

# The West Bengal Housing Industry Regulation Act, 2017

WEST BENGAL

India

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### Act 41 of 2017

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The West Bengal Housing Industry Regulation Act, 2017 (Act No. 41 of 2017) The following Act of the West Bengal Legislature received the assent of the Governor and was published in the Kolkata Gazette, Extraordinary, Part III, No. 1189-L., dated 17th October, 2017. (As passed by the West Bengal Legislature on the 17th October, 2017) An Act to establish the Housing Industry Regulatory Authority for regulation and promotion of the housing sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish a mechanism for speedy dispute redressal and for matters connected therewith or, incidental thereto. Whereas it is expedient to establish the Housing Industry Regulatory Authority for regulation and promotion of the housing sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish a mechanism for speedy dispute redressal and for matters connected therewith or incidental thereto. It is hereby enacted in the Sixty-eighth Year of the Republic of India, by the Legislature of West Bengal, as follows:

## Chapter I Preliminary

### 1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Housing Industry Regulation Act, 2017. (2) It extends to the whole of West Bengal. (3) This section shall come into force at once and the remaining sections shall come into force on such date or dates as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different sections of this Act.

## 2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes; (b) "agreement for sale" means an agreement entered into between, the promoter and the allottee; (c) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the paid allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent; (d) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of used ancillary to the purpose specified; (e) "Appellate Tribunal" means the West Bengal Housing Industry Appellate Tribunal established under section 43; (f) "architect" means a person registered as an architect under the provisions of the Architects Act, 1972 (20 of 1972); (g) "Authority" means the Housing Industry Regulatory Authority established under sub-section (1) of section 20; (h) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes; (i) "car parking area" means such area as may be prescribed; (j) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. Explanation. - For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee, and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; (k) "Chairperson" means the Chairperson of the Housing Industry Regulatory Authority appointed under section 21; (l) "commencement notice" means the commencement notice or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan; (m) "common areas" mean - (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the staircases, lifts, staircase and lift lobbies, fire escapes and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water

conservation and renewable energy;(vi)the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;(vii)all community and commercial facilities as provided in the real estate project;(viii)all other portion of the project necessary or convenient for its maintenance, safety, etc. and in common use;(n)"company" means a company incorporated and registered under the Companies Act, 2013 (18 of 2013) and includes,-(i)a corporation established by or under any Central Act or State Act;(ii)a development authority or any public authority established by the Government in this behalf under any law for the time being in force;(o)"competent authority" means the local authority or any authority created or established under any law for the time being in force which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;(p)"completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;(q)"day" means the working day, in the State notified by the State Government from time to time;(r)"development" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;(s)"development works" means the external development works and internal development works on immovable property;(t)"engineer" means a person who possesses a bachelor`s degree or equivalent or Diploma from an institution recognised by (sic) All India Council of Technical Education or any University (sic) Institution recognized under a law or is registered as an Eng (sic) under any law for the time being in force;(u)"estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost, land development cost, taxes, cess, development and other charges;(v)"external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;(w)"family" includes husband, wife, minor son and unmarried daughter wholly dependent on a person;(x)"garage" means garage and parking space as sanctioned by the Competent Authority;(y)"housing industry" means the industry which deals with development, construction, sale of houses and plots of land for any purpose;(z)"immovable property" includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;(za)"interest" means the rates of interest payable by the promoter or the allottee, as the case may be;Explanation. - For the purpose of this clause-(i)the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;(ii)the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;(zb)"internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety

requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;(zc)"local authority" means the Municipal Corporation or Municipality or Panchayats or Industrial Township Authority or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;(zd)"Member" means the member of the Housing Industry Regulatory Authority appointed under section 21 and includes the Chairperson;(ze)"notification" means a notification published in the Official Gazette;(zf)"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;(zg)"Person" includes,-(i)an individual;(ii)a Hindu undivided family;(iii)a company;(iv)a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;(v)a competent authority;(vi)an association of persons or a body of individuals whether incorporated or not;(vii)a cooperative society registered under any law relating to cooperative societies;(viii)any such other entity as the State Government may, by notification, specify in this behalf;(zh)"prescribed" means prescribed by rules made under this Act;(zi)"project" means the real estate project as defined in clause (zm);(zj)"promoter" means,-(i)a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or(ii)a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or(iii)any development authority or any other public body in respect of allottees of-(A)buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or(B)plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or(iv)an apex State level cooperative housing finance society and a primary cooperative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or(v)any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or(vi)such other person who constructs any building or apartment for sale to the general public.Explanation. - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;(zk)"prospectus" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;(zl)"real estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium , prospective

buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;(zm)"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;(zn)"regulations" means the regulations made by the Authority under this Act;(zo)"rule" means the rules made under this Act by the State Government;(zp)"sanctioned plan" means the site plan, building plan, building permit, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;(zq)"State Government" means the State Government in the Housing Department;(zr)words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the State Government shall have the same meanings respectively assigned to them in those laws.

## **Chapter II**

# **Registration of Real Estate Project and Registration of Real Estate Agents**

### **3. Prior registration of real estate project with Real Estate Regulatory Authority.**

(1)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 may be, in any real estate project or part of it, without registering the real estate project with the Housing Industry Regulatory Authority established under this Act:Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.(2)Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-(a)where the area of land proposed to be developed does not exceed five hundred square metres or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:Provided that, if the State Government considers it necessary, it may reduce the threshold below five hundred square metres or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;(b)where the promoter has received completion certificate for a real estate project prior to commencement of this Act;(c)for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.Explanation. - For the purpose of this section, where the real estate project is to be developed in phases, every such shall be considered a stand alone real

estate project, and the promoter shall obtain registration under this Act for each phase separately.

#### **4. Application for registration of real estate projects.**

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:- (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority) and the particulars of registration and the names and photographs of the promoter; (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending; (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases; (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority; (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy; (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project; (g) proforma of the allotment letter, agreement for sale and the conveyance deed proposed to be signed with the allottees; (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any; (i) the number and areas of garage for sale in the project; (j) the names and addresses of his real estate agents, if any, for the proposed project; (k) the names and addresses of the contractors, architect, structural engineer, if any, and other persons concerned with the development of the proposed project; (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:- (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be, details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be; (D) that seventy per cent, of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled Bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project: Provided also that the

promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project; Explanation. - For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934); (E) that he shall take all the pending approvals on time, from the competent authorities; (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and (m) such other information and documents as may be prescribed. (3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

## **5. Grant of registration.**

(1) On receipt of the application under subsection (1) of section 4, the Authority shall within a period of thirty days, - (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login ID and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. (2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), 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 thirty 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 and to create his web page and to fill therein the details of the proposed project. (3) The registration granted under this section shall be valid for a period declared by the promoter under section 4 for completion of the project or phase thereof, as the case may be.

## **6. Extension of registration.**

- The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority: Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year: Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter. Explanation. - For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project or any other circumstances as may be prescribed.

## **7. Revocation of registration.**

(1)The Authority may on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-(a)the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;(b)the promoter violates any of the terms or conditions of the approval given by the competent authority;(c)the promoter is involved in any kind of unfair practice or irregularities.Explanation. - For the purposes of this clause, the term "unfair practice" means a practice which, for the purpose of promoting the sale or development of any real estate project, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- (A)the practice of making any statement, whether in writing or by visible representation which,-(i)falsely represents that the services are of a particular standard or grade;(ii)represents that the promoter has approval or affiliation which such promoter does not have;(iii)makes a false or misleading representation concerning the services;(B)the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;(C)the promoter indulges in any fraudulent practices.(2)The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days` notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.(3)The Authority may instead of revoking the registration under subsection (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.(4)The Authority, upon the revocation of the registration,-(a)shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;(b)shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;(c)shall direct the bank holding the project bank account to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;(d)may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

## **8. Obligation of Authority consequent upon lapse of or on revocation of registration.**

- Upon lapse of the registration or on revocation of the registration under this Act, the Authority may consult the State Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority: .Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.



