

RAJASTHAN RERA FILING

Before we proceed further with RERA filing, first we need to understand about RERA in brief :-

(Source FAQs :- <https://rera.rajasthan.gov.in/Home/GeneralFAQ>)

I. STATUS :

1. What is the status of the Act?

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

2. When did the Act come into force?

Provisions of section 2, sections 20 to 39, section 41 to 58, sections 71 to 78 and sections 81 to 92 (relating to definitions, establishment/appointment of Regulatory Authority/Appellate Tribunal, Adjudicating Officer, framing of Rules/Regulations, constituting regulatory Fund, making website etc. came into force with effect from 1st May, 2016 vide Notfn. dt. 24.04.2016 of the Central Govt. (Ministry of HUPA). Remaining provisions of sections 3 to 19, 40, 59 to 70, 79 and 80 regarding registration of real estate projects, real estate agents, responsibilities of promoters/allottees/agents, about penalties and offences etc. came into force w.e.f. 01.05.2017 vide Notfn. dt. 19.04.2017 of the Central Govt. (Ministry of HUPA).

3. Why have some sections of the Act have been notified later?

Some sections of the Act have been notified after one year, as the institutional structures, namely the establishment of the Regulatory Authority and the Appellate Tribunal are necessary prior to their enforcement.

II. OBJECTS AND REASONS :

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

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

2. What are the objectives of the Act ?

The Real Estate is intended to achieve the following objectives:

- a) ensure accountability towards allottees and protect their interest;
- b) infuse transparency, ensure fair-play and reduce frauds & delays;
- c) introduce professionalism and pan India standardization;
- d) establish symmetry of information between the promoter and allottee;
- e) imposing certain responsibilities on both promoter and allottees;
- f) establish regulatory oversight mechanism to enforce contracts;
- g) establish fast-track dispute resolution mechanism;
- h) Promote good governance in the sector which in turn would create investor confidence.

III. PRELIMINARY :

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

Section 2(g) of the Act defines 'appropriate Government accordingly in the State of Rajasthan, the State Govt. is the appropriate Govt..

2. What are the important responsibilities of the State Government?

The State Government is required to,-

- a) notify Rules for the implementation of the Act,
- b) establish the Regulatory Authority,
- c) designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority,
- d) establish the Appellate Tribunal,
- e) designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal,

- f) appoint the Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal based on recommendation of a selection Committee,
- g) appoint officers and other employees of Regulatory Authority and the Appellate Tribunal,
- h) identify office space etc. and other infrastructure for its functioning,
- i) constitute a 'Real Estate Regulatory Fund'.
- j) make and launch a website for Regulatory Authority.

3. Does the definition of 'promoter' includes public bodies such as Development Authorities and Housing Boards?

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

4. Does the definition of 'promoter includes all promoters in case of joint development?

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

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

As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest has been specified in Rule 17 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017. Accordingly the rate of interest is State Bank of India highest marginal cost of lending rate plus two percent. Provided that in case the State Bank of India marginal cost of funds based lending rates is not in use it would be replaced by such

benchmark lending rates which the State Bank of India may fix, from time to time, for lending to the general public.

6. Does advertisement includes solicitation by emails and sms? Is issuance of prospectus considered to be a case of 'advertisement'?

As per section 2(b), which defines 'advertisement' any medium adopted in solicitation for sale would be covered under the said definition, including SMS and e-mails.

7. Does the term ' allottee' include secondary sales?

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

8. Is 'open parking areas' a part of common areas?

Section 2(n) defines 'common areas' to include open parking areas; thus open parking areas cannot be sold to the allottees.

9. Is 'community and commercial facilities' which are provided in a real estate project are part of 'common areas'?

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

10. Whether obtaining both the 'occupancy certificate' and the 'completion certificate are necessary for the promoter?

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

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

Section 2 (zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water,

sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and sections, as approved by the competent authority.

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

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

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

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

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

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

15. Are real estate agents covered under the Act? Does the term 'real estate agents' include web-projects engaged in selling of apartment or plots?

Section 2(zm) defines the term 'real estate agents', which is a very broad and inclusive definition and covers all from of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or apartments are also covered under the Act and are required to comply with the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

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

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

17. Which areas of the State are included in the Planning Area as defined in the Act?

As per definition 2(1)(f) in Rules, the planning area means a planning area or a development area as specified under the Master plan.

