



NAREDCO'S Comments on Draft Real Estate (Regulation & Development) Bill, 2011

Clause No.	Page No.	Issues	Suggestions
2(t)	4	(t) "immovable property" includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;	The Bill ambitiously defines "immoveable property" and "Real Estate Project". The aforesaid definitions intends to include "sale of immoveable property and development of immoveable property" both to be covered by the Bill. The object of the Bill indicates that the Bill intends to provide comprehensive legislative Scheme for development of immoveable property and construction and management thereof and Regulations in respect of development of immoveable property. <ul style="list-style-type: none">• Further the Bill takes into its sweep even "alteration".• The subject of Sale and Transfer of Immoveable Property is already covered
2(ze)	5 & 6	(ze) "real estate project" includes the activities of, - (i) development of immovable property including construction thereon or alternation thereof and their management; (ii) sale, transfer and management of immovable properties;	



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			<p>by the Transfer of Property Act, 1882 and which has stood the test of time. The Bill needs to be rationalized in this area.</p> <p>The Bill whilst defining “immoveable property” should provide for clarification on the Township development, Lay Out development, Division of Larger properties, phase-wise development upon division of larger property, development of Plots or colonies or group housing schemes.</p>
2(y)	4	Definition of owner does not include Power of Attorney holder (as Owner).	In many states, PoA holder represents the Owner and accordingly corrections are required to be done.
3	6	No development without registering and obtaining certificate of registration from Regulatory Authority.	Registration should be online and there should be no need of obtaining certificate of registration.



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3(a)	6	No registration required when area of land to be developed does not exceed 4000 sqm.	<p>1. Retain the limit as it is.</p> <p>2. Should be made applicable to all developments - plots / units /flats which is not for personal use.</p> <p>If occupation certificate of any project is obtained then such project will be out of the Regulatory purview (like VAT, Service Tax is not applicable) and there is no case wherein the promoter take advance and does not complete the construction work hence should be kept out of the purview of this ambit.</p>
3(b)	6	No registration required for projects approved one year prior to commencement of the Act (retrospective date effect).	<p>Retrospective bad in practice.</p> <p>Make applicable prospectively (After the commencement of Act).</p>
4(3)(b)	7	Declaration signed by Promoter stating he	Certificate from practicing Lawyer with



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(i)		has legal title to the land.	minimum 5 years experience should suffice.
4(3)(b)(ii))	7	(ii) Declaration signed by Promoter that the land is free from all encumbrances, or as the case may be, of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;	<p>Promoter should be allowed to hypothecate land to raise finance for the project and remove it before transferring to buyers. The clause accordingly should be modified. There may not be adequate booking or finance to complete the project from sale proceeds.</p> <p>“estimated cost of real estate project” means the total cost involved in developing the real estate project and excludes land cost;</p> <p>We would strongly recommend that only the construction cost is necessary to be construed as cost of project and the land cost be excluded.”</p>



Clause No.	Page No.	Issues	Suggestions
4(3)(b) (iii & iv)		(iii) his affirmation that the project or the phase of the project shall be completed as the case may be in accordance with the terms and conditions of the registration; (iv) the period of time within which he undertakes to complete the project or phase thereof, provided it is within the period of sanction by the competent authority;	Declaration signed by promoter that project will be completed in accordance with terms and conditions of registration and within the time agreed. In case of force majeure circumstances and delay in receipt of timely approvals from competent authority the project may get delayed, should be added.
4(3)(b)(v))	7	Seventy percent (70%) of the Sale proceeds to be deposited in a separate bank account.	Each developer while applying for registration will estimate the total project cost depending on what the developer is going to construct such as layout / plotting / structures / row houses / bungalows / multi storied building etc. The booking proceeds and installments of adequate no. of apartments towards amount so determined, as actual development / construction cost will be



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			<p>kept in a separate account. From the said separate account, Developer will spend towards development / construction costs. Up to the estimated projected construction costs, developer will not be allowed to withdraw the sale proceeds. Once adequate proceeds from bookings pertaining to the construction cost has been determined and deposited in the said account, the developer will be allowed to utilize the remaining surplus fund amount for any other purposes, to promote his business.</p> <p style="text-align: center;">or</p> <p>Alternatively 30%, of project cost could be retained in the project account towards the cost of construction and surplus withdrawn by developer for other proposals, as prevalent in Haryana.</p> <p>It would be obligatory on the developer to</p>