## **9. Registration of real estate agents.**

(1) 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, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, without obtaining registration under this section. (2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed. (3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfilment of such conditions, as may be prescribed—(a) grant a single registration to the real estate agent for the entire State, as the case may be; (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. (4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered. (5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act. (6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed. (7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit: Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

## **10. Functions of real estate agents.**

- Every real estate agent registered under section 9 shall—(a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may be prescribed; (c) not involve himself in any unfair trade practices, namely:—(i) the practice of making any statement, whether orally or in writing or by visible representation which—(A) falsely represents that the 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) makes a false or misleading representation concerning the services; (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered; (d) 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, as the case may be; (e) discharge such other functions as may be prescribed.

## Chapter III

### Functions and Duties of Promoter

#### 11. Functions and duties of promoter.

(1)The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under section 4, in all the fields as provided, for public viewing, including-(a)details of the registration granted by the Authority;(b)quarterly up-to-date list of number and types of apartments or plots, as the case may be, booked;(c)quarterly up-to-date list of number of garages booked;(d)quarterly up-to-date list of approvals taken and the approvals which are pending subsequent to commencement certificate;(e)quarterly up-to-date status of the project; and(f)such other information and documents as may be specified by the regulations made by the Authority.(2)The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.(3)The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:(a)sanctioned plans, layout plans along with specifications approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;(b)the stage-wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.(4)The promoter shall-(a)be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be to the allottees are executed;(b)be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;(c)be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;(d)be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;(e)enable the formation of an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:Provided that 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;(f)execute a registered conveyance deed of the

apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;(g)pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;(h)after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be.(5)The promoter may cancel the allotment only in terms of the agreement for sale:Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.(6)The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

## **12. Obligations of promoter regarding veracity of the advertisement or prospectus.**

- Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or. prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

## **13. No deposit or advance to be taken by promoter without first entering into agreement for sale.**

(1)A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without

first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.(2)The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dated and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

#### **14. Adherence to sanctioned plans and project specifications by the promoter.**

(1)The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.(2)Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by. the competent authority, are disclosed or furnished to the person who agrees to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make-(i)any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:Provided that the promoter may make such minor additions or alternations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.Explanation. - For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.(ii)any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.Explanation. - For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc. by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.(3)In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter`s failure to rectify

such defects within such time, the aggrieved allottees shall be entitled to receive such compensation in the manner as provided under this Act.

## **15. Obligations of promoter in case of transfer of a real estate project to a third party.**

(1)The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-thirds allottees, except the promoter, and without the prior written approval of the Authority:Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings, as the case may be, in the real estate project made by the erstwhile promoter.Explanation. - For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.(2)On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

## **16. Obligations of promoter regarding insurance of real estate project.**

(1)The promoter shall obtain all such insurances as may be notified by the State Government, including but not limited to insurance in respect of-(i)title of the land and building as a part of the real estate project; and(ii)construction of the real estate project.(2)The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.(3)The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.(4)On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

## **17. Transfer of title.**

(1)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, and hand over the physical possession of the plot,

apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall hand over the necessary documents and plans, including common areas to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

## **18. Return of amount and compensation.**

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force. (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

## **Chapter IV**

### **Rights and Duties of Allottees**

## **19. Rights and duties of allottees.**

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter. (2) The allottee shall be entitled to know stage-wise time schedule of completion

of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.(3)The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under section 4.(4)The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.(5)The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building, as the case may be, by the promoter.(6)Every allottee, who has entered into an agreement for sale to take an apartment, plot or building, as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other lawful charges, if any.(7)The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).(8)The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.(9)Every allottee of the apartment, plot or building, as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same.(10)Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.(11)Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

## **Chapter V**

### **The Housing Industry Regulatory Authority**

#### **20. Establishment and incorporation of Housing Industry Regulatory Authority.**

(1)The State Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the West Bengal Housing Industry Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:Provided that, the State Government may if it deems fit establish more than Authority in a State:Provided further that until the establishment of the Authority under this section, the State Government shall, by order, designate any Authority or any officer not below the rank of Secretary, as the Regulatory Authority for the purposes under this Act:Provided also that

after the establishment of the Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.(2)The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

## **21. Composition of Authority.**

- The Authority shall consist of a Chairperson and not less than two Members to be appointed by the State Government.