18. If a real estate project has land area more than 500 sq. meters but containing less than 8 apartments. Does it still need to be registered?

Yes. Every real estate project which has land area more than 500 sq. meters or has more than 8 apartments needs to be registered

19. If a real estate project has land area less than 500 sq. meters but contains more than 8 apartments. Does it still need to be registered?

Yes. Every real estate project which has land area more than 500 sq. meters or has more than 8 apartments needs to be registered.

20. Can advertisement be issued for a new project after 1st May, 2017 without registering the said project?

No. The advertisement issued after 1st May 2017 must carry the Registration Number of the project issued by the Authority.

21. Is it permissible to sell parking to allottees?

The position of parking is as follows;

- a) Open Parking Area: This has been clearly included in the definition of "Common Areas" which need to be conveyed to the Association of Allottees after Occupancy Certificate is received. Hence, sale or allotment of Open Parking Areas by the Promoter is not permissible
- b) Covered Parking is permitted to be sold.
- c) Garage as defined in the Act is permitted to be sold.

22. Does Long- term leasehold is excluded from ambit of the Act?

No. The wording in Section 2(d) "has been sold (whether as free hold or lease hold) or otherwise transferred by the promoter" indicates that the long term lease falls

within the ambit of the Act. However, the premises given on short term lease not exceeding five years are not covered under the Act.

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

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

24. Is there some fee, in addition to the fees prescribed in the Rules, to be charged from promoters, real estate agents and complainants for the website of the Regulatory Authority (rera-rajasthan.in) uploading and online services?

No. There is no additional charges for online services.

IV. REGISTRATION OF PROJECTS :

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

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

2. Does the Act cover ongoing/incomplete project?

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

As per section 3(1) first proviso, the promoters of all ongoing projects will need to register their projects with the Regulatory Authority, within 3 months of its commencement, i.e. 1st May 2017.

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

Section 3(1) provides that all projects within a 'Planning areas' will require to be registered with the Authority and 'planning area' has been defined under section 2(zh). However, section 3(1) second proviso gives powers to the Authority in the interest of 'allottees' to order/direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

4. Which projects are exempted from the ambit of the Act?

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

- a) Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be development does not exceed eight, inclusive of all phases. The State Govt. may reduce the threshold below 500 sqm. or 8 apartments.
- b) Where the promoter has received completion certificate for a real estate project prior to commencement of the Act, i.e. 1st May, 2017.
- 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.

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

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

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

Section 4 of the Act provides for details/information/documents and undertaking to be provided by the promoter to the Authority for registration of the project. Some additional informations/documents are also to be furnished as per Rule 3 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017. The application for registration shall be filled in Form- A along with Declaration in Form-B. The application fee shall be paid as per rates given in rule 3(3) of the aforesaid Rules.

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

The promoter is required to make an application in Form-A and fees prescribed under Rule 3(3) of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 along with the documents/ information and undertaking in Form-B to the Authority for registration of the project. In addition, the promoter is also required to append other/additional documents/information as specified in Rule 3(1) of the Rules. In case of ongoing projects, some additional information are also required to be submitted.

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

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

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

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

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

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

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

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

12. Whether applicant-promoter may withdraw his application for registration?

Any applicant-promoter may withdraw his application. In case the promoter applies for withdrawal of application for registration of the project before the expiry of the period of thirty days provided under sub-section (1) of section 5, registration fee to the extent of five percent paid under Rule 3(3) of the Rules, or rupees twenty five thousand whichever is more, shall be retained as processing fee by the Authority and

the remaining amount shall be refunded to the promoter within thirty days from the date of such withdrawal.

13. Is the promoter required to maintain an escrow account or a separate account?

Is a separate account to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?

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

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

14. On what basis the promoter is required withdrawing the money from the separate account?

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

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

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

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

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

In Rajasthan the web-portal of Regulatory Authority has been established. Henceforth submission of all the applications for registration of projects/agents, complaints, appeals including payments of fees shall be online based.

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

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstance, without the fault of the promoter, which shall not be more than a maximum period of 1 year. Explanation to section 6 has defined force majeure to mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

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

The registration may be extended on an application made by the promoter in Form-E prior to the expiry of the registration already granted.

