

STATUS:

1. What is the status of the Act?

The Real Estate Bill was passed by the Rajya Sabha on 10th March, 2016 and the Lok Sabha on 15th March, 2016. The Bill as passed by the Parliament was assented to by the Hon'ble President on 25th March, 2016. The Act as assented to by the Hon'ble President was published in the Official Gazette on 26th March, 2016 for public information.

2. When did the Act come into force?

Section 2, sections 20 to 39, sections 41 to 58, sections 71 to 78 and sections 81 to 92 were notified by the Central Government to come into effect from 1st May, 2016.

3. Why have some sections of the Act not been notified yet?

Some sections of the Act have not been notified yet, as the institutional structures, namely the establishment of the Regulatory Authority and the Appellate Tribunal are necessary prior to their enforcement. For e.g. projects can only be sold after they are registered with the Authority, thus, in the absence of the same there would be a vacuum.

4. When would the remaining sections of the Act come into force?

Sections 20 and section 43 provides that the Authority and the Appellate Tribunal need to be established within 1 year of the commencement of the Act. As the said sections were notified for commencement on 1st May, 2016 the Authority and the Appellate Tribunal are required to be established maximum by 30th April, 2017. Sections of the Act which have not been notified yet, would be notified maximum upon the expiry of that period.

OBJECTS AND REASONS:

5. What was the need for a regulatory law for the real estate sector?

The real estate sector has grown in the recent years but has largely been unregulated from the perspective of consumer protection. Though, consumer protection laws are available, the recourse available therein are only curative, but not preventive. This has affected the overall potential growth of the sector due to absence of professionalism and standardization.

6. What are the objects and reasons for which the Act has been framed?

The Real Estate Act is intended to achieve the following objectives:

- a) ensure accountability towards allottees and protect their interest;
- b) infuse transparency, ensure fair-play and reduce frauds & delays;
- c) introduce professionalism and pan India standardization;
- d) establish symmetry of information between the promoter and allottee;
- e) imposing certain responsibilities on both promoter and allottees;
- f) establish regulatory oversight mechanism to enforce contracts;

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- g) establish fast- track dispute resolution mechanism;
 - h) promote good governance in the sector which in turn would create investor confidence.

CHAPTER I - PRELIMINARY

7. Who is the 'appropriate Government' as per the Act?

Section 2(g) of the Act defines 'appropriate Government' to mean as follows:

- (i) for the Union territory without Legislature, the Central Government;
- (ii) for the Union territory of Puducherry, the Union territory Government;
- (iii) for the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) for the State, the State Government.

8. What are the important responsibilities of the appropriate Government?

- a) As per section 84 the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
- b) As per section 20 the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30th April, 2017.
- c) As per section 20 the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
- d) As per section 43 the appropriate Government is required to establish the Appellate Tribunal within 1 year from its commencement i.e. maximum by 30th April, 2017.
- e) As per section 43 the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
- f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
- g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
- h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.

9. Does the definition of ‘promoter’ include public bodies such as Development Authorities and Housing Boards?

The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term ‘promoter’ which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

10. Does the definition of ‘promoter’ include all promoters in case of joint development?

As per the Explanation to section 2(zk) “where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder”.

11. What is the rate of interest payable in case of default by the ‘promoter’ or the ‘allottee’? Is the rate of interest payable by either party (promoter or allottee) the same?

As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest is required to be specified by the appropriate Government in the Rules.

12. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of ‘advertisement’?

As per section 2(b), which defines ‘advertisement’ any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails.

13. Does the term ‘allottee’ include secondary sales?

As per section 2(d) an allottee includes a person who acquires the said ‘apartment / plot’ through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

14. Is ‘open parking areas’ a part of ‘common areas’?

Section 2(n) defines ‘common areas’ to include ‘open parking areas’, thus open parking areas cannot be sold to the allottees.

15. Is ‘community and commercial facilities’ which are provided in a real estate project are part of ‘common areas’?

Section 2(n) defines ‘common areas’ to include ‘community and commercial facilities’, thus they are an integral part of the project, to be handed over to the Association of Allottees.

16. What happens in case of jurisdictions (States/UTs) which do not provide for both the 'occupancy certificate' and the 'completion certificate'?

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. The two definitions are very broad and use the term 'by whatever name called'. Thus, if in a State/UT only one certificate is issued which provides for both the aspects covered under the two definitions, it would suffice the requirements under the Act.

