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The Indian Real Estate 2.0

■ **Namrta Sudan Rai**



he lack of transparency and inefficiency in the real estate sector had created an immediate demand for a much more efficient and proper vigilance mechanism.

To address this concern, the Government of India recently brought into effect the a legislative change as well as implementation of specialized regulator through the enactment of the Real Estate (Regulation and Development) Act, 2016 ("Act") on May 1, 2016 which has come into full force from May 1, 2017. The Act provides that appropriate state government shall establish Real Estate Regulatory Authority to regulate and promote the state's/Union Territory's real estate sector. RERA rules have so far been notified by 18 states and Union Territories.

The Act focuses primarily on promoting the timely completion of projects and maintaining the consistency by regulating the sale in real estate sector. It further provides for establishing an adjudicating mechanism for speedy dispute redressal through Real Estate Appellate Tribunal ("REAT") to hear appeals from the decisions and orders from the Real Estate Regulatory Authority ("RERA"). With effect from May 1, 2016, the Act brought into force 69 of the 92 sections of the Act and now, with all the 92 Sections of the Act coming into force with effect from May 1, 2017, the builders/promoters will have to ensure that all the ongoing projects as well as new projects registered with the RERA are given completion certificates by the end of July.

The Act has established RERA, REAT and the Central Advisory Council ("CAC") for discharging its functions under the act and has vested with the powers to regulate its own procedure. The CAC will represent the interests of real estate industry, consumers, real estate agents, construction labourers,

academic and research bodies in the real estate sector and will carry out the functions for advising the recommending the Central Government in matters related to implementation of the Act, protection of consumer interest, foster the growth and development of the real estate sector and as any other matter as may be assigned to it by the Central Government. The Act has further entrusted RERA and REAT with the regulatory and adjudicatory authorities with members specializing in the related field by increasing the scope for greater certainty to the matters under the Act. The RERA will facilitate the growth and promotion of transparent, efficient and competitive real estate sector through the protection of the allottees' interest, promoter and real estate agent, creation of single window system for ensuring time bound approvals and clearances of the projects and the measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment.

SOME OF THE KEY PROVISIONS OF THE ACT ARE:

(a) Mandatory registration of real estate projects by the Promoters with RERA. However, no registration of the real estate projects will be required inter alia where the area of land does not exceed 500 (five hundred) square meters or the number of apartments does not exceed 8 (eight) inclusive of all phases.

(b) Mandatory registration of real estate agents.

(c) Provides functions and duties of promoters along with rights and duties of allottees.

(c) Depositing 70% of the amounts realised from the real estate projects from the allottees from time to time to be deposited in a separate bank account in a scheduled bank to cover the cost of construction and the land



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cost, which will be used only for that purpose. However, the withdrawal from the account can be made in the proportion to the percentage of completion of the project.

(d) 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 5 years by the allottees from the date of handing over possession, the promoter will rectify such defects without further charge, within thirty (30) days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

(e) Both developers and buyers to pay the same penal interest of SBI's Marginal Cost of Lending Rate plus 2% in case of delays.

(f) The proposed project is required to be developed and completed by the Promoter as per the approved sanctioned plans, layout plans and specifications. Any alterations or additions in the sanctioned plans, layout plans and specifications after the initiation of the project would require 2/3rd of the allottees.

The allottees' interest has been protected under the Act such as allottees can get the requisite information regarding approved sanctioned plans, specifications etc., claim refunds (along with interest) of the amount paid to the promoter in the event 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, get compensation if allottees (within five years of getting possession) brings to the notice of promoters any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter, allottees may also file a complaint with the RERA (or the adjudicating officer) for any violation or contravention of the provisions of the Act. Further, any person aggrieved by the decision or order of the RERA may file an appeal before the Appellate Tribunal of the relevant jurisdiction.

As regards builders/promoters, there is a mixed reaction in the real estate industry with the Act coming into full force. The recent development has brought the builders/promoters into action for making requisite financial arrangement to comply with the provisions of the Act. The builders/promoters are now restructuring their real estate projects to meet the requirements of the Act more effectively and proposing to treat their each building as a different phase for registration process. The mid-sized builders/promoters are also proposing to realign their business, which may include seeking financial assistance to meet the 70% deposit criteria. It is also interesting to note that some of the builders/promoters are now in a hurry to handover the possession to the allottees for avoiding penalty under the Act, which shows that the provisions of the Act will play an effective role in ensuring that the possession is handed over to allottees in a timely manner.

We are hopeful that this recent development will bring a much awaited change and constructive progress in the real estate industry. A new transparent, regulated and disciplined real estate market may emerge. This may also encourage the builders/promoters to realign and revamp their business models to attract global capital flows in the Indian real estate market. [W](#)



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