## **22. Qualifications of Chairperson and Members of Authority.**

- The Chairperson and other Members of the Authority shall be appointed by the State Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, Housing Secretary and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical expertise from relevant fields, planning, law or administration:Provided that a person who is, or has been, in the service of the State Government shall not be appointed as the Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a Member unless such person has held the post of Secretary to the State Government or any equivalent post in the Central Government or State Government.

## **23. Term of office of Chairperson and Members.**

(1)The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.(2)Before appointing any person as a Chairperson or Member, the State Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect pre-judicially his functions as such Member.

## **24. Salary and allowances payable to Chairperson and Members.**

(1)The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.(2)Notwithstanding anything contained in section 23, the Chairperson or a Member, as the case may be, may relinquish his office by giving in writing, to the State Government, notice of not less than three months.(3)Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date



on which such vacancy occurs in accordance with section 22.

## **25. Administrative powers of Chairperson.**

- The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

## **26. Removal of Chairperson and other Members from office in certain circumstances.**

(1)The State Government may, in accordance with the procedure notified, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,-(a)has been adjudged as an insolvent; or(b)has been convicted of an offence, involving moral turpitude; or(c)has become physically or mentally incapable of acting as a Member; or(d)has acquired such financial or other interest as is likely to affect pre-judicially his functions; or(e)has so abused his position as to render his continuance in office prejudicial to the public interest.(2)The Chairperson or Member shall not be removed from his office on the ground specified under clause (d) or clause (e) of sub-section (1) except by an order made by the State Government after an inquiry made by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

## **27. Restriction on Chairperson or Members on employment after cessation of office.**

(1)The Chairperson or a Member, ceasing to hold office as such shall not-(a)accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:Provided that nothing contained in this clause shall apply to any employment under the State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act;(b)act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had before cessation of office, acted for, or provided advice to, the Authority;(c)give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;(d)enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.(2)The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

## **28. Officers and other employees of Authority.**

(1)The State Government may, in consultation with the Authority, appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.(2)The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

## **29. Meetings of Authority.**

(1)The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings), as may be specified by the regulations made by the Authority.(2)If the Chairperson, for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.(3)All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.(4)The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

## **30. Vacancies, etc., not to Invalidate proceeding of Authority.**

- No act or proceeding of the Authority shall be invalid merely by reason of-(a)any vacancy in, or any defect in the constitution of, the Authority; or(b)any defect in the appointment of a person acting as a Member of the Authority; or(c)any irregularity in the procedure of the Authority not affecting the merits of the case.

## **31. Filing of complaints with the Authority.**

(1)Any aggrieved person may file a complaint with the Authority for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.Explanation. - For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.(2)The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

## **32. Functions of Authority for promotion of real estate sector.**

- The Authority shall in order to facilitate the growth and promotion of a healthy, transparent efficient and competitive real estate sector make recommendations to the Sate Government or the

competent authority, as the case may be, on, - (a) protection of interest of the allottees, promoter and real estate agent; (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project; (c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials; (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment; (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of State construction materials, fixtures, fittings and construction techniques; (f) measures to encourage grading of projects on various parameters of development including grading of promoters; (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee; (i) to render advice to the State Government in matters relating to the development of real estate sector; (j) any other issue that the Authority may think necessary for the promotion of the real estate sector.

### **33. Advocacy and awareness measures.**

(1) The State Government may, while formulating a policy on real estate sector (including review of laws related real estate sector) or any other matter, make a reference to the Authority for its opinion on possible effect, of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a period of sixty days of making such reference, give its opinion to the State Government which may thereafter take further action as it deems fit. (2) The opinion given by the Authority under sub-section (1) shall not be binding upon the State Government in formulating such policy or laws. (3) The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.