17. What is the difference between the term 'completion certificate' and 'occupancy certificate'?

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

18. The Act defines 'estimated cost of the real estate project', what is the significance of the definition?

Section 2(v) defines 'estimated cost of the real estate project', which means "the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges". The determination of the estimated cost of the real estate project is necessary due to Chapter VIII of the Act, which provides that penalties would be imposed on the promoter, for violations prescribed under the Act, based on the estimated cost of the real estate project.

19. What is the definition of 'garage' and can it be sold by the promoter independent of an 'apartment'?

Section 2(y) defines the term 'garage', which can be sold to the allottee independent of the 'apartment'.

20. What is the definition of 'real estate project'? Does the term 'project' connote a 'real estate project'?

The term 'real estate project' has been defined under section 2(zn) and the term 'project' has been defined under section 2(zj), which have been interchangeably used under the Act.

21. Are real estate agents covered under the Act? Does the term 'real estate agents' include web-portals engaged in selling of apartments or plots?

Section 2(zm) defines the term 'real estate agents', which is a very broad and inclusive definition and covers all forms of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or

apartments are also covered under the Act and are required to comply with the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

22. What happens in case a term is used under the Act but has not been defined?

Section 2(zr) is an omnibus definition which provides that terms which have not been defined under the Act or the Rules and Regulations made thereunder, would have the same meaning as respectively assigned to them under the relevant Municipal laws or under any law for the time being in force.

CHAPTER II - REGISTRATION OF PROJECT AND AGENTS

23. Does the Act cover both residential and commercial real estate?

The Act covers both residential and commercial real estate. Section 2(e) defines 'apartment' and section 2(j) defines 'building' which include both residential and commercial real estate.

24. Does the Act cover ongoing / incomplete projects?

As regards the ambit of the Act, there is no distinction between an ongoing project and a future project, i.e. both ongoing / incomplete projects and future projects are covered under the Act.

Section 3(1) first proviso provides that promoters of 'all ongoing projects which have not received completion certificate will need to register their project with the Regulator Authority, within 3 months of its commencement'.

25. Does the Act cover all projects in urban areas and in rural areas?

Section 3(1) provides that all projects within a 'planning area' will require to be registered with the Authority. 'Planning Area' has been defined under section 2(zh).

However, section 3(1) second proviso gives powers to the Authority 'in the interest of allottees' to order / direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

26. Which projects are exempt from the ambit of the Act?

As per section 3(2) the following projects do not require to be registered under the Act:

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the

case may be, under the real estate project.

27. At what stage can a promoter start to advertise his project for sale?

The promoter can advertise his project for sale after the project has been registered with the Regulatory Authority as provided in section 3(1).

28. What are the details to be furnished at the time of application for registration of real estate project with the Regulatory Authority?

Section 4 of the Act provides for details / information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the fees to be paid etc. are to be determined by the Rules made by the appropriate Government.

29. What are the formalities for the registration of a real estate project with the Regulatory Authority?

The promoter is required to make an application as per Form and fees prescribed by the Rules made by the appropriate Government, along with the documents / information and undertaking specified in section 4 to the Authority for registration of the project. In addition, the promoter is also required to append other / additional documents / information as specified in the Rules.

30. In how many days is the Regulatory Authority required to register the real estate project?

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

31. What in case the application for registration of the real estate project is incomplete?

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made thereunder, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

32. Is there a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application?

Section 5 of the Act provides that the Authority has to decide on the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.

33. What is the period of validity of registration granted to a real estate project by the Regulatory Authority?

As per section 4, the validity of the registration granted to a project shall be the period declared by the promoter under section 4(2)(l)(C), at the time of making the application for registration, within which he would complete the project.

34. Is the promoter required to maintain an 'escrow account' or a 'separate account'? Is a 'separate account' to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?

Section 4(2)(l)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal.

Section 4(2)(l)(D) clearly provides that the funds can only be used for construction and land cost.

35. On what basis is the promoter required to withdraw the money from the separate account?

As per section 4(2)(l)(D) first and second proviso, the promoter is required to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. In addition, the promoter is permitted to withdraw from the separate account after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

36. Is the promoter required to get his accounts audited?

As per section 4(2)(l)(D) third proviso, the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

37. Is the application for registration of a real estate project, proposed under the Act is manual or it can also be done online?

Section 4 envisages that for a period of one year the application process can be both manual and online based, however, after one year it is mandatory to make the entire process online.

However, for the purposes of project information to the prospective consumers, it would

help in establishing the web portal at the earliest.

38. Can the period of registration granted to a real estate project by the Regulatory Authority be extended? What is the definition of force majeure?

