

Maharashtra Housing (Regulation and Development) Act, 2012

January 29, 2015





Introduction about the Maharashtra Housing (Regulation and Development) Act, 2012 ("MHRD Act")

- MHRD Act received the assent of the President of India on February 17, 2014 and pursuant thereto, it was published in Maharashtra Government Gazette on February 24, 2014. The Government of Maharashtra, by its notification dated July 8, 2014 bearing No.MHA-10.14/C.R.123/R&R-2, has notified some of the provisions of the MHRD Act *i.e.* Sections 1, 18, 19, 21, 22, 23, 36, 51 and 52.

Need to bring MHRD Act when Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963, ("MOFA") exists.

- The very object reveals the purpose of enacting MHRD Act, which *inter alia* provides that though MOFA enacted to provide for relief to flat purchasers against sundry abuses, malpractices and difficulties related to the construction, sale, management and transfer of flats, it is noticed by the State Government that, MOFA did not provide for an effective implementing arm for its various provisions and the flat purchasers were left at the mercy of redressing their grievance through the consumer forum or civil court for acts of omission or commission of the developers.
- Imagine those days in the era of 70s and 80s, where an investment in the real estate property was just thrice the value of a Contessa car, but as of today, the situation has changed drastically as the property prices have not only multiplied into hundred times as before, but a Contessa car does not even exist.
- Currently, till the time MHRD Act completely repeals MOFA (as specified under Section 56 of the MHRD Act), MOFA governs the housing laws in the State of Maharashtra.



Objectives of MHRD Act

- To avoid the multiple proceedings and most importantly hardships caused to flat purchasers, also in the famous case of Campa Cola and other matters, wherein our Apex Court and other sub-ordinate courts have time and again expressed their views that *"Unwary purchasers in search of roof over their heads, purchase flats/ apartments from the builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition..."*
- The main objectives of the MHRD Act are mainly **(a)** to provide relief to flat purchasers against malpractices and difficulties; **(b)** to establish a Housing Regulatory Authority ("**HRA**") and the Housing Appellate Tribunal ("**HAT**"); **(c)** to reduce multiple litigation before numerous authorities such as Consumer Forum and Civil Courts; **(d)** to remove information asymmetry by ensuring full and complete disclosure and compliance on the part of the Promoters; **(e)** to provide relief to buyers from the adverse and malpractices by the promoters; **(f)** to make the housing sector transparent and promote planned and healthy development; and **(g)** to pave a way for faster construction and maintenance.



Salient features of the MHRD Act.

- **Disclosures by the Promoter:** The Promoter is required to disclose various facts and information pertaining to the project and the transaction to the HRA;
- **Authority to address the concerns:** The MHRD Act empowers the Competent Authority, the HRA and the HAT to determine the issues/ disputes, and bars the jurisdiction of Civil Courts. However, the jurisdiction of Competition Commission to entertain the dispute still remains;
- **Role of Website:** Every Promoter has to register the project and display the project details, on the website of the HRA, without which, the Promoter shall not commence any development, redevelopment project including sale, marketing, advertising, receiving advances;
- **Retained Flats:** The Promoter shall retain certain percentage of the total constructed flats in a given project, maximum upto 10% of constructed flats in each building, as "Retained Flats". The Promoter is not entitled to sell such Retained Flats, till the receipt of Occupation Certificate and Building Completion Certificate of that Building;

