

RESEARCH



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RERA THROUGH A MAGNIFYING GLASS

A STUDY THAT ZOOMS INTO THE NEW DOTTED LINES BY STATE GOVERNMENTS.



RERA ACROSS STATES: FINE TUNING THE HELPING HAND

After the Real Estate (Regulation and Development) Act, 2016 (the ‘Act’) was partially implemented in May 2016, it was incumbent on the states to draw up the rules for their respective states for carrying out the purpose of the Act and establishing the regulatory authority. From 1 May 2017, the entire Act has been brought into force by the Central Government (except in the State of Jammu and Kashmir) thereby embarking the beginning of a new era in the real estate sector of the country. So far, only a few states have come up with their rules. This is a look at how the rules framed by different states stack up.

In India, the real estate sector along with the bourses has been one of the biggest wealth creators for most investors since the turn of the century. There is, however, one fact that separates both these asset classes. The general belief is the bourses, unlike the real estate sector, are well regulated for most of its stakeholders. To remove the information asymmetry that exists in the real estate sector and to ensure that the sector grows as well and gives confidence to all its stakeholders, the incumbent government has brought in the necessary legislations for the real estate sector. This legislation is much needed in the current scenario, especially to boost the interest and consequently the demand in the residential property market as the same has not been performing well for a while now. The Central Government, on its part, enacted the Act, which was partially brought into force in May 2016.

THE STORY SO FAR

While some states have done the needful, some are midway through the process. The status of the rules across major states is as follows.

RERA ACROSS STATES	
STATE	STATUS OF RERA
Haryana	Draft rules prepared
Punjab	
Tamil Nadu	
West Bengal	
Andhra Pradesh	Notified and in force
Delhi	
Gujarat	
Madhya Pradesh	
Maharashtra	
Odisha	
Union Territories*	Notified but not gazetted – hence not in force
Bihar	
Karnataka	
Rajasthan	
Uttar Pradesh	
Uttarakhand	

*The Union Territories include Chandigarh, Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, and Lakshadweep.

To remove the information asymmetry that exists in the real estate sector and to ensure that the sector grows as well and gives confidence to all its stakeholders, the incumbent government has been trying to bring in the necessary legislations for the real estate sector.

Union Territories and states such as Maharashtra, Delhi, Karnataka, Andhra Pradesh, Bihar, Tamil Nadu, Haryana, Rajasthan, Odisha, and Gujarat have prescribed the form of the Agreement for Sale that a promoter is required to follow while selling an apartment, building and/or plot.

For the purpose of this study, it is important to understand the rules framed by states that house the biggest real estate markets in the country. This would include a study of the rules framed by Delhi, Karnataka, Maharashtra, Tamil Nadu, Haryana, Gujarat and Uttar Pradesh (the 'States'). We will examine how **the States** [these states to be mentioned with a capital 'S' henceforth in this report] fare with regards to some of the most important provisions that would affect the most important stakeholders, the developers and consumers, of the real estate sector. While the recent demonetisation move will ensure that only accounted money flows into the sector, both by developers and consumers, the rules developed by the respective states will create filters so that only serious players remain in the sector.

THE BROAD FILTER

The main filter that the Act speaks of is full disclosure by the developers about themselves and their projects. This was done deliberately because most of the times consumers find it difficult to cull information about the developer, thereby making it hard for them to make an informed decision. While information about the developers listed with the

stock exchange is still easy to find, it is very difficult for consumers to get information about developers who are not listed with the stock exchange. In reality, many big developers are not listed with the stock exchange, which only makes things more difficult for the consumer. The Act mandates that developers have to not only give information about themselves and their projects but also about the real estate agents, contractors, architect and structural engineer whose services they will utilise for their projects. The first step in this direction is to get the project registered together with the requisite details with the relevant real estate regulatory authority (the '**Authority**').

APPLICATION OF THE ACT

The Act applies to the transaction of sale (whether as freehold or leasehold) of apartments, buildings or plots only in residential and commercial projects, but does not include a transaction wherein a person is given an apartment, building or plot on rent.

REGISTRATION OF A PROJECT

The Act requires the promoters of new and ongoing projects to register their project with the Authority.

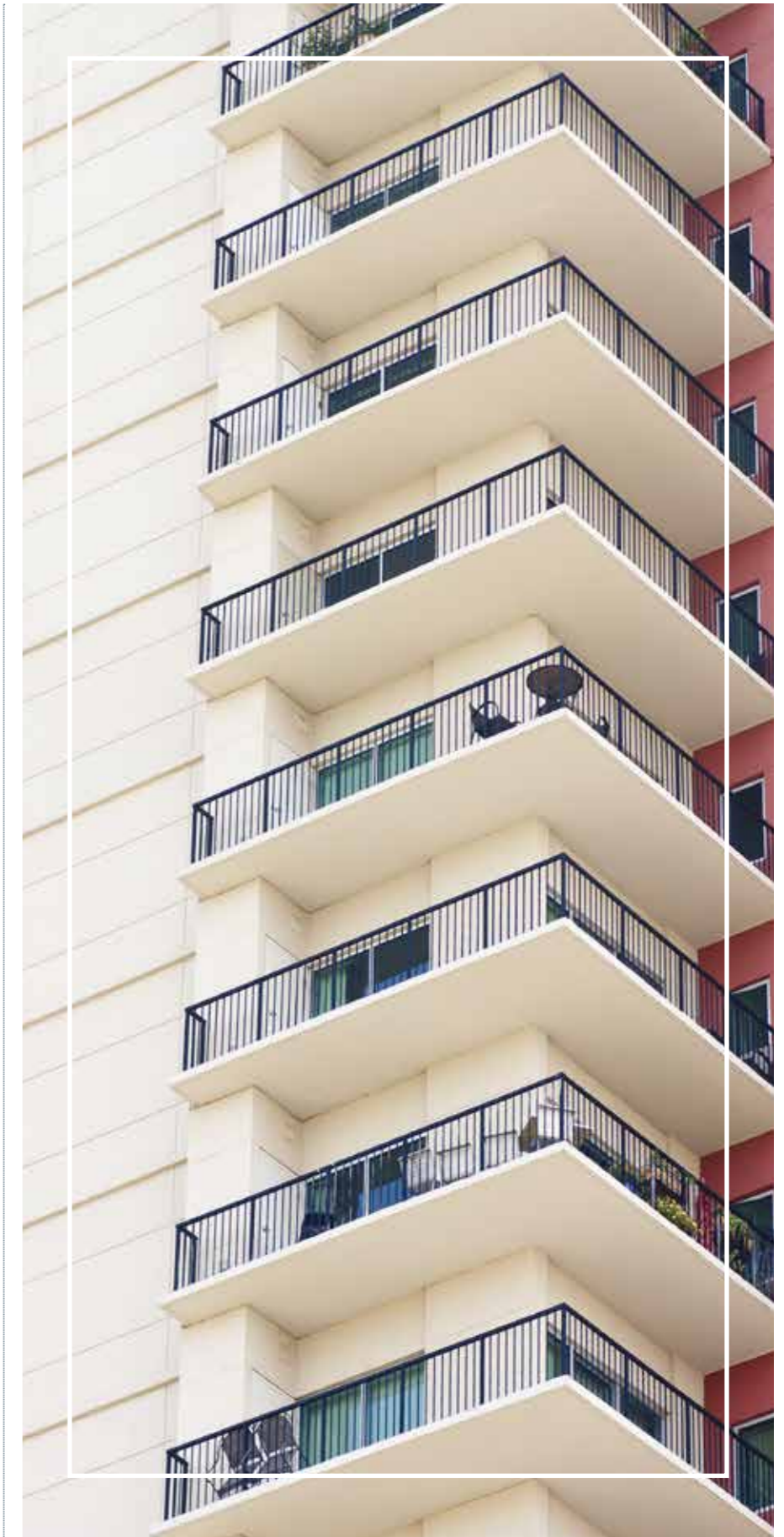
In case of ongoing projects, the Act requires the promoter to make an application for registration of such ongoing project with the Authority within three months from the date of commencement of the Act (i.e. from 1 May 2017). Only rules for Maharashtra

further clarify that in case of ongoing projects, at the end of 90 days from the date of notification of section 3 of the Act (i.e. from 1 May 2017), the promoter shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building unless he registers such independent phase as a separate real estate project with the Authority.

EXCEPTIONS TOWARDS REGISTRATION OF A PROJECT

There are, however, certain exceptions towards getting the project registered. As per the Act, there is no need to get the project registered under the following conditions:

- i. Where the area of land proposed to be developed does not exceed 500 square metres or the number of apartments proposed to be developed does not exceed eight in all its phases. The Act, however, has left it to the respective states if they wish to reduce the area from 500 square metres or the number of apartments from eight. Rules framed by the states mentioned herein do not grant any such relaxation. Thus, such a threshold will apply in these states as well.
- ii. Where the promoter has received the completion certificate for a real estate project prior to commencement of the Act.
- iii. For the purpose of renovation or repair or re-development that does not involve marketing, advertising,



selling or a new allotment of any apartment, plot or building under the real estate project.

WHY REGISTER A REAL ESTATE PROJECT?

Without registering the real estate project with the Authority, no promoter shall “advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case maybe in a real estate project or part of it, in any planning area.” Under the Act, a planning area would mean an area as notified by the state government or the competent authority for planned development in the state. Where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under the Act for each phase separately. The rules for Maharashtra also provide that a phase of a project may consist of a building or a wing of the building in the case of a building with multiple wings or defined number of floors in a multi-storeyed building/ wing.

WHAT IS AN ONGOING PROJECT?

The Act clearly specifies the need to register an ongoing project. As per the Act, projects for which the completion certificate has not been issued fall within the category of an ongoing project. The rules framed by Maharashtra, Delhi, Gujarat, and Karnataka are on similar

lines as the Act with regards to projects that can be classified as an ongoing project. However, the rules framed by Haryana, Uttar Pradesh and Tamil Nadu, provide a specific definition for ongoing projects, which are as follows:

Haryana

An ongoing project means a project where development is going on at the site and for which the completion certificate has not been issued but excludes such projects which fulfil any of the following criteria, before the stipulated date of due registration under Section 3 (1) of the Act, namely:

- i. completion/part completion certificate in case of plotted colony has been issued by the competent authority under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975) and rules framed thereunder;
- ii. occupancy certificate for the building blocks of integrated complexes like group housing, commercial, cyber park or cyber city, has been issued by the competent authority under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act 41 of 1963) and rules framed thereunder;

Explanation: The remaining area/ building blocks of the colony for which part completion/occupation certificate has not been granted/issued by the competent authority, shall not be

excluded.

- iii. The project for which an application for grant of occupancy certificate/part completion certificate has been made, provided the same is granted by the competent authority within three months of the application.

Uttar Pradesh

An ongoing project means a project where development is going on and for which the completion certificate has not been issued but excludes such projects that fulfil any of the following criteria on the date of notification of the rules:

- i. A project in which services have been handed over to the local authority for maintenance.
- ii. A project in which common areas and facilities have been handed over to the association or the resident welfare association for maintenance.
- iii. Such properties where all developmental work has been completed and the sale/lease deeds for 60% of the apartments/houses/plots have been executed.
- iv. A project where all development works have been completed and the application has been filed with the competent authority for issue of the completion certificate.