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstances, without the fault of the promoter, which shall not be more than a maximum period of 1 year.

Explanation to section 6 has defined force majeure to mean 'a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project'.

39. What are the terms and conditions for extension of registration?

The terms and conditions, the application form and the fees payable for extension of registration shall be in the manner as prescribed by the Rules.

40. Can the registration of a project be revoked?

As per section 7 the Authority has the powers to revoke registration of a project, for violations specified under the said section. However, revocation of registration of a project is envisaged as a last resort and can only be done after providing a reasonable opportunity of being heard.

41. What are the next steps that can be taken for project completion in case of revocation of a project?

In case a project is revoked, section 8 provides for various mechanisms in which the project can be completed. However, in such a scenario, the association of allottees shall have the first right of refusal for carrying out the remaining development works.

42. Does the Act also cover real estate agents? What are the duties and responsibilities of the real estate agents?

Section 9 of the Act provides that real estate agents which engage in selling projects registered under the Act, can only do so after registering themselves with the Authority. The mechanisms for registration, the fees payable, the period of registration, subsequent renewal etc. are matters to be detailed vide the Rules.

Section 10 of the Act provides for detailed functions and duties of real estate agents.

CHAPTER III - FUNCTIONS AND DUTIES OF PROMOTER

43. What are the important functions and responsibilities of the promoter after registration of the project with the Authority?

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

44. What are the disclosures to be made on the website of the Regulatory Authority?

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, the detailed list is required to be specified in the Rules.

45. What is the promoter's obligations regarding veracity of the advertisement or prospectus?

As per section 12 the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus. In case of any loss sustained by any person due to false information contained therein, the promoter is liable to make good the loss sustained due to the same.

46. Can the promoter collect any amount of money towards booking of the apartment / plot?

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment / plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

47. What is the 'Agreement for Sale' and is it binding on the 'promoter' and the 'allottee'?

As per section 13(2) the appropriate Government is required to specify through Rules the 'Agreement for Sale' to be entered into between the promoter and the allottee. This Agreement is binding on the parties, however, internal flexibility could be provided in the said Agreement for Sale, for determination / insertion of other provisions as decided between the parties.

48. Can the promoter modify / amend the sanctioned plans or project specifications after having been approved by the competent authority and disclosed to the allottees?

As per section 14 of the Act the promoter can only modify / amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification / alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

49. What is the period for which the promoter is liable for any structural defects etc. in the project / apartment etc.?

As per section 14(2) the promoter shall be liable for 5 years form the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

50. What is the obligation of the promoter as regard transfer of the project to a third party?

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two-third of allottees and the Regulatory Authority.

In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

51. What is the obligation of the promoter as regards insurance of real estate project?

As per section 16 the promoter is required to seek an insurance of the real estate project towards title of the land and towards construction of the project.

However, the said section provides that this provision shall only come into effect after and in the manner as may be notified by the appropriate Government.

52. What is the obligation of the promoter as regards transfer of title of the apartment / plot?

Section 17 of the Act provides for detailed provisions regarding transfer of title of the apartment and the project to the allottee and to the association of the allottees respectively.

53. What is obligation of the promoter towards return of amount and compensation to the allottee?

Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

CHAPTER IV - RIGHTS AND DUTIES OF ALLOTTEES

54. What are the rights and duties of the allottees under the Act?

Section 19 provides for the various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered into with the allottees, namely – stage-wise schedule of completion of the project and the services, claim timely possession of the apartment / plot, entitlement to necessary documents and plans etc.

Section 20 provides for the various duties of the allottees, which provide for matters relating to payment regarding the apartment / plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association etc.

CHAPTER V - THE REAL ESTATE REGULATORY AUTHORITY

55. What is the timelines for establishment of the Regulatory Authority?

As per section 20 the Regulatory Authority is required to be established within 1 year of the commencement of the said section. As section 20 has been notified with effect from 1st May, 2016, the Authority is required to be established maximum by 30th April, 2017. However, for speedy implementation of the Act, section 20 empowers the 'appropriate Government' to appoint an interim Regulatory Authority, until the establishment of the full time Authority.

56. How are the Chairman and the Members of the Authority required to be appointed?

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Chairman and the Members.

