

De Jure

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A BRIEF WRITE UP ON THE HIGHLIGHTS OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013.



REAL ESTATE BILL



INTRODUCTION

The real estate sector, which plays a significant role in fulfilling the need and demand for housing and infrastructure, has grown tremendously in recent years. Even then, this sector has been largely unregulated and lacks adequate consumer protection, in as much as, it fails to address all the concerns of the property buyers from unscrupulous developers and builders and therefore, constrains the healthy and orderly growth of the real estate sector.

With a view to regulate the sector and promote the healthy growth of the sector, the Real Estate (Regulation and Development) Bill, 2013 ("Bill") has been introduced. The Bill is proposed under Entries 6, 7 and 46 of the Concurrent List of the Constitution of India, which deals with Transfer of Property, Registration of Deeds and Documents and Contracts. The Bill has been prepared by the Government after extensive consultations with States, experts and stakeholders, which included the query as to why, the legislation was not treated as a money bill, as there was a provision, which talked of money being credited to the Consolidated Fund of India. The Bill has been supported by the States along with Ministry of Consumer Affairs, the Competition Commission and Tariff Commission among others. The Bill, which was approved by the Union Cabinet on June 4, 2013, was introduced in the Rajya Sabha on August 14, 2013.

OBJECTS OF THE BILL

- The Bill is a pioneering initiative to protect the interest of consumers/purchasers, by promoting fair play in real estate transactions and to ensure timely execution of projects by the developers/promoters.
- It intends to make it mandatory for promoters to launch projects only after acquiring all the statutory clearances from relevant authorities.
- It attempts to balance the interests of the purchasers and the promoters by imposing certain responsibilities on both.
- It aims at ensuring an orderly growth of the real estate sector, ensuring greater accountability towards consumers, significantly reducing frauds and delays and also, the current high transaction costs.
- The Bill provides for a uniform regulatory environment and speedy adjudication of disputes.
- It makes it mandatory for promoters to clarify the carpet area of the flat. The intention behind incorporating such a provision is that the buyer should know what he is actually getting and paying for.
- The Bill seeks to establish symmetry of information between the promoter and the purchaser and transparency of contractual conditions.



HIGHLIGHTS OF THE BILL



- The Bill widens the definition of "promoter", as compared to the definition provided under Maharashtra Ownership of Flats Act, 1963 ("**MOFA**"), to bring within its purview, not only a person who constructs or causes to be constructed an independent building or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons but also a buyer who purchases in bulk for resale, any development authority or any other public body which constructs apartments or buildings for the purpose of selling all or some of the apartments or plots and also any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or colony is developed for sale.
- **Clause 18:** It provides for the establishment of a Real Estate Regulatory Authority ("**Authority**") to exercise the powers conferred on it and perform the functions assigned to it under the Bill. It further provides that the appropriate government may establish more than one such Authority in a State or Union Territory or the appropriate government of two or more States or Union Territories may establish one single Authority.
- **Clause 3:** It provides for compulsory registration of the real estate projects by the promoter with the Authority. It is provided that a promoter shall not be entitled to book, sell, offer for sale or invite persons to purchase any property in any real estate project or part of it without first registering the real estate project with the Authority. It is however provided that, such registration of the real estate projects, shall not be required where:
 - the area of land proposed to be developed does not exceed 1000 square meters or the number of apartments proposed does not exceed 12, inclusive of all phases, **or** does not exceed such area or number of apartments, as may be notified by the Central Government, but in any event, not more than 1000 square meters or 12 apartments;
 - the promoter has received all the requisite approvals including commencement certificate prior to the coming into force of the Bill; and
 - the project is for the purpose of renovation, repair or redevelopment, not involving re-allotment and marketing of the project.
- **Clause 3** further provides that, where a real estate project is to be developed in phases, each phase is required to be registered separately by the promoter with the Authority, as if such phase is in itself, a separate real estate project.
- **Clause 4:** It requires the promoters to make certain disclosures and enclose certain documents, along with the application for registration of the real estate project, such as:
 - Brief details of his enterprise and the particulars of its registration;
 - Authenticated copy of the commencement certificate;
 - Proforma of the agreements proposed to executed with the purchasers;
 - The number and the carpet area of the apartments;
 - Names and addresses of his real estate agents;

