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An overview of the Real Estate [Development & Regulation] Act, 2016

The real estate sector in India has always been looked upon as an unorganized sector governed by diverse state laws and particularly lacking the transparency and accountability of the promoters/developers to the buyers vis- a- vis the completion of the projects resulting in delays on committed schedules. To protect the interest of the buyers and infuse some uniformity in these diverse state enactments, the Government of India has recently passed the Real Estate Regulatory Act, 2016 (“Act”) which seeks to protect the interest of the buyers of residential and commercial real estate units by promoting transparency, accountability and efficiency in the construction and execution of real estate projects by developers/promoters. The major portions of the Act have been made effective from May 01, 2016 kick-starting the process of making rules as well as putting in place institutional infrastructure to protect the interests of the consumers.

One of the major requirements under the Act is the compulsory registration of every project by developers/promoters with Real Estate Regulatory Authority (RERA) including those that have not got completion or occupancy certificates. The Act contains several provisions to address the lacunae in the real estate sector, largely by way of establishing a disclosure framework and setting strict liabilities for promoter irregularities. Set out below are the major changes or introductions envisaged by the Act:

Registration with Real Estate Regulatory Authority: Registration has been made mandatory for all the real estate projects with the RERA where the total area of land proposed to be developed exceeds 500 square meters or where more than eight apartments are proposed to be developed inclusive of all phases. Projects cannot be advertised, booked or sold in any form prior to registration and obtaining the necessary construction approvals. Real estate agents are also

compulsorily required to obtain registration from RERA. RERAs shall be established within a period of one year and till the time being the Government will be specifying the relevant authorities for the purpose of registration under the Act.

Legal & Commercial Restrictions on the Promoters/ Developers:

- ? Any transfer or assignment of majority rights and liabilities by the promoter to a third party is subject to prior written consent from two-thirds of the allottees and RERA.
- ? The promoter is prohibited from creating any charge or encumbrance on any apartment after executing an agreement for the same.
- ? The promoter is responsible for structural defects or other deficiencies for a period of 5 years from the date of delivery of possession.
- ? 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 and 2/3 rd of the allottees in case of common areas/amenities.
- ? Prior to execution and registration of a sale agreement, a cap of 10% percent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee has been imposed.

Delay in Handover: Delay in handing over the developed property and failure to achieve the committed schedules by the promoters was seen as the major problem faced by the buyers. The Act now prescribes that in case the promoter is unable to hand over possession of the apartment, plot or building to the allottee in accordance with the terms of the agreement of sale or for any other reason, then (i) the promoter will be liable, on demand, to return the amount received by him from the allottee with interest and compensation; or (ii) in case the allottee does not want to withdraw, then he will be entitled for the interest amount for the delayed period.

Change in Pricing Norms: In order to protect the buyers from the abuse of any ambiguous sale tactics, the requirement of sale of units on the basis of carpet area criterion has been imposed. Carpet area essentially means the net usable floor area of an apartment and excludes the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Warranties on the legal title: In an attempt to protect the buyers from any dispute or adverse claims on the authenticity of the title over the land or the project, the promoter is now required to declare and authenticate the legal title to the project land.

Legal Recourse: No civil court has a jurisdiction to entertain any suit or proceeding (including injunction proceeding) in respect of any matter which RERA or the adjudicating officer or the appellate tribunal is empowered by or under the Act. The Act provides for time bound resolution of complaints and disputes by the RERAs and the real estate appellate tribunals.

Stringent Penalties: Till now only buyers were the sufferers in case of any delay in the completion of project. But now as a deterrent measure to ensure the compliance of the Act and

timely completion of all the obligations of the promoters, stringent penal provisions including penalty may be up to 10% of the estimated cost of the project in case of defaults by the promoters; up to 5% of the estimated cost of the project in case of any default in disclosures and/ imprisonment of up to three years with or without fine have been prescribed under the Act. Additionally, the penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the buyer in certain cases.

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Few missing aspects still need to be looked into and supplemented to the Act like (i) the adequate measures to curb the black money usage in real estate transactions and (ii) the accountability of Governmental officers in relation to delay in providing approvals and permissions.

It is required that once implemented, the upshot of the requirement of maintaining a separate account for depositing 70% of the receivables should be closely monitored so that the same does not result in promoters opting for bank or other mode of finances and thereby ultimately raising the price!

REGULATORY AND JUDICIAL SNAPSHOTS

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