The application for extension of registration shall be accompanied with a proof of payment through online mode, for an amount equivalent to half of the registration fee as specified under sub-rule (3) of rule 3 along with an explanatory note setting out the reasons for delay in the completion of the project and the need for extension of registration for the project, along with documents supporting such reasons. Provided that where extension of registration is due to force majeure the Authority may at its discretion waive the fee for extension of registration.

19. Can the registration of a project be revoked?

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

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

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

21. Is it mandatory for the promoter to obtain permissions for the real estate project before applying for registration to Authority?

Yes, the layout of the real estate project has to be approved.

22. How will a flat buyer know, if the real estate project is duly registered under Regulatory Authority ?

The Rajasthan RERA website (rera-rajasthan.in) would display all the registered projects.

It is mandatory that the advertisement for marketing of apartments in the real estate project must carry the registration number issued from the Authority.

23. How does the promoter make an application for registration?

Website of Regulatory Authority has been launched. All promoters shall make their applications online through this website (rera-rajasthan.in), filling the details in the requisite forms, uploading the required documents and paying the necessary fees through online mode of payment.

24. Is it compulsory for the promoter to register the project immediately after he gets sanctioned approvals?

Promoter has to register the project before he starts any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.

25. Will ongoing Project have to stop sales or construction till receiving the Registration?

At the end of ninety days from the date of commencement of Section 3 of the Act, i.e. 31st July, 2017, the promoter of an ongoing project shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, unless he registers the project.

26. Can promoter change the completion date for ongoing projects while registering?

Yes, while registering project, promoter needs to give revised date of completion which should be commensurate with the amount of development completed.

27. If an ongoing project is registered under Regulatory Authority, then will the Act be applicable for the entire project or will it be applicable only to units sold after registration?

Registration is of the Project/Phase and hence the provisions of the Act are applicable to all units of the Project/Phase.

28. There is a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application. How will the promoter receive ID & password?

As per section 5(2) of the Act, Regulatory Authority shall within a period of seven days of the deemed registration, provide registration number and a Login Id and password to the promoter for accessing in the website of the Regulatory Authority and to create his webpage and to fill therein the details of the proposed project.

29. How will the Act, Rules and Regulations affect advertisement of projects with many phases?

A promoter would be allowed to advertise, market, book, sell or offer to sell or invite persons to purchase plot, apartment or building in a phase of a real estate project, only if the said phase is registered. A promoter cannot advertise, commit or sell amenities or facilities that are in a subsequent phase which is still not registered.

30. What if an adjoining land is purchased by the promoter? Can he continue with same registration?

No, it has to be separately registered if the said adjoining land was not a part of the project which has been registered.

31. What should the promoter do in case the particular brand of fixtures and fittings as mentioned in the specifications are not available in the market since the production of that type is stopped by the supplier? Will the promoter still be liable in such case? And what in case fixture/fittings do not give guarantee for more than five years.

In accordance with section 14 of the Act, the promoter should take previous consent of the concerned allottees. In accordance with the provisions of this section the promoter is also liable to rectify any structural defect etc. within a period of five years from the date possession

- 32. Estimated Cost should be submitted only for area for which approvals/plans cleared as on date of registration of project or it should also include costs even for the proposed future expected area to be generated? (Bearing in mind the pros and cons for the figures depending solely on estimated costs)**

Estimated cost of the whole project that has been put up for registration has to be indicated while applying for registration.

- 33. Are various certificates from Architect, Engineer, CA etc. are required at the time of registration of project?**

No. However, authenticated copies of necessary approvals from competent authority are required as per section 4 and the Rules and Regulations made there under. Please refer also to the Forms-A, Form-B and Form-C appended to the Rules and website of the Authority.

V. FUNCTIONS AND DUTIES OF PROMOTER :

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

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

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

- 2. What are the disclosures to be made on the website of the Regulatory Authority?**

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

Rule 16 of the Rules. The website of Rajasthan RERA ("rera-rajasthan.in") is also to be seen.

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

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

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

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

5. What is the Agreement for sale and is it binding on the promoter and the allottee?

The format of Agreement for sale to be entered into between the promoter and the allottee has been prescribed as Form-G under the Rules. This Agreement is binding on the parties. Internal flexibility as per contractual understanding could be provided in the said Agreement for sale, for determination/ insertion of other provisions as decided between the parties. However, such provisions should not be in derogation of or inconsistent with the terms & conditions of the format of the Agreement or the provisions of the Act and rules/ regulations made thereunder.