### **34. Functions of Authority.**

- The functions of the Authority shall include - (a) to register and regulate real estate projects and real estate agents registered under this Act; (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted; (c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalized under this Act, with reasons therefor, for access to the general public; (d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked; (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be; (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder; (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act; (h) to perform such other functions as may

be entrusted to the Authority by the State Government as may be necessary to carry out the provisions of this Act.

### **35. Powers of Authority to call for information, conduct investigations.**

(1)Where the Authority considers it expedient to do so, on a complaint or on its own relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor, call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.(2)Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-(i)the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;(ii)summoning and enforcing the attendance of persons and examining them on oath;(iii)issuing commissions for the examination of witnesses or documents;(iv)any other matter which may be prescribed.

### **36. Power to issue interim orders.**

- Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

### **37. Powers of Authority to issue directions.**

- The Authority may for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

### **38. Powers of Authority.**

(1)The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.(2)The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

### **39. Rectification of order.**

- The Authority may, at any time, within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties. Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act: Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

### **40. Recovery of interest or penalty or compensation and enforcement of order, etc.**

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him by the Regulatory Authority or the Appellate Authority, as the case may be under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue. (2) If any Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed. (3) While adjudging the quantum of compensation or interest, as the case may be, the Authority shall have due regard to the following factors, namely:-(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the Authority considers necessary to the case in furtherance of justice.

## **Chapter VI**

### **State Advisory Council**

### **41. Establishment of State Advisory Council.**

(1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the State Advisory Council. (2) The Minister to the Government of the State of West Bengal in charge of the Department dealing with Housing shall be the ex officio Chairperson of the State Advisory Council. (3) The State Advisory Council shall consist of representatives of the Finance Department, Department of Industry, Commerce & Enterprises, Department of Urban Development and Municipal Affairs, Department of Consumer Affairs, Law Department, five representatives of the Real Estate Regulatory Authorities to be selected by rotations, and any other State Government department as notified. (4) The State Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and

academic and research bodies in the real estate sector.

## **42. Functions of State Advisory Council.**

(1)The functions of the State Advisory Council shall be to advise and recommend the State Government,-(a)on all matters concerning the implementation of this Act;(b)on major questions of policy;(c)towards protection of consumer interest;(d)to foster the growth and development of the real estate sector;(e)on any other matter as may be assigned to it by the State Government.(2)The State Government may specify the rules to give effect to the recommendations of the State Advisory Council on matters as provided under sub-section (1).

## **Chapter VII**

## **The Housing Industry Appellate Tribunal**

### **43. Establishment of Housing Industry Appellate Tribunal.**

(1)The State Government shall establish an Appellate Tribunal to be known as the West Bengal Housing Industry Appellate Tribunal.(2)The State Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State.(3)Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.(4)Any person aggrieved by any direction or decision or order made by the Authority under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least thirty percent, of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.Explanation. - For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.(5)Notwithstanding anything contained in sub-section (1), it shall be lawful for the State Government to designate, by order, any Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under this Act.

### **44. Application for settlement of disputes and appeals to Appellate Tribunal.**

(1)The State Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority may prefer an appeal to the Appellate Tribunal.(2)Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority is received by the State Government or the a competent authority or the aggrieved person and it shall be in such form and accompanied by such fee as may be prescribed:Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.(3)On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the

parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.(4)The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority.(5)The appeal preferred under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.(6)The Appellate Tribunal may for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

#### **45. Composition of Appellate Tribunal.**

- The Appellate Tribunal shall consist of a Chairperson and not less than two whole time members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the State Government.Explanation. - For the purposes of this Chapter,-(i)"Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46.(ii)"Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of subsection (1) of section 46.