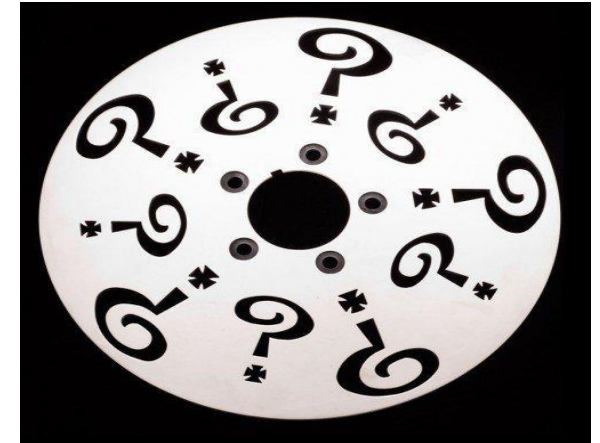


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- **Layout and Township:** New concept of Layout and Township has been introduced;
 - **Conveyance:** Subject to the terms to the contrary, a Promoter is required to execute the Conveyance within four months of formation of the society or company, and in the case of condominium, a Deed of Declaration is required to be executed within four months of handing over possession;
 - **Unilateral Deemed Conveyance:** The Competent Authority is empowered to certify that it is a fit case for enforcing unilateral execution of Conveyance Deed, and to issue a certificate to the Sub-Registrar, who shall register the Conveyance Deed;
 - **Overriding provision:** The provisions of this Act shall be in addition to the Transfer of Property Act and shall override contracts to the contrary;
 - **Main functions of HRA:** The MHRD Act has specified various main functions of the HRA, mainly, **(a)** to ensure compliance of obligations casted upon the promoters and allottee; **(b)** to cause inquiry into compliance of its orders or directions; **(c)** to levy fees and charges in respect of services; **(d)** to host and maintain a website of records of all projects within its jurisdiction; **(e)** to take measures for planned development and promotion of housing; **(g)** to perform such other functions relating to housing projects as may be entrusted to HRA; and **(f)** to make recommendations in relation to DC Regulations, changes in FSI and other related matters;
 - **Role of HAT:** The HAT is empowered to entertain an appeal against the orders passed by the HRA and Competent Authority, which are required to be filed within a period of 60 days from the date of such impugned order, and HAT shall endeavour to dispose the appeal within a period of 90 days.



Whether it is mandatory for the Promoter to register all the projects on the website of HRA, or there are any exceptions to it?

- It is mandatory for the Promoter to register all the projects and display all the projects on the website of the HRA, however there are certain exceptions carved out, which are **(a)** when the land proposed to be developed, where the project or phase of such project does not exceed 250 square meters; **(b)** where the total number of flats proposed to be developed in a project, inclusive of all phases, is less than five (5); **(c)** where the promoter has received occupation certificate from the concerned local authority in respect of development of such flats or in respect of the building in such project or phase of the project, prior to coming into force of this section; **(d)** where the project is a renovation, repair, reconstruction or redevelopment project which does not involve a fresh or new allotment of flats or marketing for sale of flats.



Advantages of MHRD Act

- MHRD Act may act as a unique regulator, safeguarding the interest of the purchasers of flats, and there may be positive reinforcements mainly on the disputes, which will be redressed by the HRA, which in turn will ensure timely delivery of flats by the Promoters. Further, the Housing sector will be transparent and there will be planned and healthy development. Also, the time limit of 90 days to dispose of matters by HRA and HAT is very commendable.

Limitations of MHRD Act

- Even though Maharashtra Government has taken a courageous step in drafting the MHRD Act, still there are some lacunas to be plugged in the MHRD Act, and the important ones to mention are that the Government organizations such as MHADA, MPCB, MMRDA and CIDCO are kept out of the scope of HRA, and even these organisation should come under the ambit of the MHRD Act, as Promoters. Further, with respect to the obligations and liabilities of the flat purchasers in the transaction, the MHRD Act has casted a liability on the flat purchaser in case of default, which is Rs.10,000 or 1% of sale consideration.



Draft Rules of Maharashtra Housing (Regulation and Development) (General) Rules, 2014 ("Draft Rules")

DRAFT

- The Government of Maharashtra was supposed to approve the Draft Rules and notify the final rules in and around October 10, 2014, however, till date, the Draft Rules are not finalised, and no Rules are notified till date, by the Government of Maharashtra.



RECOMMENDED

Recommendations with respect to shortcomings of MHRD Act

- Once the MHRD Act gets implemented, if the buyers, sellers and the developers are satisfied, then purpose of the MHRD Act would be served to the fullest, as the first unique State Housing Regulator, however, it is the 'Time', which will test the waters of the MHRD Act.

OUR VIEW

The preamble to the MHRD Act says that it aims to repeal MOFA, "*as it did not provide for an effective implementation arm for its various statutory provisions*". However, what is observed is that, the MHRD Act aims to whittle down the provisions of MOFA, in so far as the responsibilities mandated on the Promoters are concerned, and it has also weakened the "penalty provisions", which are the backbone of any regulatory law for effective compliance.

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