Tamil Nadu

An ongoing project means a project where development is going on and for which the completion certificate has not been issued, but excludes such projects that fulfil any of the following criteria on

the date of notification of the rules:

- i. Where services have been handed over to the Local Authority for maintenance.
- ii. Where common areas and facilities have been handed over to the Association or the Residents’ Welfare Association for maintenance.
- iii. Where all development works have been completed and the application or intimation letter has been submitted with the competent authority to obtain the completion certificate, if applicable.

DISCLOSURES OF PROJECTS TO GET THEM REGISTERED

The Act does not make any distinction between a new real estate project and an ongoing real estate project with regards to documentation that needs to be accompanied with an application for it to get registered with the relevant Authority. This means that the documentation for a new real estate project and an ongoing project will be the same, especially with regards to documentation to attest the credentials of the promoter.

In case of ongoing projects, the rules framed by states, however, deal in much greater detail on the documentation that promoters need to furnish. The rules framed by Delhi, Haryana, Karnataka, Tamil Nadu and Uttar Pradesh are clear on the fact that developers will make the necessary disclosures as per the Act. The rules for these five states, however, stress on the disclosure by the promoter on the following points:

- i. All project details including status of the project and the extent of completion.
- ii. Disclose the size of the apartment based on the carpet area, even if it was sold earlier on any other basis such a super area, super built-up area or built-up area. Such a disclosure, however, will not affect the validity of the agreement entered between the promoter and the allottee. In case of plotted development, the promoter shall disclose the area of the plot being sold to the allottees.

Additionally, the rules of Delhi, Gujarat and Haryana require the promoter to disclose the extent of development carried out till date and the extent of development pending, including the original time disclosed to the allottee for completion of the project at the time of sale. The promoter also needs to mention the delay and the time period within which he will undertake the completion of the pending project, which shall be commensurate with the extent of development already completed, this information shall be certified by an engineer, architect and a chartered accountant in practice. The rules also require the promoter to disclose the total amount of money collected from the allottees and the total amount of money used for development of the project, including the total amount of balance money lying with the promoter.

In the rules for Maharashtra, the disclosure requirement for an ongoing project is more than what has been prescribed by the rules for Delhi, Gujarat, Karnataka, and Uttar Pradesh,

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which are as follows:

- i. All details of the project, including extent of construction work completed as per the last approved sanctioned plan of the project and the extent of development of common areas and amenities along with expected period of completion of the ongoing project, which shall commensurate with the extent of development already completed.
- ii. To assess the status of the ongoing project, the rules require the promoter to submit (1) a certificate from the project architect certifying the percentage of completion of construction, (2) a certificate from the engineer for the estimated cost to complete the remaining construction, and (3) a certificate from a chartered accountant for the balance cost to complete the project. Further, the certificate from the chartered accountant should also certify the following: (i) balance amount of receivables from the apartments/flats/premises sold or allotted with respect to those in which agreements have been executed, and (ii) estimated amount of receivables from unsold units calculated at the prevailing Annual Statement of Rates (ASR) on the date [Annual Statement of Rates means the rate of land and building for different users and as notified under the provisions of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995].
- iii. The number of apartments sold or allotted to allottees and the basis on

which they were sold/allotted (basis over here refers to carpet area, super area, super built-up area).

- iv. The area of plots sold to allottees and details, like the extent of the share of common areas and amenities.

DOCUMENTATION REQUIRED FOR REGISTRATION OF A PROJECT

When applying for registration of a project with the Authority, which includes registration of projects that are developed in phases, the Act requires the promoter to make a full disclosure about themselves and their projects. The disclosure requirement in the Act is set out below:

- i. Brief details of his enterprise including his name, registered address, type of enterprise and the particulars of registration and the names and photographs of the promoter.
- ii. A brief detail of the project launched by him, in the past five years, whether already completed or being developed, current status of such projects, any delay in completion, details of pending cases, details of type of land and payments pending.
- iii. An authenticated copy of the approvals and commencement certificate from the competent authority and in cases where the project is proposed to be completed in phases, an authenticated copy of the approvals and commencement certificate from the competent

authority for each of such phases.

- iv. The sanctioned plan, layout plan and specifications of the proposed project or phase and the whole project as sanctioned by the competent authority.
- v. The plan of development works to be executed in the proposed project and the proposed facilities to be provided including fire-fighting facilities, drinking water facilities, emergency evacuation services and use of renewable energy.
- vi. The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including latitude and longitude of the end points of the project.
- vii. Proforma of the allotment letter, agreement for sale and the conveyance deed proposed to be signed with the allottees.
- viii. The number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or veranda area and the exclusive open terrace areas with the apartment, if any.
- ix. The number and area of the garage for sale in the project.
- x. The names and address of his real estate agents, if any, for the proposed project.
- xi. The names and addresses of the contractors, architect, structural engineer, if any, and other persons concerned with the development of the project.

Broadly speaking, the Act requires

promoters to declare everything about the project when applying for registration of the project.

The rules framed by most states are in line with the Act with regards to disclosing details about the project when applying for registration of the same. Rules framed by the States require the promoter to furnish additional details, such as audited balance sheet for the preceding financial year and/or income tax returns for three preceding years.

Further, rules framed by the States clearly mention that the promoter needs to give a declaration that he will not discriminate against any allottee at the time of allotment of any apartment, plot or building.

INFORMATION THAT WILL BE MADE AVAILABLE TO THE PUBLIC

As per the Act, the promoter, upon the Authority registering the particular project and providing the registration number, login ID and password, is required to create his web page on the website of the Authority and enter all details, including the details provided in the application for registration of the proposed project for public viewing. The details prescribed under the Act that a promoter is required to upload on the website of the Authority are as follows:

- i. Details of the registration granted by the Authority
- ii. Quarterly up-to-date list of the number and types of apartments or plots booked in the project
- iii. Quarterly up-to-date list of the

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When applying for registration of a project with the Authority, which includes registration of projects that are developed in phases, the Act requires the promoter to make a full disclosure about themselves and their projects. Among other things, promoters need to provide details of their track record over a period of five years.

- number of garages booked in the project
- iv. Quarterly up-to-date status of the project
 - v. Such other information and documents as may be specified by the regulations made by the Authority.

As a result of the above, there will be a wealth of information available on the website of the respective Authority in relation to the concerned project. This is where the consumers/homebuyers (one of the most important stakeholders in the residential property market) will start to reap the benefits. This section in the website of the respective Authority is the most helpful to consumers to take an informed decision about the promoter and the concerned project.

Thus, what is the kind of information that will be made available on the website? The rules framed by the States are congruous with each other, and they make most of the information about the promoter, real estate agents, consultants and most importantly about the project available to the public. A look at some of the common information that will be available to homebuyers is as follows:

- i. Apart from information about the promoter and his group, there will be granular details about the promoter, like his educational background.
- ii. In case of a newly incorporated or registered entity, brief details of the parent entity.
- iii. Track record of the promoter or parent entity- information if the

promoter has any experience of implementing a real estate project within the state and/or outside.

- iv. Details of past and ongoing litigations in relation to the real estate project.
- v. Financial details of the promoter such as authenticated income tax returns, audited balance sheet and annual reports.
- vi. Details of approvals received, approvals pending, approvals applied for and expected date of receipt.
- vii. Land title search report and no encumbrance certificate from an advocate.
- viii. Sanction letters from banks for construction finance and home loan tie-ups.

Under the rules for Delhi, Karnataka, Haryana, Tamil Nadu, and Uttar Pradesh, a promoter will be required to upload on the webpage of the project after every quarter, the status of construction of each building, floor, internal infrastructure and common areas together with the photographs. The time period for uploading such information after every quarter varies across states. Rules for Gujarat are, however, silent on the matter.

DECLARATION TO BE SUBMITTED BY THE PROMOTER

In addition to all the disclosures, the promoter is required to submit a declaration, which has to be supported by an affidavit on various aspects related

to the project. These include disclosures such as, he has the legal title to the land on which the development is proposed, the land is free from encumbrances and where there is an encumbrance, details of such encumbrance, the time period within which he will complete the project or phase and most importantly, a declaration stating that 70% of the money realised from allottees from time to time will be kept in a separate account maintained with a scheduled bank, which will be used to cover the land cost and construction cost of that project.

The sole objective of requiring the promoter to deposit 70% of the realisation in the separate account was to clip the wings on a practice rampant in the sector and a practice that largely contributed to delays in the sector. It was common practice in the sector to divert funds from one project to another. Therefore, apart from ensuring that only serious players remain in the sector, the Act also creates enabling factors that will ensure that there are no hindrances in the implementation of a real estate project. Thus, we believe that the Act will help the sector grow in the long run.

DEPOSIT AND WITHDRAWAL OF 70% OF THE AMOUNT FROM THE SEPARATE ACCOUNT

As mentioned above, the Act requires the promoter to deposit 70% of the money realised from allottees from time to time in a separate account maintained with a scheduled bank, which will be used to cover the land cost

and construction cost of that project.

The Act further mandates that 70% of the amount deposited in the separate account shall be withdrawn by the promoter in proportion to the percentage of completion of the project together with a certificate from an architect, engineer and chartered accountant in practice.

The promoter shall also have to get his accounts audited by a chartered accountant in practice within six months after the end of every financial year and shall also produce a statement of accounts duly certified and signed by such chartered accountant. The audit shall verify that the amounts collected for a particular project have been utilised for the said project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

In the rules framed by Delhi, Karnataka, Haryana, Gujarat, Tamil Nadu, and Uttar Pradesh there is lack of clarity on the form and content of such certificates to be issued by the architect, engineer and chartered accountant; it may lead to overlapping and duplication of the role of these three professionals and this would lead to conflicting findings and clarifications.

