall be considered a *standalone* real estate project. Consequently, the promoter shall be required to obtain registration for each phase separately pursuant to this Act.

The promoters of all incomplete projects (for which the completion certificate is yet to be issued) shall make an application to the Regulatory Authority for registration of its project within a period of three months from the date of commencement of this Act. If any promoter of a project does not comply with the aforementioned registration formalities then he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project as determined by the Regulatory Authority.

Similarly, much to the relief of consumers, the Act also requires all the real estate agents to register themselves with the Regulatory Authority, failing which the Regulatory Authority is empowered to impose fine on the unregistered agent.

3) **Standardization of Practices:**

The Act defines most of the relevant terms used in common parlance during sale and purchase of a Property so as to prevent the abuse of customers. Key terms like "apartment", "promoter", "carpet area", "common area", "interest" etc., have been defined for ease of understanding and avoid misinterpretation.

4) **Utilization of Construction Cost and Land Cost:**

The promoter of the project will need to deposit 70% of the amounts realised from the allottees in a separate account to be maintained in a scheduled bank. The intention of the legislature behind this provision is to

ensure safe keeping and allocation of funds collected from customers for bearing the cost of land and timely construction of the project. The Act mandates that a new or an ongoing project shall be registered only after a declaration has been filed with the Regulatory Authority supported by an affidavit by the promoter stating that the aforementioned amount has been deposited in a separate bank account to cover the cost of construction and the land cost.

5) Obligations of the Promoter:

The Act imposes several obligations on the promoter for safeguarding the interest of the consumer, which include:

- i) A promoter will need to enter into an agreement of sale (in a prescribed form), before accepting any deposit/advance from the allottee in respect of the Property. Moreover, this deposit/advance will not be more than 10% of the cost of the Property.
- ii) The promoter shall develop and complete the project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. The promoter can make any alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas only with the prior written consent of at least two-thirds of the allottees (who have agreed to buy the Property).
- iii) The promoter will need to, without any further charge and in thirty days, rectify any structural defect/defect in workmanship, quality or provision of services/other obligations of the promoter as per the agreement of sale which has been brought to the notice of the promoter by the allottee within a period of five years from the date of handing over possession of the Property.
- iv) The promoter shall be liable to return the amount received by him, on a demand made by the allottee, if the promoter has failed to hand over the possession of the Property to the allottee either in accordance with the terms of the agreement of sale or due to discontinuance of his business as a promoter on account of suspension or due to revocation of his registration or for any other reason. However, if an allottee does not intend to withdraw from the project, the promoter will be obligated to pay to the allottee an interest, at a prescribed rate for every month of delay till the date of handing over of the possession of Property to allottee. Delay in handing over the possession of the Property and promoters' refusal to pay delay penalty has been one of the most litigated disputes among the allottees and the promoter in the past and this new provision will hopefully bring order to the arbitrary conduct of promoters.
- v) The promoter will need to obtain all insurances as may be notified in the Act, including that for title of land and building and construction of the building.

- vi) In case of loss on account of any defect in title of the land on which the project is being developed, the allottee will be compensated by the promoter and such claims for compensation will be outside the purview of limitation provided under any law for the time being in force.

6) Rights of the Allottee:

The Act entitles allottees with certain additional rights, inter alia:

- i) to know stage-wise time schedule of completion of the project;
- ii) to claim refund of amount paid along with interest and compensation if the promoter fails to deliver possession of Property.
- iii) to take possession of plot within two months of issue of occupancy certificate for the Property.
- iv) to claim payment of interest for delay by the promoters at the same rate that is chargeable from the allottee, in case of default made by allottee.

7) Time Bound Approval of the Project:

The Act in order to facilitate the growth and promotion of a transparent, efficient and competitive real estate sector has provided for creation of a single window system for ensuring time bound project approvals, creation of a grievance redressal mechanism for the actions of the competent authority, grading of real estate projects, facilitation of amicable conciliation of disputes etc.

Conclusion

The Act has been hailed as a landmark piece of legislation for regulating the real estate sector. While the Act does impose onerous and time bound obligations on promoters, it seems that the Act is a retribution on promoters for their blatant abuse of power in the past. Even the Regulatory Authority created under the Act is empowered with real powers including the power to pass interim orders and recover penalty as an arrears of land revenue. While, on one hand the rights of the consumers are intended to be protected by bringing in fair play, standardization of best practices, establishment of an efficient complaint redressal mechanism, on the other hand the Government intends to encourage foreign direct investment into the construction development sector (which has so far been less than phenomenal). We, the investors and consumers, await effective implementation of the Act to bring in transparency and accountability to the real estate sector.

Feedback

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