



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-अ

वर्ष २, अंक १०९(३)]

गुरुवार, डिसेंबर ८, २०१६/अग्रहायण १७, शके १९३८

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असाधारण क्रमांक १६३

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाने केंद्रीय अधिनियमान्वये तयार केलेले
(भाग एक, एक-अ आणि एक-ल यांमध्ये प्रसिद्ध केलेले नियम व आदेश यांव्यतिरिक्त) नियम व आदेश.

HOUSING DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated 8th December 2016

NOTIFICATION

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.

No. REA. 2016/CR No.79/DVP-2 .—The following draft of rules which the Government of Maharashtra proposes to make in exercise of powers conferred by sub-sections (1) and (2) of section 84 of the Real Estate (Regulation and Development) Act, 2016, and of all other powers enabling it in that behalf, is hereby published, for information of all the persons likely to be affected thereby; and notice is hereby given that the said draft rules will be taken into consideration by the Government of Maharashtra on or after the 23rd December 2016.

2. Any objections or suggestions, either through e-mail *viz.* “suggesstionsonrera@maharashtra.gov.in”, or in post, which may be received by the Principal Secretary, Housing Department, Mantralaya, Mumbai 400 032, from any person with respect to the said draft on or before the aforesaid date, will be considered by the Government.

DRAFT RULES

In exercise of the powers conferred by sub-section (1) and clauses (v), (w), (x), (y) and (zf) of sub-section (2) of section 84 of the Real Estate(Regulation and Development) Act 2016 (16 of 2016), and of all other powers enabling it in that behalf, the Government of Maharashtra, after considering the objections and suggestions pursuant to the Government Notification, Housing Department, No. ***, dated the *** of 2016, published in the Maharashtra Government Gazette, Extraordinary, Part IV-A, dated the *** of *** 2016 , is hereby pleased to make the following rules, as follows, namely :---

CHAPTER I PRELIMINARY

1. *Short title and commencement.* - These rules may be called the Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2016.

2. *Definitions.*- (1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(b) “Appellate Tribunal” means the Maharashtra Real Estate Appellate Tribunal established under the sub-section (1) of section 43 of the Act by the State Government by notification in the *Official Gazette*, for such area or areas as may be specified in the notification and include different Appellate Tribunal as may be established for different areas;

(c) “Form” means the Forms appended to these rules;

(d) “section” means section of the Act;

(e) “Selection Committee” means the committee specified in sub-section (3) of section 46 of the Act;

(f) “State Government” or “Government” means the Government of Maharashtra.

(2) Words and expressions used hereinabove but not defined shall have the same meaning respectively assigned to them in the Act.

CHAPTER II

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

3. *Maharashtra Real Estate Appellate Tribunal.*- The Government may by notification in the *Official Gazette* establish Appellate Tribunal for such area as may be specified in the notification.

4. *Selection Committee Procedure.*-(1) The State Government shall make a reference to the Selection Committee for appointment of Members of the Appellate Tribunal or when any vacancy arise or likely to arise in the Appellate Tribunal.

(2) The Selection Committee may appointment a search committee consisting of such persons as the Selection Committee considers appropriate, to suggest a panel of names including suitable officers in the service of Central or State Government possessing the requisite qualifications and experience as specified in clause (c) of sub-section (1) of section 46 of the Act and suitable for being considered for appointment as or lay down guidelines for inviting applications for the selection of the Members of the Appellate Tribunal.

(3) The Selection Committee shall thereafter make a recommendation to the State Government for the consideration in the form of a panel of not more than three persons in order of preference separately for the post of vacancy or vacancies referred to by the State Government.

(4)The Selection Committee shall make its recommendations to the State Government, within a period not exceeding sixty days from the date of reference made under sub-rule (1).

(5)The Selection Committee shall normally hold its meetings at Mumbai or at such places, as may be decided by the Chairperson by recording the reasons for the change of the venue of such meetings.

(6)The Notice or Agenda, as the case maybe, for the meeting of the Selection Committee shall be issued in advance. The date and venue for the meeting shall be fixed with the convenience of the Chairperson of the Selection Committee.

