

## **Union Cabinet clears the Real Estate (Regulation and Development) Bill, 2011**

The Real Estate (Regulation and Development) Bill 2011 (“**Bill**”) has received clearance from the union cabinet. The Bill has been designed to regulate and ensure the planned development of the real estate sector and improve the efficiency and transparency in real estate and housing transactions. At present the real estate sector is unregulated and it is difficult for customers to procure complete information or enforce accountability against developers in absence of any regulation. This article briefly discusses the salient features of the Bill and its potential impact on the real estate sector.

### **Salient Features of the Bill**

- ***Establishment of a Real Estate Regulatory Authority*** – The Bill provides for the establishment of a Real Estate Regulatory Authority, which shall be vested with the functions of rendering advice regarding the development of the real estate sector, maintain a website of records of all real estate projects, act as a nodal agency to co-ordinate efforts of the government for development of the real estate sector, and to make inquiries into the compliance of regulations or orders or directions made in exercise of powers under the Act. The authority's decision can be challenged in the Appellate Tribunal, which is proposed to be set up at the central level. The Tribunal's order can be challenged in the Supreme Court.
- ***Real Estate Appellate Tribunal*** – The Bill also provides for the establishment of an appellate tribunal to adjudicate any dispute and hear and dispose appeals against any direction, decision or order of a regulatory authority. The Bill also ousts the jurisdiction of civil courts in entertaining suits or proceedings in respect of matters which the authority or appellate tribunal is empowered to determine.
- ***Registration*** – Under Clause 3 of the Bill all developers/builders who intend to sell any immovable property are required to register themselves with the Real Estate Regulatory Authority as a system of accreditation. Clause 6 of the Bill provides that upon the cancellation or lapse of registration, the Real Estate Regulatory Authority after consulting with the Government, may carry out the remaining development work or can get it done through the association of allottees or in any other manner. The Bill also provides for the revocation of the registration under Clause 7 which provides that the authority may revoke registration suo moto or upon the recommendation of the competent authorities on the grounds mentioned below:
  - (i) On willful default of promoter under the Bill;
  - (ii) On violation of the terms of agreement entered into with competent authority by promoters (The revocation of the registration under this Clause is subject to recommendation of the competent authority.)
  - (iii) Unfair practices or irregularities by promoters.
- ***Public Disclosure*** - Mandatory public disclosure norms have been prescribed for all registered developers, including details of developers, project, land status, statutory approvals, and contractual obligations. This provision can be regarded as one of the strengths of the Bill as it seeks to establish a regulatory oversight mechanism to enforce disclosure norms. Also, the developers will be required to make all such disclosures before the launch of any project, so that it cannot be carried out to the prejudice of the consumers. All such disclosures will have to be made by the developers on the website of the proposed regulatory authority and the promoters will also have to register themselves with such authority. As this sector is highly unregulated the consumers often fail to procure complete information about the builders and developers and hence the mandatory public disclosure norms should create more transparency.

- **Refund** – The Bill provides for obligations on the part of promoters to adhere to the approved plans and project specifications and to refund money in case of default. The Bill under Clause 50 makes it mandatory on the part of the promoters to comply with the provisions of Clause 3 (registration of the real estate projects), failing which, they will be punishable with imprisonment which may extend up to three years or a penalty which may extend up to ten percent (10%) of the estimated cost of the real estate project, or both.
- **Central Advisory Council** – The Bill also provides for the establishment of a Central Advisory Council to advise the government on matters relating to implementation of the Act. Functions of the Central Advisory Council would include advice on matters related to major questions of policy applicable to the real estate sector, and fostering the growth and development of the real estate sector.

### **Impact of the Real Estate (Regulation and Development) Bill, 2011**

The Bill has been hailed as a welcome step in the direction of greater transparency by seeking to regulate the thus far unregulated real estate sector in India. It will bring relief to the ordinary investor who is required to go through several hurdles in purchasing property, and is often at risk of being duped by the smaller developers and builders. Imposing of stringent obligations on the promoters will ensure that construction is completed in a timely manner. Furthermore, by establishing the Regulating Authority and Appellate Tribunal, the Bill provides for a forum where disputes can be heard by a specialized expert body.

The Bill may also prohibit builders from using pictures of housing projects in foreign countries to lure buyers while advertising a project. They will have to use pictures reflecting the actual project, which will be delivered to home buyers. The developers will have to maintain a separate bank account for a particular project, and will not be allowed to divert the money for other projects.

The Bill also makes an agreement for sale compulsorily registrable. Another important feature of the Bill is to ensure housing for urban poor by making it compulsory for developers to provide some portion of the project townships for the lower income groups.

**ARA LAW's Views:** Although the Bill is progressive, some serious concerns have been raised with respect to its implementation. Firstly, it is feared that the stringent provisions of Bill may drive small developers to abandon projects, which are currently under-way leaving buyers in the lurch. Also, there is no mention as to the retrospective effect of the Bill and there is no effective mechanism in the Bill to safeguard buyers. Secondly, it is feared that the new law may cause the real estate prices to escalate even since it prevents the promoters from receiving any advance unless the licenses and approvals are in place.

The Bill permits builders to sell open spaces, such as the parking space, terrace and private garden for independent and private use. As per the interpretation of law by the Supreme Court, the sale of open spaces by a builder is regarded as being illegal since the land and other open spaces belong to the society. The Bill once passed, will enable the builders to overcome this judgment and profit from the sale of such spaces.

According to Section 46 of the Bill, the order of the tribunal can be enforced like the decree of a civil court. Unlike the consumer fora, the authority or tribunal under the Bill does not have power to adopt penal proceedings /criminal prosecution for non- compliance. Such proceedings would have to be initiated by the authority or tribunal by filing a complaint before a criminal court. Such a proceeding would be both lengthy and cumbersome.

Industry perception of the Bill is that it is mainly intended to regulate builders and does not regulate other stakeholders such as consumers, local sanction authorities and financial institutions. For instance, if there is a delay in the issuance of the occupancy certificate at the local sanctioning authority level, it would be unfair to penalize the builder for such delay.

Section 18 of the Bill provides for establishment of real estate regulatory authority comprising of a chairman and two members. It has been felt that the strength of only 3 members on the authority would be inadequate to cope with the construction and development projects being carried out across the country. However, the most unfavorable provision of the Bill is Section 60, which states that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. The Bill therefore does away with the alternative, more efficacious remedy which was hitherto available to a flat purchaser under the Consumer Protection Act.