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- Names and addresses of the contractors, architect and the structural engineers, etc.
- **Clause 4** further requires the promoter to file a declaration supported by an affidavit along with the application for registration of the real estate project, *inter alia*, stating:
 - That he has a legal title to the land and that the land is free from any encumbrances or if there are any encumbrances on the land, the details of the same; and
 - The likely period of time within which the project will be completed.
- **Clause 4** further requires the promoter to deposit, seventy percent or such lesser percent as may be notified, of the amounts realised for the real estate project from the purchasers, from time to time, in a separate account to be maintained by the promoter in a scheduled bank within a period of fifteen (15) days of its realisation to cover the cost of construction and such amount is required to be used only for that purpose.
- **Clause 9:** It provides for the compulsory registration of the real estate agents with the Authority, prior to them facilitating the sale or purchase of any property or acting on behalf of any person for facilitating such sale or purchase. On the real estate agents registering with the Authority, they shall be provided with a registration number, which number is required to be quoted in every sale facilitated by such agents.
- **Clause 11:** It imposes several duties and functions, which are required to be discharged by the promoter. It, *inter alia*, makes the promoter responsible for obtaining the completion certificate, for providing and maintaining essential services at reasonable charges and for taking steps for the formation of an association or society of the purchasers.
- **Clause 35:** It provides for the establishment of a Central Advisory Council for the purpose of advising and recommending the Central Government, *inter alia*, on matters concerning the implementation of the Act, major questions of policy and towards protection of consumer interests.
- **Clause 37:** It provides for the establishment of a Real Estate Appellate Tribunal ("**Tribunal**") in each State or Union Territory to which an appeal may be preferred by any person aggrieved by the direction, order or decision of the Authority or the adjudicating officer.
- **Clause 50:** It provides for an appeal to the High Court by any person aggrieved from any decision or order passed by the Tribunal.
- **Clauses 51-58:** It imposes stringent penalties for the non-observance of various provisions of the Bill. In addition to the penalties, the Bill also provides for imprisonment in case of contravention of certain provisions or the non-compliance of the decisions or directions of the Authority/Tribunal.
- **Clause 69:** It bars the jurisdiction of the civil courts to entertain any suit or proceeding in respect of any matter which the Authority/Tribunal is empowered to determine
- **Clauses 77 and 78:** It provides that the provisions of the Bill shall be in addition to the provisions of any other law for the time being in force. It further provides that the provision of the Bill shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

KEY POINTS OF THE BILL AT A GLANCE



- Bookings in the project are permissible only after registration of the project.
 - Compulsory disclosures to be made and documents to be enclosed by the promoter along with the application for registration and uploading of all such information and documents on the Authority's website.
 - Compulsory registration of real estate agents with the Authority prior to facilitating any sale or purchase of property.
 - Seventy percent (70%) of the funds received by the Promoter from the purchasers are required to be deposited in a separate bank account and such funds are required to be used only for the same project.
 - Establishment of the Real Estate Regulatory Authority.
 - Establishment of the Real Estate Appellate Tribunal.
 - Provision for an appeal to the High Court.
 - Imposition of heavy fines and imprisonment for contravention of the provisions of the Bill.
 - Bar of jurisdiction to the civil courts to entertain any suit or proceedings in respect of matters under the Bill.
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OUR VIEW



- Though the Bill has the bite required to protect the interests of the purchasers, the effective implementation thereof, in order to achieve its proposed objects, remains a concern in view of the past experience of the failure of MOFA (*another strongly worded legislation*) to achieve its intended objects. The Bill, if implemented effectively, may prove to be the long awaited legislative protection to the purchasers from the unscrupulous developers and promoters.
 - The Bill provides for imprisonment of promoter in case of non-compliance of the decisions or directions of the Authority/Tribunal under Clause 51(1) by the promoter or if the promoter continues to violate the provisions of Clause 3 of the Bill.
 - The Bill merely provides that the promoter shall take necessary steps to execute a registered conveyance in favour of the purchasers and as such, fails to effectively address the prevailing issue as regards conveyance to be executed by the promoter in favour of the purchasers.
 - The Bill, by doing away with the necessity of following the procedure laid down by the Code of Civil Procedure and enabling the Authority to regulate its own procedure, may result in the speedy adjudication of disputes. However, at the same time, it may lead to arbitrary exercise of discretionary power.
 - Since the Bill requires the promoters to follow several steps before a property can be even offered for sale, it may lead to an increase in bribery and corruption as the promoters, who will be desirous of completing the formalities speedily in order to enable them to sell the property, may resort to "under the table" tactics.
 - The Bill has widened the definition of promoter as compared to the definition provided under the provisions of MOFA.
 - The Bill provides that unless the real estate project is registered under clause 3 of the Bill (*which clause also requires the promoter to obtain the commencement certificate prior to the registration of the project*), the promoter cannot even offer the property for sale. This may prove to be a disadvantage to the investors as they will not be able to invest in the property at lower prices at an early stage. However, on the other hand, it may benefit the purchasers as they can be assured that the promoter has obtained the necessary permissions and approvals before commencing with the construction of the project.
 - The proviso to Clause 78 of the Bill provides that where the State has enacted a law for regulation of the real estate sector and such law is not inconsistent with the Bill, the State may, to that extent, not apply the provisions of the Bill. In Maharashtra, the State Government may, by this proviso, apply certain provisions of MOFA instead of certain provisions of the Bill, and as such, lay down a stringent law for regulation of the real estate sector. *For example*, the provisions as regards execution of conveyance and deemed conveyance under Section 11 of the MOFA may be applied in place of the provision for execution of conveyance under the Bill.
 - However, as is in the case of any other enactment, whether the Bill proves to be effective enough or turns out to be toothless and ineffective, is something which can only be determined over a period of time.
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