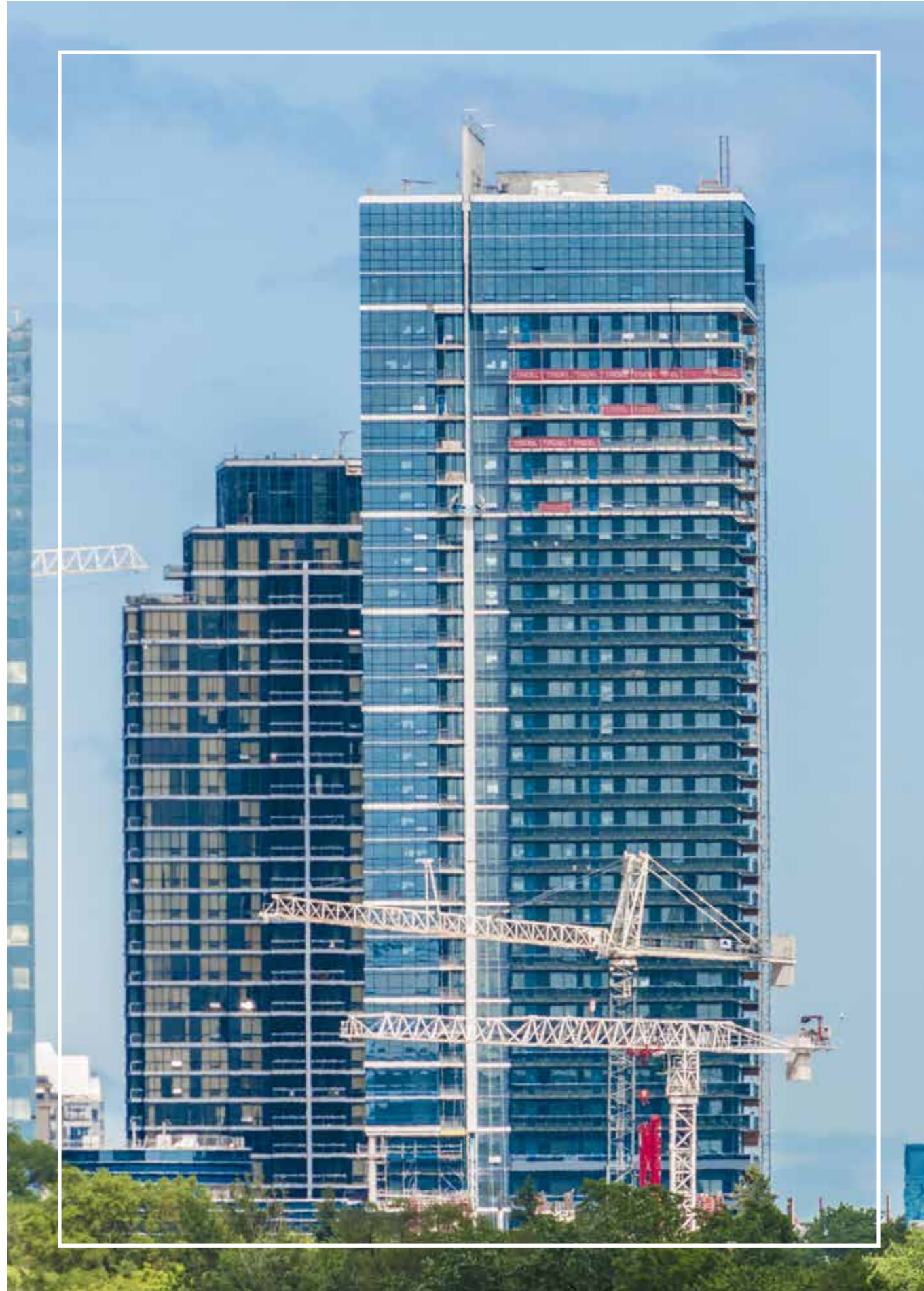
However, the rules of Maharashtra bring about a lot of clarity in this regard, which are as follows:

- Architect's certificate – Certifying the percentage of completion of construction work of each building/wing of the project;
- Engineer's certificate – Certifying the actual cost incurred on the construction work of each building/wing of the project;
- CA certificate – Certifying the cost incurred on construction cost and land cost;
- CA certificate – Also, to certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project.

The total estimated cost of the project multiplied by such proportion shall determine the maximum amount that can be withdrawn by the promoter from the separate account.

The promoter shall be required to follow the above procedure for each withdrawal until the occupation is obtained and on receipt of the Occupation Certificate (OC), the entire balance amount lying in the account can be withdrawn.





WHAT IS LAND COST AND CONSTRUCTION COST?

In this context, it is essential to understand what is land cost and construction cost. The Act does not define the term land cost and construction cost. However, rules framed by the States (except Delhi and Gujarat) define these terms.

Under the rules framed by Maharashtra, land cost and construction cost are elaborately dealt with and are set out herein below:



LAND COST:

- Acquisition cost, lease charges overhead cost, marketing cost, legal cost and supervision cost;
- Premium paid to obtain development rights, floor space ratio (FSI), additional FSI, fungible FSI, and any other incentive under Development Control Regulations (DCR);
- Acquisition of Transfer of Development Rights (TDR);
- Consideration payable to outgoing developer;
- Amounts payable to the state government or competent authority or any other statutory authority of the state or Central Government, towards stamp duty, transfer charges, registration fees, etc.;
- Premium payable as per ASR for redevelopment of land owned by public authorities;
- In case the promoter is not required to incur any cost towards acquisition of the land due to inheritance, gift or otherwise, the cost of land shall be reckoned

on the basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, 1958 relevant on the date of registration of the project.

CONSTRUCTION COST:

- On-site and off-site expenditure for development of the project;
- Payment of taxes, fees, charges, premiums, interest, etc.;
- Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders;
- Rehabilitation scheme – expenditure towards clearance of land or encumbrances for temporary transit accommodation, construction of rehab building, overhead cost, ASR linked premium, fees, charges and security deposits to authorities.

However, construction cost shall not include the sum that the promoter has raised and incurred by way of loan obtained from such banks, non-banking finance companies or money-lenders, for the purpose of purchase of land for the project or for obtaining the development rights over such land.

The rules of Uttar Pradesh, Haryana, Tamil Nadu, and Karnataka provide more or less the same definitions of land cost and construction which are as follows:

Land cost:

Karnataka and Tamil Nadu –

Cost incurred by the promoter, whether as an outright purchase, lease charges, etc.

Haryana –

Cost incurred by the promoter, whether as an outright purchase, lease, registration charges, stamp duty and brokerage cost etc.

Uttar Pradesh –

Cost incurred by the promoter, whether as an outright purchase, lease charges, etc. and will include charges incurred to obtain approval of the competent authority.

Construction cost:

Karnataka and Uttar Pradesh –

Cost incurred towards on-site expenditure for the physical development of the project.

Tamil Nadu –

Cost incurred towards on-site expenditure for the physical development of the project including fees/charges paid towards obtaining statutory clearances.

Haryana –

Cost incurred by the promoter, towards on-site expenditure for the physical development of the

project and shall include all the cost including statutory fee incurred by the promoter towards procuring approvals and commencement certificates, preparation of the sanctioned plan, layout plan, building and structural drawings, purchase of building materials, hiring of plant and equipment for construction of building, providing of basic infrastructure and amenities, cost of supervision and consultancy from any structural engineer, architect, chartered accountant, etc. loans and finance required for construction purpose and labour charges.

Deposit of 70% realisation in case of ongoing projects

A general question that arises is that in case of ongoing projects, whether the promoter would be required to deposit even the past realisation that the promoter has received prior to commencement of the Act?

States such as Maharashtra, Delhi, Haryana, and Gujarat have brought certain clarity in this regard, which is as follows:

Maharashtra:

The rules clarify that the promoter is required only to deposit such amounts as are to be realised from the allottees after the Act comes into

force. However, the exception being where the estimated receivables of the ongoing project is less than the estimated cost of the completion of the project, then the promoter shall deposit 100% of the amount to be realised from the allottees in the separate account.

Delhi and Haryana:

The rules of Delhi and Haryana require that the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, 70% of the amounts already realised from the allottees, which have not been utilised for construction of the project or the land cost.

Gujarat:

In case of ongoing projects that promoter shall within a period of three months of application for registration of the project deposit in a separate bank account 70% of the balance amounts that are to be realised from allottees.



CHANGE OR MODIFICATION OF SANCTIONED PLANS

As per the Act, with regards to making alterations or additions to the sanctioned plan of the apartment or the building or common areas, the promoter shall not make any such alterations or additions without the previous written consent of (i) the allottee in case of any alterations or additions to the sanctioned plan of the apartment, or (ii) in case of any alterations or additions to the sanctioned plan of the building or the common areas, at least 2/3rd of the allottees other than the promoter who have agreed to take apartments in the building.

As far as ongoing projects are concerned, the rules for Maharashtra and Tamil Nadu have specifically dealt with this subject because they provide for certain additional circumstances where consent of the allottee would not be required in case of change of

sanctioned plan in an ongoing project.

The rules for Maharashtra clarify that the previous written consent of at least 2/3rd of the allottees may not be necessary (i) for implementation of the proposed plans/specifications as disclosed in the agreement executed with the allottee prior to registration, or (ii) for any alterations or additions or modifications in the sanctioned plans, layout plans and specifications of the building and common areas that are required to be made by the promoter in compliance of any direction or order by a competent authority or statutory authority, under any law of the State or Central Government, for the time being in force. Further, the model form of agreement for sale prescribed under the rules of Maharashtra additionally provides that in case of ongoing projects as well as new projects prior consent of allottee(s) would not be required where such alteration or addition is required by any Government authorities or due to change in law.

The rules framed by most states are in line with the Act with regards to disclosing details about the project when applying for registration of the same. Rules framed by the States require the promoter to furnish additional details, such as audited balance sheet for the preceding financial year and/or income tax returns for three preceding years.

There will be a wealth of information available on the website of the respective authorities in relation to the concerned project. The rules framed by Uttar Pradesh, Haryana, Gujarat, Delhi and Karnataka prescribe additional information that will be made available to homebuyers through the website of the Authority. This is where the consumers/homebuyers will start to reap the benefits.

The draft rules for Tamil Nadu clarify that if the ongoing project has been conceived to be developed in phases and the plans for the initial phase are approved by the planning authority prior to the notification of the rules, then, for such projects, the requirement of obtaining 2/3rd consent from the existing allottee is exempted for addition/revision/modification of plans for subsequent phases of development, provided the scheme of developing the project in a phased manner has been agreed upon by the allottee and promoter in the agreements executed between them.

DISCLOSURE OF CARPET AREA

The Act requires the promoter to sell an apartment on carpet area only.

In case of new projects, the model form of the agreement for sale annexed with the rules of Maharashtra, Delhi, Haryana, Gujarat, Tamil Nadu, and Karnataka require the promoter to record the exact carpet area that is being sold. Further, the agreement for sale for Maharashtra, Karnataka, Tamil Nadu and Delhi provides the flexibility to the promoter to recover money for the proportionate cost of common area, garage and car parking spaces.

In the case of ongoing projects, the rules for the States require the promoter to mention in the application for registration of the concerned project, the carpet area of apartments sold in such ongoing project, even if the same is sold on built-up area or super built-up area and such sale would not affect the validity of the agreement already entered.

TITLE REPORT AND ENCUMBRANCE CERTIFICATE

The rules for Maharashtra require a promoter to submit at the time of registration of the project, a copy of the title report of a practicing advocate reflecting the flow of title of the promoter to the land on which the development is proposed.

Further, as a part of the documents to be uploaded on the website of the Authority, Delhi, Karnataka, Haryana, Gujarat, and Uttar Pradesh require the promoter to provide a land title search report from an advocate having experience of at least 10 years in land related matters.

The rules of the States require the promoter to declare the encumbrances, if any, including litigations on the land on which the development is proposed.

In case if there is no encumbrance on the land on which the development is proposed, then in such cases, the rule of Uttar Pradesh requires a promoter to provide a non-encumbrance certificate through an advocate having experience of at least 10 years. The rules of Maharashtra and Delhi require a promoter to provide a non-encumbrance certificate through an advocate having experience of at least 10 years from the revenue authority not below the rank of tehsildar. However, the rules of Karnataka prescribe that a non-encumbrance certificate can be obtained from the concerned sub registrar having at least 12 years' experience in land related matters. The

rules of Haryana require a promoter to provide a non-encumbrance certificate through an advocate having experience of at least 10 years in land related matters as well as from the revenue authority not below the rank of tehsildar. The rules of Tamil Nadu require a promoter to provide an up-to-date encumbrance certificate, extract/certificate from the revenue authorities reflecting the title of the promoter to the land on which development is proposed. In Gujarat, if the promoter is not the owner of the land on which development is proposed then details of consent of the owner of the land along with a copy of the necessary agreement entered between the promoter and the owner of the land needs to be provided. Further, copies of title and other documents reflecting the title of the owner need to be provided.