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			<p>spend money for the development / construction from the said account.</p> <p>or</p> <p>The developer may give a Performance BG for amount equal to development cost for completed layout or construction layout for the complete development project, which shall be released automatically on obtaining occupation certificate.</p> <p>The authority shall not hold BG or the proportionate no lien account once occupation certificate by the developer is obtained.</p>
4(7)(a)(c)	8	The Authority shall grant registration if satisfied that Promoter has Entered into agreement with competent authority for the development works.	<p>Authorities don't execute such agreements. Clause to be modified.</p> <p>Developer needs to upload the title, and sanctions such as license/CLU, copy of submissions/sanction plans etc through the</p>



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			password provided by the authority.
5(1)	8	Registration extension for 1 year x 2 terms	Registration should be extended for 2 terms of 2 years each. Clause accordingly modified.
6	8	Upon lapse of the registration or on cancellation of the registration under this Act, the Authority, may consult the Appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as the case maybe.	Authority should bridge the gap and make efforts to get the project completed by the developer. Cancellation of registration should be the last option. No time limit has been fixed for authority to take decision. A time limit of 15 days should be fixed.
7(1)(a)(b) (c)	8	Revocation of registration if the promoter makes willful default in doing anything required of him by or under this Act or the	Willful default is difficult to ascertain. No Revocation of registration without proper investigation by the authority and before



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		rules or the regulations made thereunder;	hearing the promoter. If promoter is found guilty, a monetary penalty should be imposed and promoter, if willing, given a chance to complete the work. Revocation of registration should be undertaken as last resort.
7(3)	9	The Authority may, instead of revoking the registration under subsection (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.	<p>The promoter should be allowed to complete the project as per the terms and conditions under the guidance of the authority and the terms and conditions should be as similar as to other industries. (This is must, otherwise, lot of complications will be faced by the promoter such as banks, financial institutions, authority approvals, commitment to the land owner etc.)</p> <p>In case at any stage, the developer is unable to complete the project, on account of circumstances beyond his control, then</p>



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			the developer should be allowed 'exit' after the refund of money paid to him by customers along with interest at a rate allowed by public sector banks on fixed deposits or after payment of cost required to complete balance work.
7(4)(abc) (5)	9	Upon revocation of registration by the Authority, Promoter shall be debarred and his name will be declared in the list of defaulters with regulatory authority including authorities in other states	<p>Promoter should be directed to complete the work as stipulated in the Agreement failing which authorities will get the work executed by appointing a Contractor on behalf of the promoter and recover the cost from BG / no lien account.</p> <p>The decision to revoke the Registration should be passed by at least three member bench comprising of judicial officers and a detailed order along with findings and reasons for revoking the Registration should be given by the Bench/ Authority after giving proper opportunity to the</p>



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			Promoter
8(2)(g)	10	Publish list of persons who have booked property on website and update fortnightly.	1. Should be deleted to maintain secrecy or be voluntary on developer. 2. Disclosing the names of real estate agents not required.
9(2)	10	No publication of advertisement till it is filed with the authority.	Replace with – “The developer shall file copies of advertisements released from time to time to the authority.”
9(3)	11	In the advertisement website address of the regulatory authority is to be mentioned, so that consumer can directly approach to the authority website.	As no sale is allowed without registration, why this.
11(1)	11	Promoter not allowed to accept any sum of money as deposit or advance unless a written Agreement of the Sale is executed.	20% (maximum) of the total sale value to be allowed as advance towards registration and balance after execution of Agreement of sale as the bookings are done across the



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			world, across several points of contact, online as well as by property brokers and it is not possible to ensure which apartment gets allotted, whereas at same time apartments can only be allotted at one control place and then agreement executed. Maharashtra Act allows 20%.
11(2)	11	Date on which possession is to be handed over.	Possession date is subject to force majeure conditions and connection of services by municipality as also on infrastructure development by authority.
12(1)(c)	11	Time schedule for connecting project with various municipal services.	If service provider is unable to provide the required services, then the promoter will not be responsible – should be added.
12(1)(d)	11	the certificate signed by the owner, architect and structural engineer regarding the compliance of statutory provisions	The word 'owner' should be replaced by 'promoter'.



Clause No.	Page No.	Issues	Suggestions
		related to the relevant revenue, planning, local, structural safety, and fire safety laws or requirements;	Reason Land in many cases is on power of attorney and under collaboration/ JV agreements with promoter who is responsible for all actions.
12(2)(b)	12	obtain a completion certificate from the relevant local authority as per local laws or other laws in force and to make it available to the allottees individually or to the association of allottees, as the case may be;	The Act should make local authority accountable for giving 'occupancy/Completion Certificate' within a maximum period of one month after application.
12(2)(e)	12	take steps for the formation of an association or society or cooperative Society, as the case may be, of the allottees, under the laws applicable or, as soon as the majority of members for the formation of the same are in place;	Penalty for allottees who refuse to become members of society/association should be specified. The Act should also specify levy of heavy penalty on allottees for non payment of maintenance charges.