57. What are the important responsibilities of the 'Regulatory Authority'?

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibility of the Regulatory Authority are:

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;

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- c) Renewal of registration of the real estate agent and its revocation;
 - d) As per section 34 the Authority is responsible to maintain a website of records for public viewing of –
 - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website;
 - details of promoters with photographs of promoters;
 - details of projects in case of revocation of registration or where any project penalized under the Act;
 - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
 - e) As per section 71 the Authority is required to appoint one or more 'adjudicating officer' in consultation with appropriate Government.
 - f) As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
 - g) As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

58. How can a complaint be filed with the Authority for any violations under the Act?

Section 31 of the Act provides for filing of complaint by an aggrieved with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are to be specified by Rules to be made by the appropriate Government.

59. What is the time period within which the Authority is required to dispose of any matter that is brought to it for consideration?

Section 29 provides that the Authority should endeavour to dispose of the questions / complaints as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it could not be disposed of during the said period the Authority is required to record its reasons for the same.

CHAPTER VI - CENTRAL ADVISORY COUNCIL

60. What is the composition of the Central Advisory Council?

The Central Advisory Council, to be headed by the Union Minister for Housing, is a multi-member body comprising of representatives of specified Central Ministries, five representatives of State Governments to be selected by rotation, five representatives of Regulatory Authorities to be selected by rotation and any other central government department as notified.

The Central Advisory Council is also required to have representatives of consumers, real estate industry, real estate agents, construction labourers, NGOs, and academic / research institutions.

61. What is the role and responsibility of the Central Advisory Council?

The Central Advisory Council is required to advise the Central Government on matters relating to implementation of the Act, questions of policy, protection of consumer interest, foster growth and development of the real estate sector, and other matters as may be assigned to it by the Central Government.

CHAPTER VII - THE REAL ESTATE APPELLATE TRIBUNAL

62. What is the timelines for establishment of the Appellate Tribunal under the Act?

As per section 43 of the Act, the Appellate Tribunal is required to be established within 1 year of the commencement of section 43. As section 43 has been notified with effect from 1st May, 2016, the Appellate Tribunal is required to be established maximum by 30th April, 2017.

However, for speedy implementation of the Act, section 43 empowers the 'appropriate Government' to designate an existing Appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act.

63. What are the important responsibilities of the Appellate Tribunal?

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

64. Can an appeal be filed against the decision or the orders of the Appellate Tribunal?

Any person aggrieved by the decision or order of the Appellate Tribunal can file and appeal with the High Court.

65. What is the time period within which the Appellate Tribunal is required to dispose of the appeal?

Section 44 provides that the Appellate Tribunal should endeavour to dispose of the appeal as expeditiously as possible but not later than sixty days from filing the appeal. However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same.

66. How are the Chairman and the Members of the Appellate Tribunal required to be appointed?

As per section 46 the Chairman of the Appellate Tribunal shall be a sitting or retired Judge of the High Court. Section 46 also provides that the Appellate Tribunal shall comprise of at-least two Members one of whom shall be a Judicial Member and the other shall be a

Technical or Administrative Member.

As per section 46 the Members of the Appellate Tribunal are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Judicial / Administrative Members.

CHAPTER VIII - OFFENCES, PENALTIES AND ADJUDICATION

67. What is the punishment prescribed for non-registration of a project under the Act?

As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project.

However, in case the promoter consistently defaults or does not comply with the directions / orders of the Authority as regards registration of the project with the Authority, he shall be liable to additional fine of ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.

68. What is the punishment prescribed for violation of section 4 which provides for application for registration of the project?

As per section 60 if the promoter defaults as regards matters covered under section 4, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

69. What is the punishment prescribed for violation of other provisions of the Act by the promoter?

As per section 61 if the promoter defaults any other provision of the Act or the Rules and Regulations made thereunder, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

70. What is the punishment prescribed for non-compliance of the orders of the Authority by the promoter?

As per section 63 if the promoter fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the estimated cost of the real estate project.

71. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the promoter?

As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto

ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend upto three years or with both.

72. What is the punishment prescribed for non-registration of by a real estate agent under the Act?

As per section 62, where under the Act, it is obligatory for the real estate agent to register himself with the Authority, and the real estate agent fails to do the same, he shall be liable to a penalty upto of rupees ten thousand per day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

73. What is the punishment prescribed for non-compliance of the orders of the Authority by the real estate agent?

As per section 65 if the real estate agent fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

74. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the real estate agent?

As per section 66 if the real estate agent fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment, for which the sale has been facilitated by him or with imprisonment for a term which may extend upto one year or with both.

75. What is the punishment prescribed for non-compliance of the orders of the Authority by the allottee?

As per section 67 if the allottee fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment.

76. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the allottee?