THE REGISTRATION FEE

The Act requires every promoter to submit an application to the Authority for registration of his project with necessary documents along with a registration fee. As per the Act, the application has to be accompanied by such fee as may be specified by the regulations made by the Authority. The fee that promoters need to pay when applying for registration varies across states. In Maharashtra, the promoter shall pay a registration fee by way of online transfer for a sum calculated at ₹10 per square metre of the area of the land, subject to a minimum of ₹50,000 and a maximum of ₹1,000,000.

In Delhi, however, the registration fee can be paid only through a demand draft drawn on any scheduled bank. The registration fee in Delhi is also higher than in Maharashtra. In Delhi, there is a distinction between commercial projects, group housing projects and mixed-development projects with regards to registration fee.

In case of a commercial project: ₹20 per square metre, if land area is less than 1,000 square metres. ₹25 for every square metre, if land area exceeds 1,000 square metres, but not more than ₹1,000,000.

- i. In case of a group housing project: ₹5 per square metre, if land area is less than 1,000 square metres. ₹10 for every square metre, if land area exceeds 1,000 square metres, but not more than ₹500,000.
- ii. In case of a mixed-development project (residential and commercial): ₹10 per square metre, if land area is less than 1,000 square metres. ₹15 for every square metre, if land area exceeds 1,000 square metres, but not more than ₹700,000.
- iii. In case of a plotted-development project: ₹5 per square metre but shall not be more than ₹200,000.

Even Uttar Pradesh makes a distinction between registration fee for residential and commercial projects but the rates vary from Delhi. In Uttar Pradesh as well, the registration fee has to be paid by a demand draft drawn on a nationalised or scheduled bank. The registration fee in Uttar Pradesh is as

follows:

- i. ₹10 per square metre for residential or any other projects where the area of land proposed to be developed does not exceed 1,000 square metres; and ₹500 for every 100 square metres where the area of land proposed to be developed exceeds 1,000 square metres.
- ii. ₹20 per square metre for commercial projects where the area of land to be developed does not exceed 1,000 square metres; and ₹1,000 for every 100 square metre of land where the area of land to be developed exceeds 1,000 square metres.

In Haryana, the promoter shall pay the below registration fee per square metre of land area by way of a demand draft or a banker's cheque drawn on any scheduled bank or through online payment mode, as the case may be:



RATES OF REGISTRATION FEE FOR PROMOTERS (IN ₹ PER SQ M) IN HARYANA

Sr No.	Category of uses	Hyper	High potential-I	High potential-II	Medium potential	Low potential
1	Residential					
	a) Plotted	20	15	10	7.5	5
	b) Group Housing	30	25	20	15	10
2	Commercial	40	35	30	25	20
3	Industrial					
	a) Plotted	20	15	10	7.5	5
	b) Cyber city/park	30	25	20	15	10
4	Mixed-land use	30	25	20	15	10

The registration fee in Gujarat needs to be paid by way of a demand draft drawn on any scheduled bank. The applicable fee will be as follows:

- I. In case of group housing projects: ₹5 per square metre for projects where the area of land proposed to be developed does not exceed 1,000 square metres; or ₹10 per square metre for projects where the area to be developed exceeds 1,000 square metres but shall not be more than ₹5 lakh.
- II. In case of mixed-development projects (includes both residential and commercial projects): ₹10 per square metre when the land proposed to be developed does not exceed 1,000 square metres; or ₹15 per square metre where the land proposed to be developed exceeds 1,000 square metres but shall not be more than ₹7 lakh.

III. In case of commercial projects: ₹20 per square metre where area of land to be developed does not exceed 1,000 square metres; or ₹25 per square metre where the area of land proposed to be developed exceeds 1,000 square metres but shall not exceed more than ₹10 lakh.

IV. In case of plotted development projects: ₹5 per square metre but shall not be more than ₹2 lakh.

The rules framed by Karnataka and Tamil Nadu are silent on the registration fee that needs to be accompanied with the application for registration of a real estate project.

GRANT OF REGISTRATION OF THE PROJECT

As per the Act, on receipt of application for registration of a project or phase of

the project, the Authority shall within 30 days grant or refuse the registration. In case a registration is granted, the Authority will provide a registration number and a log in ID and password through which the promoter can access the website of the Authority, create his webpage, and fill in the details of his proposed project. The registration so granted will be valid for a period declared by the promoter in the application for registration in relation to completion of the project. In case the Authority rejects the application, then it will do so in writing but not before giving a chance to the applicant to put forward his case.

However, if the Authority fails to grant the registration or rejects the application, as the case may be, the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of

the said period of 30 days specified under sub-section (1), provide a registration number and a login ID and password to the promoter for accessing the website of the Authority to create his web page and to fill therein the details of the proposed project.

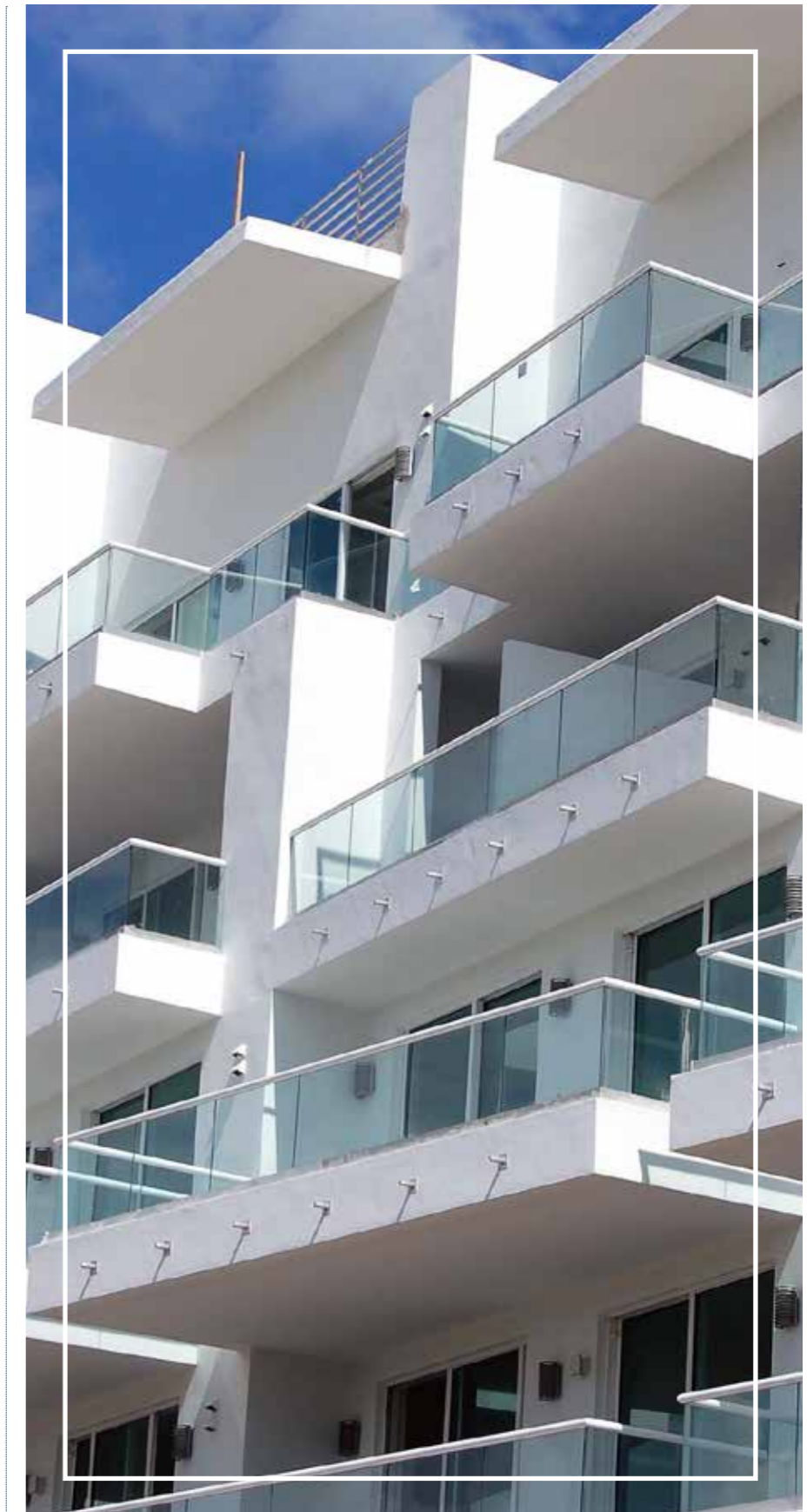
On the matter of grant or rejection of registration for a project, the rules for the States are in line with the Act.

VALIDITY OF REGISTRATION OF THE PROJECT

The registration granted to the promoter for the project or its phase shall be valid for a period declared by the promoter under the declaration to be submitted before the Authority at the time of registration.

EXTENSION OF REGISTRATION OF THE PROJECT

The Act has a provision wherein the registration for a project can be extended by the Authority. Under the Act, extension may be granted by the Authority only under two circumstances, firstly, in case of force majeure, which means 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, secondly, under reasonable circumstances where there has been



no default by the promoter and based on facts of each case to be recorded in writing, which shall in aggregate not exceed more than a year. In this case, the reasons for delay will have to be recorded in writing. The Act further stipulates that the application for extension of registration has to be in writing and accompanied with a fee, the quantum of which may be specified by regulations made by the Authority.

With regards to extension of registration, the rules framed by all states are clear on one point, i.e. in instances where the extension is sought on grounds of force majeure, the Authority may at its discretion waive the extension fee.

Under the draft rules for Maharashtra, the period for which registration is valid shall exclude the period where actual work could not be carried out by the promoter as per the sanctioned plan due to specific orders relating to the real estate project from any court of law, tribunal, competent authority, statutory authority or a high-power committee or due to such mitigating circumstances as may be decided by the Authority.

Additionally, the model form of agreement for sale prescribed under the rules of Maharashtra provides that the promoter shall be entitled to reasonable extension of time for giving delivery of apartment on the aforesaid date, if the completion of building in which the apartment is to be situated is delayed on account of (i) war, civil commotion or act of God; and (ii) any notice, order, rule, notification of the government and/or other public or

competent authority/court.

There is, however, variance among states with regards to the quantum of fee for extension of registration.

REVOCATION OF REGISTRATION OF A PROJECT

The registration granted to a project can be revoked under certain conditions. The Act clearly highlights the conditions under which registration granted to a project can be revoked. As per the Act, the registration of a project can be revoked under the following conditions:

- i. The promoter defaults in doing anything required by or under the Act or the rules or regulations made there under.
- ii. The promoter violates any of the terms and conditions of approval given by the competent authority.
- iii. The promoter is involved in any kind of unfair trade practice.

The Act further specifies that registration shall not be revoked unless the Authority has given the promoter a notice of not less than 30 days, in writing, stating the grounds on which the registration will be revoked and has considered any cause shown by the promoter within the period of notice against the proposed revocation. The rules formulated by all the states, which have been considered for the purposes of this study are in line with the Act.