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			<p>Formation of association / society / co-operative society applicable to the large layout also (safety to the developer for the residual FSI? Sec.7 applicability from MOF?</p> <p>Buyers either pay as part of super area or lease of the particular building(S) to be given in favour of the society upon completion of the complete layout / project / colony, before taking/ hand over to the prospective purchaser's association.</p>
12(2)(f)	12	not cancel the allotment unless he has sufficient cause to cancel it in terms of the agreement of sale and if he so cancels the agreement of sale, he shall give due notice to the other parties to the agreement of sale and tender a refund of the amount collected along with interest at such rates as may be prescribed:	In case customer defaults, there is no conferred power to developer to recover cost. How developer will refund with interest if customer defaults as his paid amount has gone into land and building.



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		<p>Provided that the allottee may approach the Authority for relief if he is aggrieved by such cancellation and thinks the cancellation of the allotment by the promoter is unilateral and without any genuine cause and is not in accordance with the terms of the agreement of sale.</p>	<p>Developer to refund only in case of default or failure to carry out construction as per agreement.</p> <p>For a defaulting customer forfeiture should be the initial deposit upto 20% of the sale value.</p> <p>Note: On many occasions when prices fall below 20%, customers simply cancels flat/unit; hence this action required.</p> <p>Suitable balanced clause is required.</p> <p>Promoter not to be responsible for alterations done after handing over possession of the flat or apartment:-</p> <p>After possession of the building or flat or apartment is handed over to the flat purchasers/unit holders, the flat purchasers/unit holders shall not be</p>



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			<p>permitted to carry out any additions or alterations in the flat, apartment or building and the promoter shall not be responsible if additions and alterations are done in the flat, apartment or building by the flat purchasers/unit holders or occupier, in violation of the building regulations.</p> <p>Supply of essential services: It shall be the responsibility of the promoter to provide essential services such as water supply, electricity, light in passages and staircases, lifts and sanitary services as per agreement to the flat purchasers/unit holders of the building or apartment or to any person in authorized occupation thereof till such time and in such manner as specified in the agreement of sale and such services shall not, except with just and sufficient notice, be cut-off,</p>



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			<p>withheld, or curtailed. The aforesaid responsibility is subject to the service provider providing the same. If the service provider is unable to provide the aforesaid services, then the promoter shall not be responsible to provide the same.</p> <p>The Layout including Recreation Ground/s, Park/s, Garden/s and Playground/s disclosed along with the Building Plans, can be amended, modified and varied by the Promoters from time to time in accordance with the Development Control Regulations including for the utilization of the full Development Potential available from time to time.</p>
12(3)		add new sub clause.	<p>Responsibility of Competent Authorities: after clause 12(2)</p> <p>Competent Authority shall provide essential</p>



Clause No.	Page No.	Issues	Suggestions
			infrastructure such as roads, sewer connection, power, water etc with in fixed time schedule and before the completion of the project. Time extension on delivery and compensation will be paid by the defaulting party responsible to cause delay.
13(1)	12	Adherence to approved plans and project specifications.	Changes in layout and construction of new buildings in accordance with Development Control Regulations after approval from local authority to utilize full development potential should be permitted.
13(2)	12	Structural defects to be rectified by the Promoter if brought to notice within a period of one year, at his cost and expense.	Allottees are not permitted to undertake any alteration to the structure / beams / columns and regulator will have power to prosecute the allottee and compensate the damages to the developer in such event, to be included. Promoter shall not be responsible for alteration done after



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			handing over possession.
14(i)	13	Transfer of title	Local practices to be followed which varies from State to State. Transfer of title will be subject to – (a) right of promoter to dispose of unsold flats. (b) use of roads, facilities, amenities, services etc for balance development. (c) right to develop remaining layout land. (d) use of addl. FSI, TDR FSI consequent to change in policy.
15(b)	13	Return of amount on failure to complete.	Penalty should be removed and refund restricted to principal plus interest.
16(2)(3)		(2) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any	Charging of interest on delayed payments shall be as per the agreement signed between buyer and promoter. (Agreement