(7) The Secretary of the Housing Department shall be the convener of the Selection Committee.

5. Appointment of Member.- The State Government shall consider the recommendation of the Selection Committee for the appointment of Member or fill the vacancy in order of preference as recommended by the Selection Committee. If the State Government appoints person not according to the order of preference, the Government shall record the reasons in writing therefor.

CHAPTER III

SALARY AND ALLOWANCES

6. Salary and allowances payable and other conditions of service of Chairperson and Members of the Appellate Tribunal.-(1) The salaries and allowances payable to the Chairperson and Members of the Appellate Tribunal shall be as follows,-

(a) The Chairperson shall be paid a monthly salary equivalent to the Judge of a High Court.

(b) The whole time member shall be paid a monthly salary equivalent to that of the Chief Secretary of the State Government.

(2)*Leave.-* The Chairperson and every Member shall be entitled to thirty days of earned leave for every year of service.

(3)*Leave Sanctioning Authority.-* Leave Sanctioning Authority in case of,-

(a) the Chairperson of the Appellate Tribunal, shall be the Chief Justice of High Court; and

(b) the Members of the Appellate Tribunal, shall be the Chairperson.

(3) The other allowances and conditions of service of the Chairperson and the whole-time Member shall be as per the Order issued by the State Government, from time to time:

Provided that, such entitlement shall not be less than what he is otherwise eligible in case of serving government servant.

7. Tenure of office.- (1) *Tenure of Office-* The term of office of the Chairperson and Members shall be in accordance with Section 47(1) and (2) of the Act.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most (in order of appointment) Judicial Member of the Appellate Tribunal holding office for the time being shall discharge the functions of the Chairperson until the day on which the Chairperson resumes the charge of his functions.

(3) If any vacancy occurs in the office of the Chairperson by reason of his death or resignation, the State Government shall nominate Senior most Judicial Member as per seniority of date of appointment to act as Chairperson and the Member so nominated shall hold office of Chairperson until the vacancy is filled by a fresh appointment under section 46 of the Act. Till that period the senior-most (in order of appointment) Member of the Appellate Authority holding office for the time being shall discharge the functions of the Chairperson until the day on which the Chairperson resumes the charge of his functions.

8. Oath of office and secrecy:-(1)Every person appointed as the Chairperson of the Authority shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Minister in charge of the Housing Department of the Government.

(2)Every person appointed as a Member shall, before entering upon his office, make and subscribe an Oath of Office and Secrecy, in Form I and Form II, respectively, appended to these Rules, before the Chairperson of the Appellate Tribunal.

9. Declaration of financial or other Interest.- Before appointment, the Chairperson and the Member shall have to take an undertaking in Form III appended to these Rules, that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

CHAPTER IV

PROCEDURE OF INQUIRY AND REMOVAL OF CHAIRPERSON AND MEMBERS

10. Procedure of inquiry .-(1)Whenever the State Government is of the opinion that there are reasonable grounds for making an inquiry against the Chairperson or Member on the grounds specified in sub-section (1) of section 49 of the Act, the Government may, after consulting

Chief Justice of Judicature at Bombay, appoint a Judge of the High Court for the purpose of conducting such inquiry.

(2) The Government shall inform the charges against the Chairperson or such Member, as the case may be.

(3) The State Government shall forward to the Judge so appointed, copies of,-

(a) the statement of charges against the Chairperson or Member, as the case may be;

(b) material documents and other evidences relevant to the inquiry.

11. Powers of the Judge.- (1) The Judge so appointed, shall deliver or cause to be delivered to the Chairperson or Member, as the case may be, a copy of the charges and a list of documents, if any, and shall require him to submit within such time as may be allowed, a written reply or statement of his defence.

(2) The Judge shall be guided by the principles of natural justice and shall have power to regulate his own procedure including the fixing of places and time of the enquiry.

(3) The Judge shall have, for the purposes of discharging his functions under these rules, the same powers as 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 :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of document;

(c) receiving evidence on affidavits; and

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office.