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

As per section 14 of the Act the promoter can only modify/amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations. However, in case of major modification/alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-

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

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

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

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

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two-third of allottees and the Regulatory Authority. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

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

As per section 16 the promoter is required to seek an insurance of the real estate project towards title of the land and towards construction of the project. However, the said section provides that this provision shall only come into effect after and in the manner as may be notified by the State Government.

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

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

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

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

12. Is the promoter required to give any undertaking to the Regulatory Authority for completing his project within a specified period?

Yes, in accordance with the provisions of the Act, the promoter, while applying for registration to Regulatory Authority, has to give a declaration cum affidavit, indicating the time period within which he undertakes to complete the project or phase thereof, as the case may be.

13. Is there a time limit prescribed for the promoter to execute conveyance in favour of the association of buyers?

Promoter shall execute a registered conveyance deed in favor of the allottee within three months from date of issue of occupancy certificate or fifty one per cent of the total number of purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.

14. When a landowner should be named and treated as a promoter?

The landowner should be named and treated as a promoter in the following situations:

- a) The landowner himself has some role as a builder, coloniser, contractor, developer or estate developer in construction or development of the project (with the exception that if the landowner's power of attorney holder acts as a builder, coloniser, contractor, developer or estate developer of the project, in that case such power of attorney holder will be named and treated as a promoter); or
- b) The landowner has a share in the area developed for sale in the project, with the intent of marketing or selling it or any part of it before completion of the project; or
- c) The landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement), does not give to the developer-promoter all the powers of sale and conveyance of all the units to be sold, along with proportionate undivided interest in the land in the name and on behalf of the landowner, such that the landowner is required to signall or any

agreements for sale or sale deeds, etc. in respect of all or units of his share so as to bind him to the terms, conditions and covenants thereof; or

- d) The landowner proposes to share profit or loss of the project; or
- e) It is specifically agreed in the development agreement that the landowner shall be named or treated as a promoter under the Act.

15. When a landowner should not be named or treated as a promoter?

The landowner should not be named or treated as a promoter in the following situations:

- a) The landowner has no role as a developer-promoter; and
- b) The landowner does not have a share in the area developed for sale in the project or has such share but not with the intent of marketing or selling it or any part of it before completion of the project; and
- c) The landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement), has given to the developer-promoter all the powers of sale and conveyance of all the units to be sold, along with proportionate undivided interest in the land in the name and on behalf of the landowner, such that the landowner is not required to sign any agreement for sale or sale deed, etc. in respect of any units in the project; and
- d) The landowner does not have a share in profit or loss of the project.

For further clarifications, please refer to the Order (No. F.1 (152) RJ/RERA/LAND/2020/1202) dated 30th June, 2020, uploaded on the website of Rajasthan RERA.

16. Can the promoter change the plans of subsequent phases after registration of the 1st phase?

The Act puts an obligation on a promoter to obtain consent of each allottee, if he wants to change the building plans for the phase that is registered. If a subsequent phase has not been registered, the promoter can change the plans of the subsequent phases without obtaining consent of the allottees from current / ongoing phases. However, if the subsequent phases are also registered, consent of allottees, of the concerned phases, would be needed as mentioned in section 14 of the Act

17. If the promoter needs to change the plans of an on-going project post registration, will he need the consent of the pre-registration purchasers?

The Act protects the interest of all the Allottees including those who have executed an agreement before the project is registered under its provisions. Hence, if the promoter wants to change the plans post registration, then consent of all pre-registration allottees shall be required as well.

18. The promoter can hand over the common amenities only after completing subsequent phases. What should he commit to the customer for the registered phase?

A promoter should meticulously plan the buildings of the registered phase & common areas and then declare the individual date of handing over possession of the building & common areas. Each phase along with the development works shall have to be completed and handed over to the allottee within the time frame defined by the promoter, during registration, for that phase of the project.

19. Is insurance of the project compulsory? What are the provisions regarding Insurance?

As per section 16 of the Act the promoter has to obtain all such insurance as notified by the State Government. So insurance will be compulsory only after the Notification is issued by the State Government. The Act says that the State Government can prescribe various types of insurance including but not limited to,-

- a)** Title of the land and building as a part of the real estate project; and
- b)** Construction of the real estate project.