The Act provides little elbow room with

regards to revocation of a project. As per the Act, the Authority may instead of revoking the registration, permit the registration to remain in force subject to certain terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed will be binding on the promoter.

THE IMPACT OF REVOCATION OF A PROJECT

The Act deals with the consequences of revocation of registration of a project, in great detail. As per the Act in case of revocation of registration, the Authority will do the following:

- i. Shall debar the promoter from accessing its website, in relation to that project and specify his name in the list of defaulters, display his name in the list of defaulters, display his photograph on its website and also inform real estate authorities in other states and Union Territories about the revocation.
- ii. Shall facilitate the remaining development works in the said project
- iii. Shall direct the bank holding the project bank account to freeze the bank account and thereafter take necessary action
- iv. To protect the interests of the allottees or in public interest issue such directions as it may deem necessary.

Rules formulated by the States are in

line with the Act in this regard.

OBLIGATIONS OF THE AUTHORITY AFTER REGISTRATION OF A PROJECT IS REVOKED OR HAS LAPSED

Precautions are taken to protect allottees in case the registration of a project is lapsed or revoked. As per the Act, upon lapse or revocation of registration, the Authority may consult the appropriate government to take action, as it may deem fit, including carrying out the remaining development works by a competent authority or by the association of allottees or in any other matter as may be determined by the Authority. In case of revocation, the Act specifies that the association of allottees shall have the first right of refusal for carrying out the remaining development works.

The rules of Maharashtra only additionally provide that while facilitating the remaining development work, the Authority shall take such measures as may be required to protect the interest of mortgagees and investors, which have been disclosed by the promoter to the Authority and displayed on the website of the Authority. The Authority shall also give adequate opportunity to be heard to debt and equity investors in the project including but not restricted to scheduled banks, housing finance companies, insurance companies, NBFC operating as asset finance companies, investment companies, loan companies, investment finance

The Act requires every promoter to submit an application to the Authority for registration of his project with necessary documents along with a registration fee. The application has to be accompanied by such fee as may be specified by the regulations made by the Authority. Such fee varies across states.

The Act mandates that 70% of the amount deposited in the separate account shall be withdrawn by the promoter in proportion to the percentage of completion of the project together with a certificate from an architect, engineer and chartered accountant in practice.

companies, infrastructure debt funds, micro-finance institutions, foreign direct investors, private equity funds and REITs, etc. The rules of other States do not deal with this matter.

TIME PERIOD FOR COMPLETION OF CONSTRUCTION

In case of ongoing projects, the rules framed by Maharashtra, Delhi, Gujarat, and Haryana require the promoter to specify an expected timeline for completion of the balance construction work of the ongoing project which shall be commensurate with the extent of development already completed. In case of Delhi, Gujarat and Haryana, such information is required to be certified by an engineer, an architect and a chartered accountant in practice. The rules of other States are silent in this regard.

In case of new projects, the declaration annexed with the rules of the States require the promoter to declare the timeline within which the promoter shall complete the project. Therefore, delay not attributable to reasons which allow extension of time under the Act, rules or contract (to the extent contractual provisions are not repugnant to the act and/or rules) in handing over possession would attract the liabilities provided under the Act.

WHEN THINGS GO WRONG

As per the Act, a homebuyer has two options if the project in which he has invested in has been delayed.

First, if the homebuyer intends to withdraw from the project, then the promoter would return all the money that the homebuyer has paid to him with regards to the purchase of the said flat along with the applicable interest as prescribed under the rules and compensation as may be adjudicated by an adjudicating officer. This is in addition to any other remedy available to the allottee. However, if the homebuyer wants to stay invested in the project, then the promoter will compensate him by paying interest for every month of delay. Further, in case of delay in payment of any instalment by the allottee, the allottee will also be liable to pay interest on such delayed payment. The rules by the states apply the same rate of interest for both, promoter and allottee.

In case of Delhi, Maharashtra, Haryana, Gujarat, and Karnataka, the applicable rate of interest is the State Bank of India highest marginal cost of funds based lending rate plus 2%. In case of Tamil Nadu, the applicable rate of interest is the repo rate of the Reserve Bank of India plus 2%. The rules of Uttar Pradesh do not provide for the rate of interest.

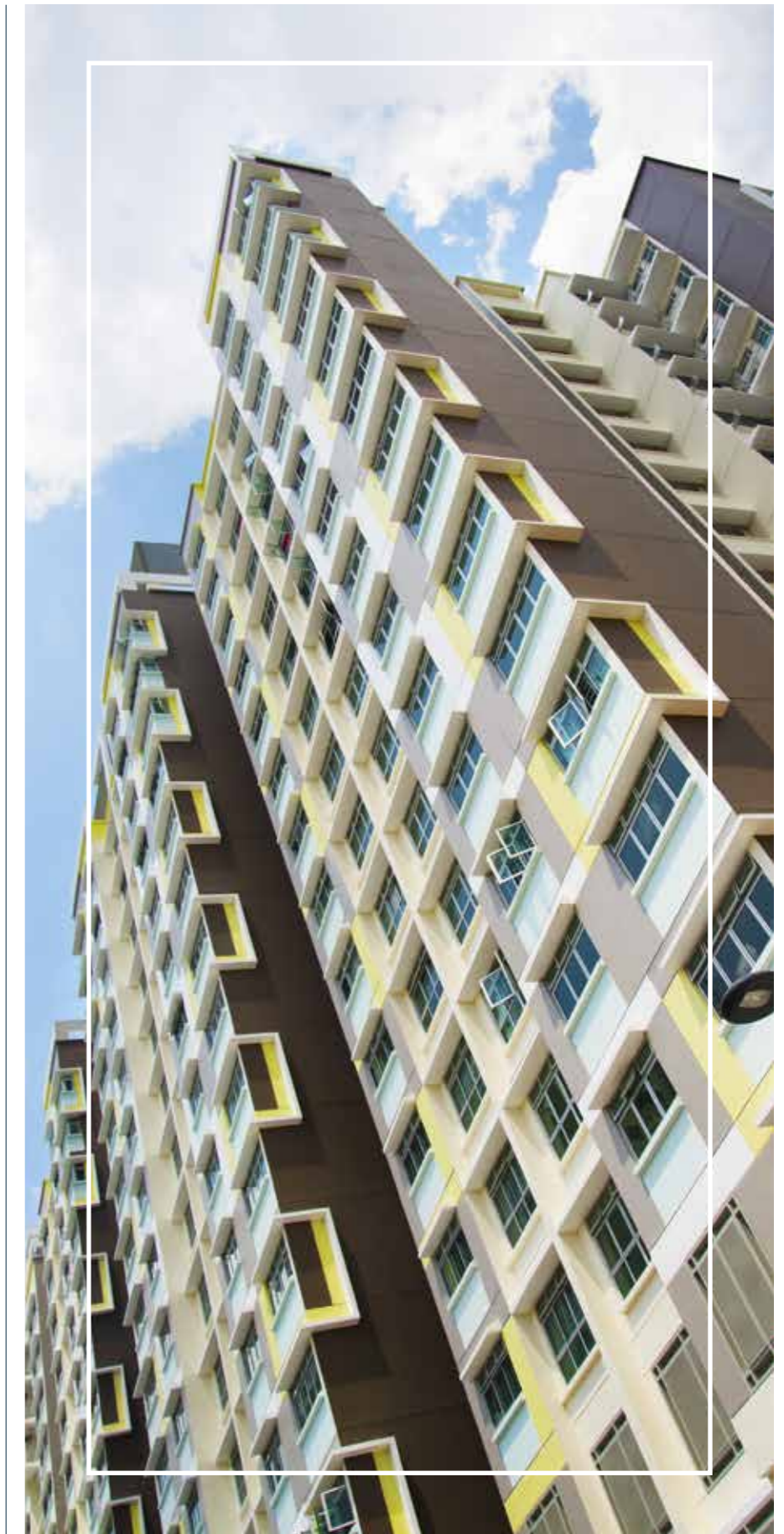
The rules framed by the states are also very clear on the time period within which the amount needs to be refunded by the promoter to the allottee. The time frame, however, varies across states. As per rules framed by Delhi, Karnataka, Uttar Pradesh, Gujarat, and Tamil Nadu, this amount needs to be paid within 45 days from the date on which such refund becomes due. In case of

Maharashtra, however, the amount needs to be paid within 30 days from the date on which such refund becomes due. In case of Haryana, the amount needs to be paid within a period of 90 days from the date on which such refund along with applicable interest and compensation, as the case may be, becomes due.

While other states are silent on the mode in which the payment needs to be made, the state of Maharashtra clarifies that fact as well. The rules specify that the payment can be made by the promoter 'through RTGS or NEFT or any other digital transaction mode.'

In case of Maharashtra, in the event of an allottee defaulting thrice on payment of instalments, the promoter may at his own option, terminate the agreement. The promoter can do this provided he gives a notice of 15 days in writing to the allottee (either through e-mail or the postal mail) about his intention to terminate the agreement and specific breach or breaches because of which the agreement is being terminated. Upon termination, the promoter will be free to sell the said apartment to anyone at a price that the promoter deems fit. The promoter shall refund all the instalments received after adjusting any agreed liquidated damages or any other amount, within a period of six months of the termination.

In Gujarat, the promoter can terminate the agreement if the allottee defaults thrice on the payments and after giving a notice of 15 days in writing. The rules further clarify that the promoter after adjustment and recovery of any



On receipt of application for registration of a project, the Authority shall within 30 days grant or refuse the registration. In case a registration is granted, the Authority will provide a registration number and a log in ID and a password through which the promoter can access the website of the Authority to create his webpage, and fill in the details of his proposed project.

liquidated charges will refund the amount to the allottee within 30 days of termination of the agreement.

On the other hand, under the Agreement for Sale provided in the rules of Delhi, Tamil Nadu, Haryana, and Karnataka, if an allottee fails to pay any instalment as per the payment plan and upon consecutive demand made by the promoter, the allottee shall be liable to pay interest on the unpaid amount and if the allottee continues to default in such payment for consecutive months after notice being issued by the promoter in this regard, then the promoter may cancel the allotment of the apartment and refund the money paid to him by the allottee by deducting the booking amount and interest.

The Agreement for Sale for Karnataka, Tamil Nadu, Haryana, and Delhi even allows the allottee to voluntarily withdraw/cancel his allotment without any fault of the promoter and in such case, the promoter is entitled to forfeit the booking amount and refund the balance within 45 days of such cancellations.

However, the Act or rules do not clarify whether the promoter is permitted to withdraw from the separate account 70% of the amount deposited for the purpose of meeting the requirement of refund of the principal amount.

WHAT TO DO WHEN THINGS GO WRONG?

If a consumer feels aggrieved, the rules framed by almost all the states

lay down the procedure in which the consumer can file a complaint with the Authority or with the adjudicating officer. The procedure for filing a complaint is also the same. The variance among states, however, is the fee that needs to be furnished along with the complaint.

PENALTY AND COMPOUNDING OF OFFENCE

Stringent penal provisions have been prescribed under the Act against the promoter, allottee and the real estate agent in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Authority or the Appellate Tribunal, which are as follows:

- i) If the promoter does not register the project with the Authority – penalty of up to 10% of the estimated cost of the project, as determined by the Regulatory Authority;
- ii) If the promoter does not comply with the order of the Authority for registration of the project – imprisonment of up to three years and a further penalty of up to 10% of the estimated cost of the project, or with both; and
- iii) In case the promoter provides any false information while making an application to the Authority or contravenes any other provision of the Act – penalty of up to 5% of the estimated cost of the project.

