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A BRIEF PRIMER ON THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

A. Introduction

The Real Estate (Regulation and Development) Act, 2016 (“**Act**”) which was published in the Official Gazette on March 26, 2016 was introduced with the objective of streamlining the regulation of the real estate sector, to bring about accountability and protect consumer interests. The preamble of the Act has been reproduced below:

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

While certain sections of the Act were initially notified to come into force on May 1, 2016, the remaining sections came into force a year later on May 1, 2017. The key provisions of the Act have been discussed and dealt with in this article.

B. Salient Features

➤ Real Estate Regulatory Authority:

The Act prescribes that the ‘appropriate government’ which refers to a State Government or Union Territory to establish a real estate regulatory authority (“**Authority**”) to perform the functions provided in the Act, which include:

- Registration of real estate projects, including extension, renewal of such registrations;
- Maintain a website and database with details of the all the registered real estate projects
- Make recommendations to the government on matters pertaining to the growth and promotion of the real estate sector
- Ensure the compliance of obligations by the promoters, allottees, real estate agents as provided under the Act or rules.

It is pertinent to note that the Authority has the power to issue directions, interim orders, and has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

➤ Registration:

The Act requires all real estate projects covering residential and commercial plots, buildings, apartments, to be registered with the Authority. The exemptions to this requirement include: (a) in case where area to be developed is not more than 500sq. mtrs. or the apartments to be developed does not exceed 8 in number; (b) if the promoter has obtained the completion certificate before commencement of the Act; (c) in case of renovation, redevelopment/ repair work which does not include advertising, selling, marketing or new allotment.

In effect, there can be no advertisement, marketing, selling or booking of any plot,

apartment or building, in respect of a real estate project unless the same has been registered.

➤ Carpet Area:

It is interesting to note how the Act has defined 'carpet area'. According to the Act, the carpet area refers to the "*the net usable floor area of an apartment, excluding 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*". At the time of registration, the applicant is required to provide the layout plans and specify the carpet area. By virtue of this definition, the Act seeks to provide transparency to the consumers so they are able to ascertain the extent of the area they are paying for, as opposed to the earlier practice of developers and real estate companies misleading consumers by including the area occupied by balconies, lift areas, verandahs, etc. to inflate the carpet area.

The Act further introduces the concept of 'common area' which includes staircases, common basements, lifts, community and commercial facilities, open areas, parks, common entrances and exits, etc. Under the Act, the association of allottees or a competent authority will be entitled to the undivided proportionate title to the common areas.

➤ Escrow:

Another provision of note includes the requirement of maintaining a separate account in which 70% of the amounts received from the allottees shall be deposited for the purposes of construction and land cost. Such account will also be subject to an audit at the end of every financial year.

➤ Timelines:

At the time of registration, the promoter is required to provide the timelines within which the project will be completed and is required to strictly adhere to them. The Act mandates the promoter to disclose the stage wise completion schedule to the allottee.

In case there has been a delay in meeting such timelines, except in case of reasons that are not attributable to the promoter, he is liable to pay an interest to the allottee for every month of the delay until handover of possession. The allottee also has the right to withdraw from the project and the promoter is required to repay all amounts received from the allottee with interest.

➤ Taxes:

Among the obligations cast on the promoter under the Act, is the condition to pay all outgoings in respect of the project until the transfer of possession of the project to the allottee or association of allottees. Outgoings include land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances, etc. The Act places the liability in the event of non-payment of such costs or taxes squarely on the promoter, who will have to bear costs of any legal proceedings that may arise as a result of such non-payment.

➤ Defects Liability:

As per the Act in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale is brought to the notice of the promoter within a period of five years from the date of handing over possession, the promoter is required to rectify such defects without further charge, within thirty days. If the promoter fails to undertake such repair then the allottee is entitled to receive appropriate compensation.

This is a controversial provision that has been introduced, since the Act does not clearly define what constitutes a defect of 'workmanship, quality or provision of services' and to what extent. Further, the time period of five years from date of possession can become an issue especially where construction of a project may have been completed earlier, but possession of an apartment or unit takes place much later possibly due to a slow real estate market.

➤ Redressal mechanism:

The Act provides for grievance redressal wherein an aggrieved person can approach the Authority directly with a complaint against the promoter/ real estate agent citing violation or contravention of the provisions of this Act or the rules and regulations. As discussed above, the Authority has the power to investigate, issue summons, interim orders, impose penalties or compensation, recover such penalties and enforce orders.

The Act also provides for the establishment of a Real Estate Appellate authority to hear appeals under the Act.

B. Conclusion

Presently, there has been a slew of cases that have been filed before the Courts by different players from the real estate sector including builders, developer, even consumers challenging the provisions for registration under the Act and the penalties imposed, raising issues on the applicability of the Act to old/ ongoing projects, etc.

This is being further amplified by the inconsistencies being introduced in the regulations issued by the State Governments as compared with the provisions of the Act. By way of example, the draft regulations that have been recently approved by the cabinet in Haryana, exempt ongoing projects in respect of which application for grant of occupancy certificate/part completion certificate has been made or received a completion / part completion certificate or occupancy certificate.

It may take a while before the provisions of the Act are fully implemented and the inconsistencies and ambiguities are ironed out. Until then, there is some reprieve for consumers as far as upcoming real estate projects are concerned.