The promoter is liable to pay the insurance premium before transferring the same to the allottee / association of allottees. The documents related to insurance will have to be handed over to the association of allottees when the same is formed.

20. Can project finance taken by promoters from financial institutions be withdrawn from designated 70% account?

Yes, if this is declared at the time of registration and subject to provisions of Section 4 of the Act and Rajasthan Real Estate (Regulation and Development) Rules, 2017. However, the money withdrawn should be utilized towards construction expenses of the project, on priority.

21. In case of joint development with land owner on revenue share basis or area share basis, whether land owner's component could be withdrawn from designated account of 70%?

The Act makes both the Promoters and the land owner or any such parties which are beneficiary of a sale of a project and receive payments from allottees, as Co-Promoters and hence liable to adhere to the provisions of the Act and Rules and Regulations made there under. The withdrawal of money would be subject to provisions of Section 4 of the Act and Rules made there under.

22. If due to a change in government policy, the promoter is entitled to additional FSI etc., can the promoter build additional floors in a registered ongoing project where initially those floors were not planned?

Yes, but consent of allottees would be needed as mentioned in section 14 of the Act.

23. While withdrawing money from the account as per provisions of section 4 (2) (I) (D), does the promoter need to submit the certificates to Banker or retain with him?

The original certificates have to be retained by the promoter because the same are required to be verified and audited by the statutory auditor of the promoter's company at the end of every financial year. Copies may also have to be submitted to the concerned bank, if demanded by them.

24. Can escrow account opened with the Bank from whom loans are availed by the promoter, be treated as Separate Bank Account for a registered project.

No. A separate bank account needs to be opened in accordance with the provisions of the Act and rules made there under.

25. Can separate account be more than one since at times there might be multiple lenders in same project (building wise lender) though developer might register the project at one go.

No. There should be one designated bank account for every registered project or registered phase of a project.

26. Sometimes buyer is ready and gives undertaking that he is ok to give money beyond 10% however does not want to register. Should it be allowed?

No. Section 13(1) of the Act prohibits the promoter from taking more than 10% of the cost of apartment without entering into a written agreement for sale, duly registered.

27. In case of customers default, can promoter be selective in cancelling units?

Provision of termination of agreement is covered in the Form of Agreement for Sale (Form-G) attached to Rajasthan Real Estate (Regulation and Development) Rules, 2017.

VI. RIGHTS AND DUTIES OF ALLOTTEES :

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

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

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

2. If the registration of a real estate project is revoked for any reason, how will the interest of the buyer, in such project, be protected by Regulatory Authority?

Regulatory Authority will take action in accordance with section 8 of the Act.

3. In case of delay in getting possession from the promoter, will the buyer be entitled to get interest on the amount paid by him, for such delayed period?

Yes. In accordance with the Agreement for Sale as prescribed in Form-G, if the Promoter fails to abide by the time schedule for completing the project and handing over the [Apartment/Plot] to the Allottee, the Promoter agrees to pay to the Allottee, who does not intend to withdraw from the project, interest as specified in the Rules, on all the amounts paid by the Allottee, for every month of delay, till the handing over of the possession.

4. Will such interest payment by the promoter to the buyer be automatic or the buyer will have to approach Regulatory Authority?

The interest payment is in accordance with the Agreement for Sale and hence should be automatically paid. The buyer may have to file a complaint to Regulatory Authority if there is a grievance.

5. Is there a ceiling on the interest to be levied by the promoter in case of default in payment of any installments by the allottee?

In accordance with the Agreement for Sale, the Allottee has to pay to the Promoter, a rate of interest specified in rule 17 of the Rules. The rate of interest is equal to the State Bank of India highest Marginal Cost of Lending Rate plus two percent, on all the amounts which become due and payable by the Allottee to the Promoter under the terms of the Agreement for Sale from the date the said amount is payable by the allottee(s) to the Promoter.

6. What are the provisions for an aggrieved person to lodge a complaint before the Authority?

Section 31 of the Act and Rule 35 of Rajasthan Real Estate (Regulation and Development) Rules, 2017 provide for filing of complaint with Regulatory Authority, by an aggrieved person. The aggrieved person can file an application online as per Form-N prescribed under the Rules.