- iv) If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Authority, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the cost of the plot, apartment or building, as the case may be, as determined by the Authority. Further, if any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment of up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

- v) In case an agent contravenes any provision of the Act – penalty of ₹10,000 for every day of default, which may cumulatively extend to 5% of the cost of apartment, plot or building. In case an agent contravenes the order of the Authority – penalty for every day of default, which may cumulatively extend to 5% of the estimated cost of the apartment, plot or building. In case an agent contravenes the order of the Appellate Tribunal – imprisonment of up to one year or fine for every day of default, which may cumulatively extend up to 10% of the estimated cost of the apartment, plot or building, or with both.

The Act further provides that offences punishable with imprisonment may

be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed.

The rules framed by Delhi, Tamil Nadu and Karnataka provide for compounding of various offences punishable with imprisonment for an amount specified therein.

IN CASE OF PROMOTER –

Offence punishable with imprisonment can be compounded by paying 10% of the estimated cost of the real estate project;

IN CASE OF AN AGENT –

Offence punishable with imprisonment can be compounded by paying 10% of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated;

IN CASE OF AN ALLOTTEE –

Offence punishable with imprisonment can be compounded by paying 10% of the estimated cost of the plot, apartment, or building as the case may be.

However, the rules framed by Maharashtra, Haryana, Gujarat and Uttar Pradesh differ from the rules framed by the above States in relation to compounding of offences, which are as follows:

MAHARASHTRA AND HARYANA

In case of promoter –

Offence punishable with imprisonment can be compounded by paying 5% (in case of violation of order of the Authority) and 5% (in case of violation

No application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard. Rules framed by all states are in line with the Act on the matter. The only addition that the rules framed by states have made is that the rejection or extension of registration shall be made in writing.

of order of the Appellate Tribunal) of the estimated cost of the real estate project, which may extend up to 10%.

In case of an agent –

Offence punishable with imprisonment can be compounded by paying 5% of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, which may extend up to 10%.

In case of an allottee –

Offence punishable with imprisonment can be compounded by paying 5% of the estimated cost of the plot, apartment or building, as the case may be, which may extend up to 10%.

GUJARAT

In case of promoter –

Offence punishable with imprisonment can be compounded by paying 5% in case of violation of order of the Authority and in case of violation of order of the Appellate Tribunal.

In case of an agent –

Offence punishable with imprisonment can be compounded by paying 5% of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.

In case of an allottee –

Offence punishable with imprisonment can be compounded by paying 5% of the estimated cost of the plot, apartment or building, as the case may be.

UTTAR PRADESH

In case of promoter –

Offence punishable with imprisonment can be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10% of the estimated cost of the real estate project for three years.

In case of an agent –

Offence punishable with imprisonment can be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10% of the estimated cost of plot, apartment or building for one year.

In case of an allottee –

Offence punishable with imprisonment can be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10% of the estimated cost of plot, apartment or building for one year.

OTHER IMPORTANT ISSUES

Formation of association of allottees

As per the Act, in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.

The rules framed by Maharashtra provide as follows:

- In case of a single building project or in case of a layout of more than one building or a wing of one building in the layout, the promoter shall submit an application for registration of the association of allottees (being a society, company or any other legal entity) within three months from the date on which 51% of allottees have booked.
- In case of an Apex Body, within three months from the date of receipt of OC of last of the buildings in the layout.

If the promoter fails to form the association of allottees within the aforesaid timelines, the Authority shall by an order direct the promoter to apply for formation of the association or may authorise the allottees to apply for formation of the association.

The rule of Delhi, Uttar Pradesh, Haryana, Gujarat, Tamil Nadu, and Karnataka are silent on the timelines for formation of association of persons, which means that the association in these states would be

formed in accordance with the local laws prevailing in these states or in the absence of such local laws, in accordance to the Act, i.e. within three months of the majority of allottees having booked their apartments.

Conveyance of Title

As per the Act, in the absence of any local law, the promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, within three months from date of issue of the occupancy certificate.

Under the rules framed by Maharashtra, the promoter is required to observe the following timelines for conveyance of land and building in favour of association of allottees or the Apex Body:

- In case of plots – within three months of the allottee paying full consideration
- In case of a single building project – if no period for conveyance to association is agreed upon, within three months from the date of OC or 51% of allottees having paid full consideration, whichever is earlier
- In case of a building/wing in a layout – if no period for conveyance to association is agreed upon, within one month, from the date on which the Association is registered or within three months from OC, whichever is earlier
- In case of a layout – if no period for

The sole objective of requiring the promoter to deposit 70% of the realisation in the separate account was to clip the wings on a practice rampant in the sector and a practice that largely contributed to delays in the sector. It was common practice in the sector to divert funds from one project to another.

The Act provides little elbow room with regards to revocation of a project. As per the Act, the Authority may instead of revoking the registration, permit the registration to remain in force subject to certain terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed will be binding on the promoter.

In case of ongoing projects, the rules framed by Maharashtra, Delhi, Gujarat, and Haryana require the promoter to specify an expected timeline for completion of the balance construction work of the ongoing project. In case of Delhi, such information is required to be certified by an engineer, an architect and a chartered accountant in practice. The rules of other states are silent in this regard.

conveyance of the entire undivided land along with common areas is agreed upon, within three months from the date of registration of the Apex Body or within three months from the issuance of OC to the last of the building/wing in the layout, whichever is earlier

In case of failure by the promoter to comply with the aforesaid time lines – the Authority shall by an order direct the promoter to convey the title.

Deemed Conveyance – The association of allottees shall also be entitled to have a unilateral deemed conveyance in their favour under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

As per rules framed by Gujarat, the conveyance deed needs to be executed as per the time limit prescribed by the Registration Act.

The rules of Delhi, Uttar Pradesh, Haryana, Tamil Nadu, and Karnataka are silent on the timelines for conveyance of title, which means that the promoter will have to convey title in accordance with the local laws prevailing in these states or in the absence of such local laws, in accordance to the Act, i.e. within three months of OC.

Rebate and set off

The model form of Agreement for Sale prescribed under the rules framed

by the states of Delhi, Maharashtra, Karnataka, Tamil Nadu, and Gujarat, records that the promoter may allow in its sole discretion a rebate to the allottee for early payment of instalments by discounting such early payment at certain interest and once allowed, such provision for rebate cannot be revised or withdrawn by the promoter.

The model form of Agreement for Sale prescribed under the rules framed by the states of Delhi, Maharashtra, Karnataka, Tamil Nadu and Gujarat, also permits the promoter to adjust/appropriate all payments made by the allottee under any head(s) of dues against lawful outstanding, if any, at its sole discretion and the allottee has to undertake not to object/demand/direct the promoter to adjust his payments in any manner.

Total price of the apartment

Under the Agreement for Sale in the states of Karnataka, Haryana, Gujarat, Tamil Nadu, and Delhi, the total price of the apartment should include the break-up of cost of apartment, garage/closed parking, proportionate cost of common areas, preferential location charges, and all taxes, etc. However, in case there is a downward change or modification in taxes, the promoter will accordingly have to reduce the amount payable by the allottee.

The Agreement for Sale in the states of Karnataka, Haryana, Tamil Nadu, and Delhi also provide that the total price of apartment includes the cost of maintenance of essential services

till maintenance is taken over by the association of allottees.

Under the Agreement for Sale in the state of Maharashtra, the total price of the apartment should include the break-up of cost of the apartment, garage/parking space, proportionate cost of common areas and facilities, but excludes all taxes in connection with the project and construction till handing over possession. The total price shall even be recalculated and adjusted on confirmation of final carpet area on receipt of OC, subject to a variation cap of 3%.

Car parking spaces

The Act prescribes two types of parking space – garage and open parking space. Garage means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas. Open parking space forms part of the common areas of a project.

While the Act does not clarify whether a garage can be sold to an allottee independent of an apartment (i.e. who is not an apartment purchaser in the project), the Ministry of Housing and Urban Poverty Alleviation, Government of India has published an FAQ (Frequently Asked Question) on 17 January 2017 pursuant to the meeting held with officials of various state governments and Union Territories, wherein the Ministry has clarified that a garage can be sold to the allottee independent of the apartment.

Also, in case of open parking space, the Ministry has further clarified in the FAQ that open parking space cannot be sold to the allottees.

Various States' rules provide that covered parking space can be sold to the allottees. However, none of these States, except Maharashtra, define what is a 'covered parking'. Maharashtra defines 'covered parking space' as an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees, which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking.

As per the model Agreement for Sale in Gujarat both covered as well as open parking spaces can be sold.

If the homebuyer wants to stay invested in the project, then the promoter will compensate him by paying interest for every month of delay. Further, in case of delay in payment of any instalment by the allottee, the allottee will also be liable to pay interest on such delayed payment. The rules by the state apply the same rate of interest for both, promoter and allottee.



Stringent penal provisions have been prescribed under the Act against the promoter, allottee and the real estate agent in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Authority or the Appellate Tribunal.

REGISTRATION OF REAL ESTATE AGENTS

As per the Act, when applying for registration of a real estate project, the promoters have to provide many details to the relevant Authority. During the application stage, among the most important details that promoters need to share with the Authority are the details of real estate agents, if any, that the promoters plan to use for the proposed project. In the new environment, it is imperative that promoters can only seek the services of registered real estate agents. This fact is evident in the Act that no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building in a real estate project or part of it. Most importantly, to do so, the real estate agent has to be part of the registered

real estate project.

Every real estate agent, who wishes to get himself or his organisation registered has to make an application in a prescribed format to the relevant Authority. This application has to be accompanied by the relevant documents and the prescribed fee. Upon receipt of the relevant documents, the Authority can either grant a single registration for the entire state or reject the application, if it does not conform to the provisions of the Act. The Act, however, clarifies that no application will be rejected without giving an opportunity to the applicant to be heard. If the real estate agent does not receive any communication either about deficiencies in his application or rejection of his application, then he shall be deemed to have been registered. Once registration has been granted to a

real estate agent, then the Authority will grant a registration number that the real estate agent shall quote in every sale facilitated by him. Every registration granted shall be valid for a period as may be prescribed. Once the registration expires, the real estate agent is required to get himself re-registered.

PAPERWORK FOR REGISTRATION OF REAL ESTATE AGENTS

As regards to the paperwork, the Act does not specify the paper work in great detail, as it did in the case of registration of real estate projects, that needs to be submitted by real estate agents. The rules formulated by the states, however, deal in detail about the paperwork that real estate agents need to submit along with their application. The paperwork that needs to be submitted with the application in Delhi, Karnataka, Tamil Nadu, and Uttar Pradesh are roughly the same. The following is the paperwork that real estate agents applying for registration in the above-mentioned three states need to submit to the Authority:

- i. Brief details of his enterprise including its name, registered address, type of enterprise
- ii. Particulars of registration including the bye-laws, memorandum of association, articles of association as the case may be
- iii. His photograph, if the registration has to be done for an individual and photographs of directors, partners in case of a company.