As per section 68 if the allottee fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment or with imprisonment for a term which may extend upto one year or with both.

77. Can an offence which provides for imprisonment be compounded?

As per section 70 if any person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions which may be prescribed by Rules

made by the appropriate Government. In addition, the fine payable in lieu of imprisonment needs to be specified by the said Rules, which cannot be more than the maximum fine payable for that offence.

78. What is the role of the Adjudicating Officer?

The Adjudicating Officer is a quasi-judicial person who is mandated to adjudicate on disputes arising under section 12, 14, 18 and section 19. The Adjudicating Officer shall be a person who is or has been a District Judge.

79. What are the factors that need to be taken into account by the Adjudicating Officer while deciding a dispute under sections 12, 14, 18 and 19 of the Act?

The Adjudicating Officer shall, while deciding the disputes under section 12, 14, 18 and 19 of the Act, have regard to – the amount of disproportionate gain or unfair advantage, the amount of loss, repetitive nature of the default and such other factors that the Adjudicating Officer may consider necessary in furtherance of justice.

CHAPTER IX - FINANCE, ACCOUNTS, AUDITS AND REPORTS

80. What is the mechanism to finance the functioning of the Authority?

The Central Government or the State Government as the case may be, may through due appropriation make grants and loans to the Authority.

81. Who is required to constitute the Real Estate Regulatory Fund? What are the purposes for which the Fund is supposed to be used?

The appropriate Government is required to constitute the Real Estate Regulatory Fund, which is to be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

The said Fund is required to be used towards payment of salary and allowances to the Chairperson and the Members of the Authority and the Appellate Tribunal and such other expenses of the Authority in connection with the functions and purposes specified under the Act.

82. Can the penalties imposed under the Act be deposited in the Real Estate Regulatory Fund?

As per section 76 penalties recovered under the Act are to be deposited in the Consolidated Fund of India (in case of Authority established by the Central Government) and in the State Account (in case of Authority established by the State Government).

However, as per section 75, grants received by the Authority, fees received under the Act / Rules and the interest accrued thereon shall be credited to the Real Estate Regulatory Fund.

83. Is the Authority required to prepare a budget and maintain proper accounts and other relevant records? Are the accounts of the Authority required to be audited?

As per section 77 the Authority is required to prepare a budget and maintain proper accounts and other relevant records and also prepare an annual statement of accounts in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, section 77 provides that the accounts of the Authority are required to be audited by the Comptroller and Auditor General of India.

The accounts of the Authority as certified by the Comptroller and Auditor General of India (audit report) is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

84. Is the Authority required to prepare an Annual Report?

As per section 78 the Authority is required to prepare an Annual Report in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, the said Annual Report is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

CHAPTER X - MISCELLANEOUS

85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?

As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act.

Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

86. Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?

The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.

87. Can the Authority delegate any of its functions under the Act?

As per section 81, the Authority is empowered to delegate such of its powers and functions under the Act to any Member, officer or any other person subject to conditions specified in the order issued for the same. However, the Authority cannot delegate the responsibility of making Regulations under section 85 under the Act.

88. What is the timeline for notification of the Rules by the appropriate Government under the Act?

As per section 84 of the Act, Rules are required to be prepared by the “appropriate Government” within 6 months of the commencement of the Act. As section 84 commenced with effect from 1st May, 2016, Rules were required to be prepared by the ‘appropriate Government’ by 31st October, 2016.

89. What is the timeline for notification of the Regulations by the Authority under the Act?

As per section 85 of the Act, Regulations are required to be notified by the ‘Regulatory Authority’ within 3 months of its establishment.

90. Are the Rules, Regulations etc. notified required to laid before the Parliament or the State Legislature?

As per section 86 every Rule, Regulation, notification issued by the appropriate Government or the Authority, is required to be laid before the Parliament or the State Legislature, as the case may be.

91. Does the Government have the power to issue Orders towards Removal of Difficulties while implementing the Act?

The Central Government, under section 91, has been empowered to notify Orders towards removal of difficulties while implementing the Act. However, such removal of difficulties Order cannot be issued after the expiry of a period of two years since its commencement.

92. Why was section 92 repealing the Maharashtra Housing (Regulation and Development) Act, 2012 provided under the Act?

The Maharashtra Housing Act, 2012 was received for seeking presidential assent under Article 254(2) of the Constitution of India, when the Real Estate Bill was not enacted. For the sake of uniform application across the country, the said State Act, was repealed under Article 254(2) proviso of the Constitution of India.