VII. THE REAL ESTATE AGENTS- THEIR REGISTRATION, DUTIES AND RESPONSIBILITIES :

1. Does the Act also cover real estate agents?

Yes. Real estate agents which engage in selling projects registered under the Act can do so only after registering themselves with the Authority. Section 9 of the Act provides that no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, 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, being sold by the promoter in any planning area, without obtaining registration under section 9.

2. What are the duties and responsibilities of the real estate agents?

Section 10 of the Act provides for detailed functions and duties of real estate agents, which are as under:-

- a) He shall 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, being sold by the promoter in any planning area, which is not registered with the Authority;
- b) He shall maintain and preserve such books of account, records and documents as may prescribed;
- c) He shall 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—
 - (i) falsely represents that the services are of a particular standard or grade;
 - (ii) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - (iii) 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) He shall 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) He shall discharge such other functions as may be prescribed.

3. What is the manner for registration of real estate agents?

The mechanisms for registration, the fees payable, the period of registration, subsequent renewal, rejection of application for registration, revocation etc. are detailed vide the Rajasthan Real Estate (Regulation and Development) Rules, 2017. For registration every real estate agent shall make an application in Form-H to the Authority along with the following documents, namely:-

- a) brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, society, partnership, company etc.);
- b) particulars of registration (whether proprietorship, society, partnership, company etc.) including the bye-laws, memorandum of association, articles of association etc. as the case may be;

- c) photograph of the real estate agent if it is an individual and the photograph of the partners, directors etc. in case of other entities;
- d) authenticated copy of the PAN card;
- e) authenticated copy of the address proof of the place of business; and
- f) such other information and documents, as may be specified by regulations

Real estate agent shall pay a registration fee at the time of application for registration through online mode at the time of online registration, for a sum of Rs.10,000/- in case of the applicant being an individual or Rs.50,000/- in case of the applicant being anyone other than an individual.

4. For which period the registration of real estate agent shall be valid ?

The registration granted to a real estate agent shall be valid upto five years.

5. Whether registration of real estate agent can be renewed? What is the manner and fees for renewal?

The registration of real estate agent may be renewed, on an application in Form-K which shall not be less than three months prior to the expiry of the registration granted.

The application fees for renewal shall be paid through online mode at the time of online submission of application, for a sum of Rs.5,000/- in case of the real estate agent being an individual or Rs.25,000/- in case of the real estate agent being anyone other than an individual.

The real estate agent shall also submit all the updated documents as required for new registration as set out in clauses (a) to (f) of sub-rule (1) of rule 10. The renewal granted shall be valid for a period five years.

6. Whether registration of a real estate agent can be revoked?

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.

7. Whether the registration of a real estate agent is valid for a particular place or for a particular project or for throughout the State?

The Authority shall grant a single registration to the real estate agent for the entire State.

8. In case the Authority does not respond to the application for registration, whether the real estate agent shall be deemed as registered after a certain period?

Yes. Where, on the completion of the period of thirty days, if the applicant does not receive any communication about the deficiencies in application for registration or the rejection of such application, the real estate agent shall be deemed to be registered.

9. Existing customers referring to others for buying the flat in same project or other project of same promoter. Will they be treated as Real Estate Agent?

Yes, if it is against a consideration. Real Estate Agent is clearly defined in section 2(zm) of the Act

10. For Foreign brokers registration and advertisement outside India, will same rule apply as in India ?

Yes, if it pertains to a registered project under the Regulatory Authority.

11. What is the procedure to obtain registration to operate as Real Estate Agents? What are documents required to get real estate agent's license?

It will be through an easy online process. The procedure is explained in Rule 10 & 11 of Rajasthan Real estate(Regulation and Development) Rules 2017.

12. What is the fee for registration? What is the duration?

The fees are in accordance with Rule 10(3) of the Rajasthan Real Estate (Regulation and Development) Rules, 2017. The registration is valid for a period of five years

13. Will marketing and sales staff of Builder/ Promoter/ Developer also need to take registration as an agent?

A real estate agent is clearly defined in Section 2(zm) of the Act.

14. Is registration of a Real Estate Agent is transferable to another agent or to other state where agents intend to shift his office?

No

15. Even if real estate agent has not taken any commission from client and taken it from promoter, can the agent still be responsible and liable for builder's default?

The agent's liability is in accordance with Section 10 of the Act. He is not held liable for the promoter's default.