- iv. Authenticated copy of the PAN card
- v. Income tax returns for three financial years preceding the application and in case where the applicant was exempted from filing returns for any of the three years preceding the application, a declaration needs to be given to such an effect.
- vi. Authenticated copy of the proof of address of the place of business
- vii. Such information and documents as maybe be specified by regulations.

In addition to the above-mentioned documents, the rules for Maharashtra ask for more details from real estate agents who plan to register to operate in the state. A look at the additional documents real estate agents planning to get registered in Maharashtra need to submit along with their application form to the Authority, is as follows:

- i. Brief details of his enterprise including its name, registered address of place of business, type of enterprise. Registration numbers such as Aadhar Card no., PAN, Director Identification Number (DIN) as the case may be under which returns are required to be filed with the statutory authority.
- ii. Particulars of registration obtained under other laws, and rules and regulations as the case may be along with the copies of partnership deeds, memorandum of association and articles of association.
- iii. Colour photographs of the real

If any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment of up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

estate agent, if it is an individual and in other cases pictures of all partners, directors, and trustees including persons in service or assigned work expected of a real estate agent.

- iv. Income tax returns filed for the three years preceding the application. In case the applicant was exempted from filing returns in any of the three years preceding the application, a declaration needs to be given to that effect.
- v. Authenticated copy of the proof of address of the principal place of business, number of branch offices, if any, along with contact details including telephone numbers, fax numbers and email addresses.
- vi. Details, if any, of all the real estate projects and their promoters on whose behalf he has acted as a real estate agent in the five years preceding the application.
- vii. Details of all civil or criminal cases pending against him, in case the real estate agent is an individual, or against any of the partners, directors or trustees if the real estate agent applying to get registered is a company.
- viii. Copies of all the letterheads, rubber stamps and acknowledgement receipts proposed to be used by the real estate agent.
- ix. Such other information and documents as may be specified by the regulation to be framed by the Authority in consultation and approval of the state government.

In addition to the above-mentioned documents, Maharashtra is the only state to specify that real estate agents associated with ongoing projects need to make an application to the Authority to get themselves registered.

The documents that real estate agents have to submit, to prove their credibility to the Authority, are also roughly the same as those that promoters have to submit. The rules framed by the states of Delhi, Karnataka, Tamil Nadu, and Uttar Pradesh are robust and capture all the details related to a real estate agent. The place where the rules for real estate agents in Maharashtra score over other states is that they seek to look into the past track record and pending criminal cases of the real estate agent. These two aspects are something we believe should also be included by other states.

REGISTRATION FEE FOR REAL ESTATE AGENTS

The rules framed by the Central Government only give a brief mention about the fee that real estate agents need to furnish along with the application to get themselves registered. As regards to the fee, the Act mentions that the application for registration has to be 'accompanied by such fee and documents as may be prescribed.' Beyond this, the Act does not state anything about the fee that real estate agents need to provide when applying for registration. The rules framed by the Central Government and states, however, have gone ahead and clearly mentioned the

amount that real estate agents need to provide along with the application. There is, however, variance across states about the amount of fee that real estate agents need to provide along with their application.

The following is a look at the fee real estate agents need to provide with their application fee in Delhi and Uttar Pradesh. The registration fee in both the states can be paid through a demand draft drawn on any scheduled bank.

- i. ₹25,000 in case the applicant is an individual.
- ii. ₹2.50 lakh if the applicant is anyone other than an individual.

In Karnataka, the fee to be paid by a real estate agent depends on where the area to be planned is located. The fee needs to be paid through a demand draft drawn on any scheduled bank or a co-operative bank. The fee that has to be paid is as follows:

- i. Within the jurisdiction of the Bangalore Metropolitan Region Development Authority (BMRDA), an individual needs to provide ₹50,000.
- ii. In case the agent is a company, then the necessary fee will be ₹5 lakh.
- iii. In case the planning area is outside the purview of BMRDA, then the fee for an individual will be ₹25,000.
- iv. For a company, the fee will be ₹2.50 lakh.

In Maharashtra, the fee can either be paid through NEFT or RTGS or any other digital mode. The fee that

real estate agents need to pay in Maharashtra is as follows:

- i. ₹10,000 in case the applicant is an individual.
- ii. ₹1 lakh in case the applicant is other than an individual.

In Haryana, the fee can either be paid by way of a demand draft or a banker's cheque drawn on any scheduled bank or through online payment. The fee that real estate agents need to pay in Haryana is as follows:

- i. ₹25,000 in case the applicant is an individual.
- ii. ₹250,000 in case the applicant is other than an individual.

In Tamil Nadu, the fee shall be paid by way of a demand draft on any scheduled bank. The fee that real estate agents need to pay in Tamil Nadu is as follows:

- i. ₹25,000 in case the applicant is an

individual.

- ii. ₹50,000 in case the applicant is other than an individual.

In Gujarat, the registration fee can be paid via demand draft or a banker's cheque drawn on any scheduled bank or through online payment. The applicable fee will be as follows:

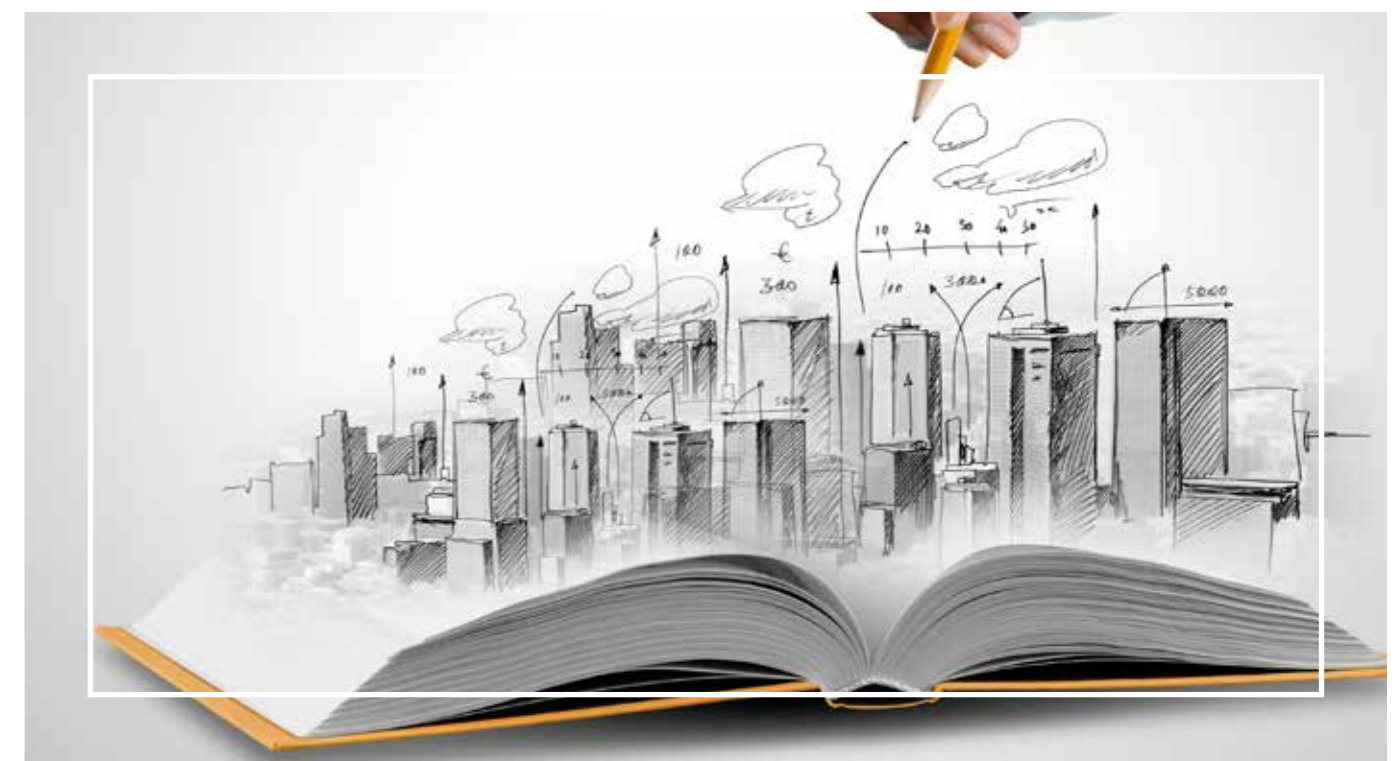
- I. ₹10,000 in case the applicant is an individual.
- II. ₹50,000 in case the applicant is other than an individual.

There is no room for any ambiguity with regards to the fee that real estate agents need to provide. Most states have made room for only two layers—individual and company. Maharashtra, on the other hand has gone ahead and created three layers. The only possible reason for this could be that the state houses the financial capital of the country and that it houses corporate

offices of many of the companies.

THE REGISTRATION

As per the Act, once a real estate agent is registered, the Authority will grant him a registration number. The Act is also silent on the number of days within which the application will either be accepted or rejected. Rules framed by the states, however, fine tune this particular aspect of the Act. Rules framed by most of the states speak of providing a real estate agent with a registration number and a registration certificate, upon registration. Except for Maharashtra, no state has stated in black and white the time frame in which the registration certificate will be issued, provided the documentation is in order and the necessary fee has been paid. As per the rules for Maharashtra, if everything is in order, then the registration number will be



provided within seven days of applying for the same. The Act speaks about the validity of the registration but leaves it to the states to fix the validity period of the registration granted. As per the Act, every registration 'shall be valid for such period as maybe prescribed.' States have dealt with the matter and have clearly specified the validity of registration given by the Authority. The validity period, however, varies across states. In the states of Delhi, Maharashtra, Gujarat, Haryana, Tamil Nadu, and Karnataka, the registration provided will be for a period of five years. In Uttar Pradesh, however, the registration will be valid for 10 years.

RENEWAL OF REGISTRATION FOR A REAL ESTATE AGENT

Just as in the case of validity of the registration granted, the Act only makes a mention of the renewal of the registration. As per the Central Government's rules, every 'registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner on payment of such fee as may be prescribed.' In simple words, this means that the registration once granted, on expiry can be granted on payment of a fee. The rules framed by most states clearly speak about the renewal fee and also about the manner in which a real estate agent can apply for renewal. There are, however, three factors that are common across all rules framed by the states with regards to renewal of registration of a real estate agent. First, renewal of registration shall be

granted provided that the real estate agent remains in compliance with the provisions of the Act and the rules and regulations made thereunder. Second, renewal applications can also be rejected but that cannot be done without giving an opportunity to hear the case of the real estate agent. Third, when applying for renewal of registration, the real estate agent has to submit updated documents that were presented to the Authority while applying for grant of registration. Fourth, the validity period of the renewed registration by the Authority shall be valid for a period of five years. The difference between rules framed by the states is the renewal fee. Also in the states of Delhi, Karnataka and Uttar Pradesh, the renewal fee is less than the fee that was required to apply for registration, in the first place. The difference in rules across states is largely in the fee that the real estate agent needs to provide along with the application for renewal of registration and in the time frame when real estate agents need to apply for renewal of registration. The following is a look at the renewal fee required as per the rules of different states.