#### **46. Qualifications for appointment of Chairperson and Members.**

(1)A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,-(a)in the case of Chairperson, is or has been a Judge of a High Court; and(b)in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the West Bengal Legal Service for at least twenty years, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and(c)in the case of a Technical Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government, or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.(2)The Chairperson of the Appellate Tribunal shall be appointed by the State Government in consultation with the Chief Justice of High Court or his nominee.(3)The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the State Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

#### **47. Term of office of Chairperson and Members.**

(1)The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office,

but shall not be eligible for re-appointment: Provided that in case a person, who is or has been a Judge of High Court has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years: Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years. (2) Before appointing any person as Chairperson or Member, the State Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect pre-judicially his functions as such member.

#### **48. Removal of Chairperson, Member etc.**

(1) The State Government may remove from office the Chairperson or any Judicial Member or Technical or Administrative Member, as the case may be, of the Appellate Tribunal, who- (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the State Government involves moral turpitude; or (c) has become physically or mentally incapable; or (d) has acquired such financial or other interest as is likely to affect pre-judicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. (2) The Chairperson or Judicial Member or Technical or Administrative Member, as the case may be, shall not be removed from his office except by an order made by the State Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial Member or Technical or Administrative Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. (3) The State Government may suspend from the office of the Chairperson or Judicial Member or Technical or Administrative Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the State Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference. (4) The State Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

#### **49. Salary and allowances payable to Chairperson and Members.**

(1) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure. (2) Notwithstanding anything contained in section 47, the Chairperson or a Member, as the case may be, may relinquish his office by giving in writing to the State Government a notice of not less than three months. (3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled up within a period of three months from the date on which such vacancy occurs.

#### **50. Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office.**

(1) The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not:- (a) accept any employment in, or connected with, the management or administration of, any person or organization which has been associated with any work under this



Act, from the date on which he ceases to hold office: Provided that nothing contained in this clause shall apply to any employment under the State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act; (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had before cessation of office, acted for or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such. (2) The Chairperson or Judicial Member or Technical or Administrative Member shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

## **51. Officers and other employees of Appellate Tribunal.**

(1) The State Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit. (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson. (3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

## **52. Vacancies.**

- If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the State Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

## **53. Powers of Appellate Tribunal.**

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice. (2) Subject to the provisions of this Act the Appellate Tribunal shall have power to regulate its own procedure. (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872). (4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examinations of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for

default or directing it ex parte; and (g) any other matter which may be prescribed. (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, 1860 (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

#### **54. Administrative power of Chairperson of Appellate Tribunal.**

- The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

#### **55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.**

- No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of - (a) any vacancy in or any defect in the constitution of the Appellate Tribunal, or (b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or (c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

#### **56. Right to legal representation.**

- The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority, as the case may be. Explanation. - For the purposes of this section, - (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

#### **57. Order passed by the Appellate Tribunal to be executable as a decree.**

- Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil

court shall execute the order as if it were a decree made by the court.

## **58. Appeal to High Cour.**

(1)Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.(2)No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

## **Chapter VIII**

### **Offences and Penalties**

## **59. Punishment for non-registration under section 3.**

(1)If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent, of the estimated cost of the real estate project as determined by the Authority.(2)If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten percent, of the estimated cost of the real estate project, or with both.

## **60. Penalty for contravention of section 4.**

- If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent, of the estimated cost of the real estate project, as determined by the Authority.

## **61. Penalty for contravention of other provisions of this Act.**

- If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4 or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority.

## **62. Penalty for non-registration and contravention under sections 9 and 10.**

- If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues,, which may cumulatively extend up to five per cent, of the cost of plot, apartment or

buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

### **63. Penalty for failure to comply with orders of Authority by promoter.**

- If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent, of the estimated cost of the real estate project as determined by the Authority.

### **64. Penalty for failure to comply with orders of Appellate Tribunal by promoter.**

- If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten percent, of the estimated cost of the real estate project, or with both.

### **65. Penalty for failure to comply with orders of Authority by real estate agent.**

- If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent, of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

### **66. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent.**

- If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten percent, of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

### **67. Penalty for failure to comply with orders of Authority by allottee.**

- If any allottee, who 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 five per cent, of the plot, apartment or building cost, as the case may be, as determined by the Authority.