16. Are the provisions of the Act protect Agents for their commissions not paid by builder or by parties to the deal?

No, these will be guided by the agreements that real estate agents have with the concerned promoters or allottees.

17. Will agent be responsible till the delivery of flats / real estate unit done or is he responsible till documents are registered?

The responsibility of the real estate agent will be in accordance with Section 10 of the Act.

18. What are unfair trade practices of a Real Estate Agent?

It is explained in Section 10 (c) of the Act.

19. What if promoter gives false information or documents to real estate agent and agent acts upon such information, will he be liable?

Under Section 12 of the Act, it is the obligation of the promoter regarding veracity of advertisement and prospectus. The agent is liable if he makes a false or misleading representation concerning the services that he intends to offer.

20. Will listing websites / newspapers/ exhibitions promoting real estate needs to take agents' license?

Yes, if they intend to 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 registered real estate project being sold by the promoter in any planning area.

21. Will real estate agents putting advertisement on builders' behalf need to get approved his print / radio/ TV/ other media promotions content?

No, however no advertisement should be put out for a project unless the concerned promoter has registered the project with Regulatory Authority. The agent should not advertise for services that are not intended to be offered.

22. Will a multi-state operator of real estate agency business need to apply in all state of India?

For working as a real estate agent in Rajasthan, registration will be given by the Real Estate Regulatory Authority of Rajasthan.

23. Is Agent authorized to sign on behalf of his promoter / builder?

No.

VIII. THE REAL ESTATE REGULATORY AUTHORITY :

1. Whether the regulatory authority for Rajasthan has been established?

Yes. As per section 20 the Regulatory Authority is required to be established by the State Government. For speedy implementation of the Act, the State Government has designated the Additional Chief Secretary, UDH Department as an interim Regulatory Authority, until the establishment of the full time Authority.

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

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the State Government on the recommendations of a Selection Committee comprising of the Chief justice of the High court (or his nominee), the Addl. Chief Secretary, UDH Dept. and the Principal Secretary Law Dept.. The section also provides for the qualification etc. that are required for the appointment of the chairman and the members.

3. What is the eligibility for the appointment of the Chairman and the Members of the regulatory Authority?

As per section 22 the Chairperson should have adequate knowledge of and professional experience of at least 20 years and the Members should have adequate knowledge of and professional experience of at least 15 years in urban development, housing, real estate development, infrastructure, economic, technical expert from

relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affair or administration.

A person who has held the post of Addl. Secretary to the Central Govt. or any equivalent post in the Central/State Govt. can be appointed as Chairperson and a person who has held the post of Secretary to the State Govt. or any equivalent post in the Central/State Govt. can be appointed as Member.

4. What are the important responsibilities of the Regulatory Authority?

Apart from the day to day implementation of the Act and the Rules and Regulations made there under the immediate responsibility of the Regulatory Authority are;

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

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

Section 31 of the Act provides for filling of complaint by an aggrieved with the Regulatory Authority. Any aggrieved person may file a complaint in Form-N prescribed in Rules. The Complaint shall be accompanied by a fee of rupees 1000/- to be paid through online mode of payment. The manner for filling the complaint has been specified in rule 35 of the Rules.

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

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

7. Can a promoter or a real estate agent also file complaint against a buyer?

Yes. An aggrieved person having any interest in the registered real estate project can file complaint.

8. Where will the aggrieved home buyer be required to file his complaint?

The aggrieved person can file an application online as per prescribed Form-N which is also provided by Regulatory Authority website.

9. On what grounds can the home buyer file a complaint?

An aggrieved person may file a complaint with Regulatory Authority for any violation or contravention of the provisions of the Act or the Rules or Regulations made there under.

10. Who would decide the complaints?

The Regulatory Authority shall decide complaints.

11. Is there any time limit prescribed for the promoter for formation of society or any other legal entity of home buyers?

Promoter has to enable formation of Association of Allottees like Cooperative Society, Company, Association, Federation etc. within three months from the date on which fifty one per cent of the total number of purchasers, in such a building or a wing, have booked their apartment.

12. Can an allottee who has executed agreement with the promoter prior to the on-going project getting registered with the Authority, be a complainant before the Regulatory Authority?