The rules for Delhi, Gujarat, Haryana, and Uttar Pradesh clearly speak for the need to apply for renewal of registration not less than three months prior to the expiry of the registration granted. In Delhi and Uttar Pradesh, the application for renewal of registration has to be accompanied with a demand draft drawn on any scheduled bank for a sum of ₹5,000 in case of the real estate agent being an individual and ₹50,000 in other cases. In Gujarat,

the applicable fee is ₹5,000 for an individual and ₹25,000 in case the applicant is other than an individual. The applicable fee in Haryana is ₹5,000 in case of an individual and ₹50,000 in other cases. The application of renewal has to be accompanied with an updated set of documents that was submitted at the time of applying for registration in the first instance. The renewal of registration granted shall be valid for a period of five years in Delhi, Haryana, Uttar Pradesh, and Gujarat.

The rules for Maharashtra with regards to renewal of registration of real estate agents are slightly different than Delhi. As per the rules in Maharashtra, the real estate agent has to apply for renewal of registration at least 60 days prior to expiry of the registration. The application has to be accompanied with all the updated documents that were submitted at the time of applying for registration. The renewal granted for registration to the real estate agent shall be valid for five years from the date of its renewal.

In Karnataka, the real estate agent is required to apply for renewal of his registration three months prior to the expiry of the registration granted. The application for renewal of registration shall be accompanied with a demand draft drawn on any scheduled bank or a co-operative bank. The renewal fee in Karnataka will be as follows:

- i. Planning area within the jurisdiction of BMRDA, ₹25,000 in case the real estate agent is an individual and ₹2.50 lakh in other cases.
- ii. Planning area outside the

jurisdiction of BMRDA, ₹15,000 in case the real estate is an individual and ₹50,000 in other cases.

From the fee framed by different states, the fee for renewal is comparatively lower in Delhi and Uttar Pradesh as compared to the applicable fee in Maharashtra and Karnataka, especially if the renewal of registration has to be done for a company.

FUNCTIONS OF A REGISTERED REAL ESTATE AGENT

The Act clearly restricts the agent not to facilitate the sale or purchase of any plot, apartment or building in a real estate project being sold by a promoter in any planning area that is not registered with the Authority. The other important functions of a registered real estate agent are as follows:

- i. Maintain and preserve such books of account, records and documents as may be prescribed.
- ii. Not involve himself in any unfair trade practice. An unfair trade practice will include the following:
 - a. Falsely represents that services are of a particular standard or grade.
 - b. Represents that the promoter or himself has approval or affiliation, which such promoter or himself does not have.
 - c. Make a false or misleading representation concerning the services.
 - d. Permitting the publication of any advertisement whether in any

newspaper or otherwise of services that are not intended to be offered.

- iii. Facilitate the possession of all the information and documents as the allottee is entitled to, at the time of booking of any plot, apartment or building.
- iv. Discharge such other functions as may be prescribed.

The rules framed by all the states are largely in line with the Act. The states have, at best, fine-tuned some of the functions of a registered real estate agent. The common factors between the rules framed by the states are as follows:

- i. The rules framed by the states are very clear on the fact that the real estate agent will preserve all the books of accounts, records and documents in accordance with the provisions of the Income Tax Act, 1961 or the Companies Act, 2013 or under any other applicable law.
- ii. The real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of the sale of any plot, apartment or building as the case maybe.

The rules formulated by the state of Maharashtra go a step further; rules framed by no other state specify this matter in black and white. The rules framed by Maharashtra clearly specify that the real estate agent shall prominently display the number of his registration certificate at the principal place of business and at its branch offices. Further, a registered real estate

In the absence of any local law, the promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, within three months from date of issue of occupancy certificate.

agent in Maharashtra will be required to quote the registration number in all documents related to marketing, sale/purchase of a real estate project.

The core of the rules pertaining to registration of real estate agents and promoters is to ensure that unscrupulous players do not find a way to enter the sector and once players are allowed to enter the sector, to ensure that they play by the rules. One of the ways to ensure that after a real

estate agent is allowed to enter the sector, he operates as per the rules laid down, is the option to revoke the registration of a real estate agent.

REVOCAION OF REGISTRATION OF A REAL ESTATE AGENT

To ensure that only serious and clean players remain in the sector, the rules framed by most states speak about the

circumstances in which the registration of a real estate agent can be revoked. The rules framed by the Central Government clearly mention that the registration granted to a real estate agent can be revoked or suspended for a period. The ground on which the registration can be revoked is that if the real estate agent commits a breach of any of the conditions as laid down by the Act or where the Authority is satisfied that registration is secured by misrepresentation of fraud.



FEW ANTICIPATIONS ON RERA

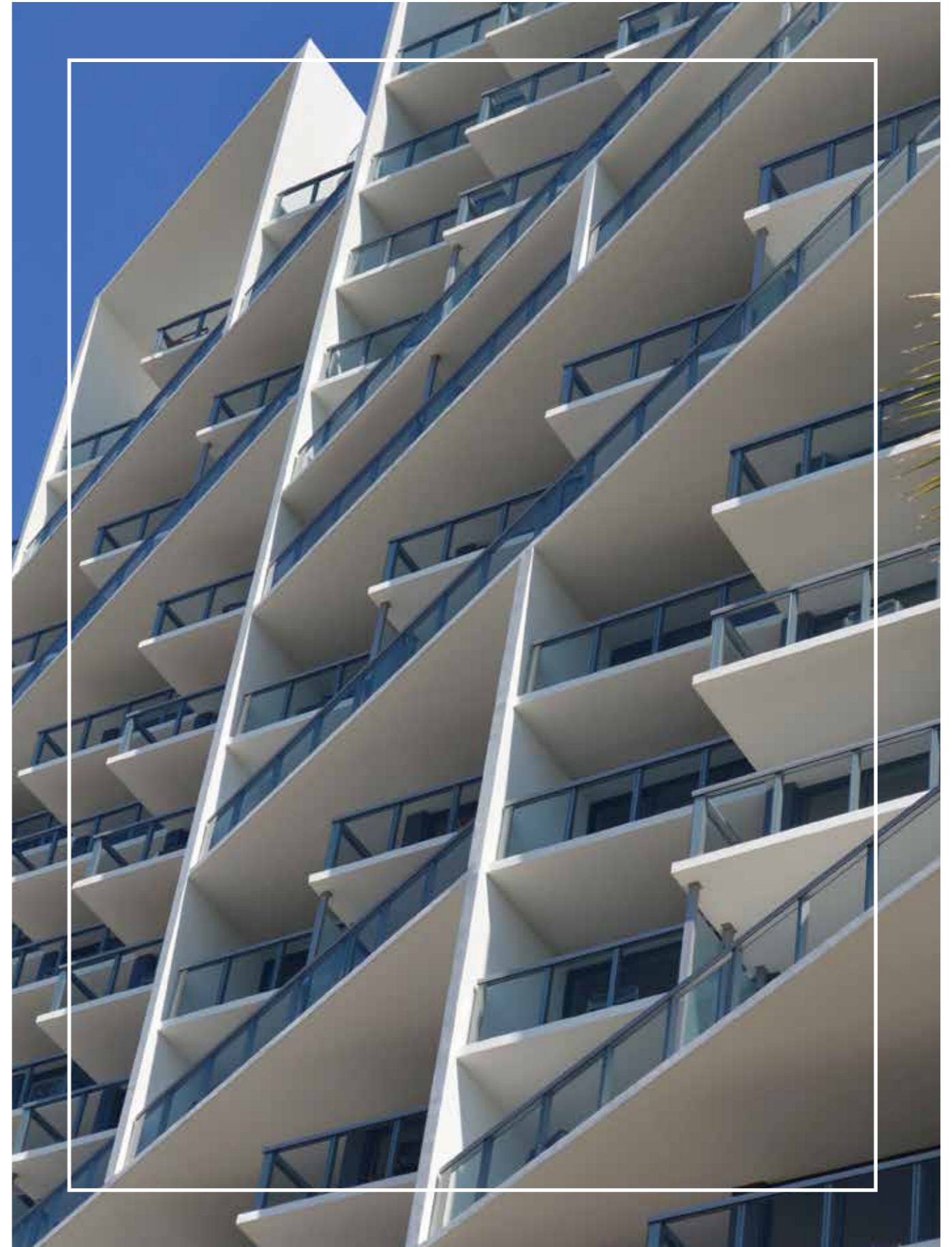
1. There appears to be no difficulty in carrying on the regular business of advertisement, marketing booking and sale of units in ongoing projects from 1 May 2017 until the end of 90 days.
2. It appears that the timing the developer/promoter will prescribe for completion of the balance construction of an ongoing project will be scrutinised by the authority and such time will be granted as would be considered reasonable for completion of the project and in applicable cases, such time shall be commensurate to the extent of development already completed.
3. If the promoter/developer requests for unreasonable time to complete the balance construction of the ongoing project, the authorities may not grant the same and instead fix a reasonable time.
4. It appears that the authority may not have the power to entertain and/or apply any penal provision for the past delays of the promoter, i.e. delays caused prior to commencement of the Act.
5. It seems that the authority only has the power to penalise a promoter if the promoter breaches the timeline as sought for and/or as actually granted by the authority after registration of the project.
6. It appears that the authority may not have the power to issue directions suo moto to government authorities/statutory bodies for expeditious grant of approvals and sanctions required for development.
7. Whilst the authority may not have the power to grant direction to any government/statutory body with regard to any approval or sanction that the government/statutory body is required to issue for development work, the authority shall on application by the promoter, consider the delay by such government/statutory body in granting approval/sanction for development.
8. It appears that the authority shall regulate, through rules and regulations, the functions of the adjudicating officer, so that it is not administered in an isolated, independent manner but is referred through the authority itself, thereby avoiding multiplicity of proceedings and/or conflicting decisions.
9. It appears that in deciding matters, the authority shall take a holistic approach taking into consideration the applicable local law while dealing with matters relating to obligation of the promoter.

CONCLUSION

The implementation of the Act, in its entirety, will have a far-reaching impact on the real estate sector. The Act will be a game changer for the entire sector and will transform the entire paradigm in which the sector operates and the manner in which different stakeholders interact with each other. Implementation of the provisions of the Act will cause some teething troubles in the short term but in the long run, the sector will stand to gain. The Act will require developers to recalibrate their business model so that it complies with the various provisions of the Act. Other stakeholders from the supply side, like real estate agents, will also need to be more accountable and will need to function in a more transparent manner. The unorganised world of broking in India would see a new paradigm. From being merely a facilitator between

buyers and sellers, brokers will now have to adopt a bigger advisory role attached with the responsibility for projects and disclosures. The survival of broking firms will depend on how they inculcate a corporate culture in dealing with both the stakeholders. For consumers, the Act will bring in good news, as it will raise the transparency levels in the sector. This will help them take an informed decision and give them the necessary confidence to participate in the sector. Participation from homebuyers will galvanise the fortunes of the sector and help the cash-strapped developers. The confidence flowing into the sector, from the provisions of the Act, will also rub off on institutional funds and banks, thus enabling them to lend to the sector. The access to funds at competitive rates, which in the present day are pretty high, could lead to

rationalisation of prices within the sector thereby making it a win-win situation for all the stakeholders. Most importantly, the Act will ensure that only serious and strong players remain within the sector. Therefore, going forward, a consolidation among players within the sector cannot be ruled out. The success of the new rules of the game will however, lie in having the necessary systems and processes across states so that the act can be implemented in full letter and spirit without causing much distress among the relevant stakeholders.



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