(4) Where it is alleged that the Chairperson or Member of the Appellate Tribunal is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Judge may take necessary action as deemed fit for the medical examination of the Chairperson or Member of the Appellate Tribunal.

(5) After the conclusion of the inquiry, the Judge shall submit his report to the State Government stating therein his findings and the reasons thereof on each charges separately with such observations as he thinks fit. The report of inquiry shall be submitted to the State Government along with the finding of the inquiry wherein clearly indicating the allegations are proved or otherwise.

(6) On the basis of the report of the Inquiry along with the recommendations so received, the State Government shall in consultation with the Chief Justice of the Judicature of Bombay by Order decide either to remove or otherwise the Chairperson or Member, as the case may be.

12. Filling of vacancy.- The State Government shall initiate necessary action to fill the vacancy of Chairperson or Member of the Appellate Tribunal, as the case may be, caused by such removal.

CHAPTER V

CONDITION OF SERVICE OF OFFICERS AND OTHER EMPLOYEES OF AUTHORITY

13. Categories of Officers and employees of the Tribunal.- The nature and categories of officers and employees of the Tribunal shall be recommended by the Tribunal for the consideration of the State Government which shall be approved with or without modifications, as the case may be, by the State Government.

14. Conditions of service. - (1) The conditions of service of the officers and employees of the Appellate Tribunal and in any other category of employees appointed by the State Government, in the matter of pay, allowances, leave, joining time, joining time pay, provident fund, age of superannuation, pension and retirement benefits and other conditions of service, shall be regulated in accordance with such rules and regulations as are, from time to time, applicable to officers and employees of the State Government and drawing the corresponding scales of pay.

CHAPTER VI

MISCELLENOUS

15. Interpretation.- If any question arises relating to the interpretation of these rules or when express provision has not been made in these Rules about a particular matter, the same shall

be referred to the State Government for its decision. The State Government shall take decision after recording reasons within the framework of the Act. The decision of the State Government shall be binding on the Appellate Tribunal.

16. Residuary provision:- Matters relating to the terms and conditions of service of the Chairperson or Member with respect to which no express provision has been made in these rules, shall be referred by the Appellate Tribunal to the State Government for its decision, and the decision of the State Government thereon shall be binding on the Chairperson or Member, as the case may be.

FORM – I

(See rule 9)

Form of Oath of Office for the Chairperson/Members of the Maharashtra Real Estate
Appellate Tribunal

I, _____, having been appointed as the Chairperson/Member (cross out portion not applicable) do solemnly affirm and do swear in the name of God that I will faithfully and conscientiously discharge my duties as the Chairperson/Member (cross out portion not applicable), of the Maharashtra Real Estate Appellate Tribunal, to the best of my ability, knowledge and judgement, without fear of favour, affection or ill-will.

Dated:

(Name of the Chairperson/Member)

MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL

FORM – II

(See rule 9)

Form of Oath of Secrecy for the Chairperson/Members of the Maharashtra Real Estate
Appellate Tribunal

I, _____, having been appointed as the Chairperson/Member (*cross out portion not applicable*) do solemnly affirm and swear in the name of God that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as the Chairperson/ a Member (*cross out portion not applicable*), of the Maharashtra Real Estate Appellate Tribunal except as may be required for the due discharge of my duties as the Chairperson/ a Member (*cross out portion not applicable*).

Dated:

(Name of the Chairperson/Member)

MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL

FORM – III

(See rule 10)

Declaration against acquisition of any adverse financial or other interest

I _____, having been appointed as the Chairperson/Member (*cross out portion not applicable*) of the Maharashtra Real Estate Appellate Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is

likely to affect prejudicially my functioning as the Chairperson /Member (cross out portion not applicable), of the Maharashtra Real Estate Appellate Tribunal.

Dated:

(Name of the Chairperson/Member)

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL

By order and in the name of the Governor of Maharashtra,

R.K. DHANAWADE,
Deputy Secretary to Government.