## **68. Penalty for failure to comply with orders of Appellate Tribunal by allottee.**

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

## **69. Offences by companies.**

(1)Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purpose of this section, - (a) "company" means any body corporate and includes a firm, or other association of individuals; and (b) "director" in relation to a firm, means a partner in the firm.

## **Chapter IX**

### **Finance, Accounts, Audits and Reports**

## **70. Grants and loans by State Government.**

- The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

## **71. Constitution of Fund.**

(1) The State Government shall constitute a fund to be called the Housing Industry Regulatory Fund and there shall be credited thereto, - (a) all Government grants received by the Authority; (b) the fees received under this Act; (c) the interest accrued on the amounts referred to in clauses (a) to (b). (2) The Fund shall be applied for meeting - (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate

Tribunal;(b)the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.(3)The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.(4)The committee appointed under sub-section (3) shall spend money out of the Fund for carrying out the objects for which the Fund has been constituted.

## **72. Crediting sums realized by way of penalties to Consolidated Fund of State.**

- All sums realized, by way of penalties, imposed by the Appellate Tribunal of the Authority shall be credited to Consolidated Fund of the State.

## **73. Budget accounts and audit.**

(1)The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.(2)The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority Comptroller and Auditor-General of India.(3)The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.(4)The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the Authority and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

## **74. Annual report.**

(1)The Authority shall prepare a report once in every year, in such form and at such time as may be prescribed by the State Government which shall contain of-(a)a description of all the activities of the Authority for the previous year;(b)the annual accounts for the previous year; and(c)the programs of work for the coming year.(2)A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

## **Chapter X**

### **Miscellaneous**

## **75. Bar of jurisdiction.**

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

## **76. Cognizance of offences.**

- No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorized by it for this purpose.

## **77. Delegation.**

- The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 81), as it may deem necessary.

## **78. Power of State Government to supersede Authority.**

(1) If, at any time, the State Government is of the opinion, - (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or (b) that the Authority has persistently defaulted in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do, the State Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification: Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority. (2) Upon the publication of a notification under sub-section (1) superseding the Authority, - (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the State Government or such authority as the State Government may specify in this behalf; and (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the State Government. (3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such

case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.(4)The State Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature.

## **79. Powers of State Government to issue directions to Authority and obtain reports and returns.**

(1)Without prejudice to the foregoing provisions and this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the State Government may give in writing to it from time to time:Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.(2)If any dispute arises between the State Government and the Authority as to whether a question is or is not a question of policy, the decision of the State Government thereon shall be final.(3)The Authority shall furnish to the State Government such returns or other information with respect to its activities as the State Government may, from time to time, require.

## **80. Power of State Government to make rules.**

(1)The State Government may, by notification, make rules for carrying out the provisions of this Act.(2)All rules made under this Act shall be laid for not less than fourteen days before the State Legislature as soon as possible after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid. Any modification of the said rules made by the State Legislature shall be published in the Official Gazette, and shall, unless some later date is appointed by the State Government, come into force on the date of such publication.

## **81. Power to make regulations.**

- The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

## **82. Members etc., to be public servants.**

- The Chairperson, Members and other officers and employees of the Authority, and the Appellate Tribunal, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).



### **83. Application of other laws not barred.**

- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

### **84. Protection of action taken in good faith.**

(1) Anything which is done in good faith or intended to be done by any authority or any officer in this behalf in respect of anything done under this Act, the authority or the officer, as the case may be, shall be protected from prosecution, suit or any other legal proceeding. (2) If any loss or damage is caused or likely to be caused by anything which is in good faith done or intended to be done by the State Government in pursuance of the provisions of this Act or any rules made thereunder, the State Government shall be protected from prosecution, suit or any other legal proceeding.

### **85. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty. (2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

### **86. Repeal and savings.**

(1) The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Bengal Act XX of 1993) is hereby repealed. (2) Notwithstanding such repeal, - (a) the provisions of the said enactments shall apply in relation to any proceeding relating to any real estate project which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to proceedings which commenced on or after this Act comes into force; (b) all rules made and notifications published, under the said enactment shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.