Regulatory Authority empowers any aggrieved person to file a complaint with respect to a registered real estate project. This will include an allottee who has an agreement executed before the ongoing project is registered with the Regulatory Authority. However, the Regulatory Authority will have authority to adjudicate for violations and contravention of provisions of the Real Estate (Regulation and Development) Act or rules and regulations made thereunder.

IX. THE REAL ESTATE APPELLATE TRIBUNAL :

1. Whether the Real Estate Appellate Tribunal has been established under the Act?

As per section 43 of the Act, Appellate Tribunal is required to be established by the State Government. For speedy implementation of the Act, section 43 empowers the State Government to designate an existing appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act, accordingly the State Government has designated the Food Safety Appellate Tribunal as interim Real Estate Appellate Tribunal until the establishment of permanent Real Estate Appellate Tribunal.

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

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the order/decisions/directions of the Regulatory Authority or the Adjudication Officer, as the case may be. Every appeal shall be accompanied by a fee of rupees 5000/- to be paid through online mode of payment. The appeal shall be filed in Form-M. The manner of filling of appeal and the manner for hearing and disposing the appeal has been prescribed in rule 27 of the Rules.

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

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

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

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

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

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

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

X. OFFENCES, PENALTIES AND ADJUDICATION :

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

As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project. however, in case the promoter consistently defaults or does not comply with the directions/orders of the Authority as regarding registration of the project with the Authority, he shall be liable to additional fine of ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.

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

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

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

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

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

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

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

As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulatively extended up to ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend up to three years or with both.

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

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

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

As per section 65, if the real estate fails to comply with the orders of the Authority he shall be liable to a penalty for every day of default, which may be cumulatively

extended up to five percent of the cost of the plot/apartment/ building, for which the sale has been facilitated by him.

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

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

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

As per section 67 if the allotted fails to comply with the orders of the Authority he shall be liable to a penalty for every day of default, which may be cumulatively extended up to five percent of the cost of the plot/apartment/building.

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

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

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

As per section 70 if person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions which has been prescribed in rule 34 of the Rules, which cannot be more than the maximum fine payable for that offence.

12. What is the role of the Adjudicating Officer?

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

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

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

XI. FINANCE, ACCOUNTS, AUDITS AND REPORTS :

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

The State Government may through due appropriation make grants to the Authority.

2. Who is required to constitute the Real Estate Regulatory Fund?

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

3. What are the purposes for which the Real Estate Regulatory Fund is supposed to be used?

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

4. What are the sources of the Real Estate Regulatory Fund?

Following shall be credited to the Real Estate Regulatory Fund :-

- a) all Government grants received by the Authority,
- b) the fees received under the Act, and
- c) the interest accrued on the amounts (a) +(b)

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

As per section 76 penalties recovered under the Act are to be deposited in such account as may be specified by the State Government in Finance Department.

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

As per section 77 the Authority is required to prepare a budget and maintain proper account and other relevant records and also prepare an annual statement of accounts in the manner prescribed in rule 37 of the Rules. The annual statement of accounts shall be prepared in Form-P prescribed in the Rules.

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

The accounts of the Authority as certified by the CAG together with the audit report is required to be forwarded annually to the State Government by the Authority and the State Government shall cause it to be laid before the State Legislature.

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

As per section 78 the Authority is required to prepare an Annual Report in the manner prescribed in rule 38 of the Rules. The annual report shall be prepared by the Authority in Form-Q as prescribed in the Rules.

In addition, the said Annual Report is required to be forwarded to the State Government for it to be laid before the State Legislature.

XII. MISCELLANEOUS :

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

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

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

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

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

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

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

4. Whether the Regulations has been notified by the Authority under the Act?

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

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

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

6. Does the Government have the power to issue orders towards Removal of difficulties while implementing the Act?

The Central Government, under section 91, has been empowered to notify orders towards removal of difficulties while implementing the Act. However, such removal of difficulties order cannot be issued after the expiry of a period of two years since its commencement. The Central Government vide its notification dt.28.10.2016 has issued such order namely, "the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016" which has been published in Gazette of India on dt.28.10.2016.

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

The Central Advisory Council, to be headed by the Union Minister for Housing, is a multi-member body comprising of representatives of specified Central Minister, five representatives of State Governments to be selected by rotation, five representatives

of Regulatory Authorities to be selected by rotation and any other central government department as notified.

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

8. What is the role and responsibility of the Central Advisory council?

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

XIII. .

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XIV. .

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XV. .

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