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		<p>amount or charges to be paid under sub-section (1).</p> <p>(3) The obligations of the allottee under sub-section (1) and the liability towards interest under sub-section (2) may be reduced when mutually agreed to between the promoter and such allottee.</p>	<p>of Sale).</p>
18 & 19	14	<p>Chairperson and two members shall be appointed by the government with experience in real estate.</p>	<p>The Authority shall consist of a Chairperson and not less than three whole time Members to be appointed by the Appropriate Government.</p> <p>Chairperson should be a retired Chief Justice/ judge of High Court. No Government official (serving or retired) should be appointed chairperson.</p> <p>Out of the three (3) members to be appointed by the Govt., one should be from DTCP, one from real estate industry and</p>



Clause No.	Page No.	Issues	Suggestions
			one from State Consumer Forum.
28 & 29	16 & 17	Functions of Authority	<p>Provides for functions of Authority for planned land development and promotions of Real Estate Sector. Authority has multiple functions requiring multiple skills and abilities with vast infrastructure. The following are the nature of functions expected to be performed by Real Estate Regulatory Authority.</p> <ul style="list-style-type: none">a) to protect the interest of the allottees.b) to improve processes and procedures for clearance and sanctions of plans and get them put the process online and issue of certificate by local body to implement social and economic planning. To make clearance process simple, transparent and hassle free (with time limits) under single window for land title certification to CLU/ licensing, building plans, health,



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			<p>environment clearance, DGCA clearance.</p> <p>c) to encourage adequate supplies construction of all environmentally, sustainable and affordable housing, to promote standardization of construction materials.</p> <p>d) Ensure affordable supply of housing for all segment of society as per local requirement varying from city to city and area to area so that all income groups have access to affordable housing by making FAR & density norms as per demand of areas.</p> <p>e) to publish and maintain web sites.</p> <p>f) to act as nodal Agent, coordinate efforts of appropriate Government regarding development of Real Estate Sector .</p> <p>g) to act as a watch dog of Real Estate Industry & advise ways to augment supply to contain prices.</p> <p>h) to act as Infrastructure Authority.</p>



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			<p>i) to monitor malpractices leading to escalated cost of construction</p> <p>j) to give technical advice, conduct investigation and implementation.</p> <p>k) to perform judicial functions.</p> <p>l) to act as executive body and to coordinate between Promoter and Purchasers, Local Body and Government.</p> <p>The functions as envisaged in the Bill are highly ambitious and at the same time non-realistic to be achieved in real life. In fact, RERA is modeled to become a Local Body, Planning Authority, Executive Authority, Town Planning Authority and Judicial Authority. Each of the aforesaid functions is at present performed by respective Authorities constituted under the existing Statutes. Be it, Municipal Corporation Act, Town Planning Act, Housing Boards, Infrastructure Law, Civil Procedure Code.</p>

Clause No.	Page No.	Issues	Suggestions
			<p>The Government must review the functions of RERA and rationalize if necessary, providing for hierarchy of functionaries and bodies within the same Bill or coordinate with other Authorities under the statutes operating in the areas or holding fields for effective functioning. There is a grave danger of RERA becoming too large and wide an Authority which will be ultimately unable to carry out its functions and satisfy the expectations and become merely a “paper authority”, failing to achieve most of the objects of the Bill and the Bill going the same way as several legislations have gone in the past and become ineffective legislations.</p>
30(1)(2)	17	Dispute resolution mechanism	<p>The ombudsman/ dispute reconciliation/ mediation/ arbitration mechanism should be fast & effective.</p>



Clause No.	Page No.	Issues	Suggestions
			This section relating to appointment of Conciliators/Arbitrators/Mediators should be subject to the Agreement between the parties and other relevant laws prevailing thereto. The mediators preferably should be retired high court judges.
31(a)(b)	17	Powers of Authority to call for information, conduct investigation etc.	The promoter will appoint an architect / lawyer / officer to represent the matter and promoter personally need not be summoned (many multi-nationals corporate companies are in the field of construction and technically not possible for them to attend the matter & promoter should be able to focus on quality & delivery).
32	17	Powers of Authority to issue direction	Direction needs to be specified, otherwise it would result into a vague clause with discretionary powers to the authority,



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			which could create problems.
35	18	Establishment of Real Estate Appellate Tribunal.	Tribunal should adjudicate - (a) adjudicate any dispute - – between promoter and authority – between LA and promoter – between government , government agency and promoter – between bank ,financial institution and promoter – between service provider and promoter – services consultant(architect, advocate, structural engineer, MEP ,surveyor, engineer and promoter (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.
44(1)(3)	21	(1) Appellate Tribunal not bound by procedure laid down in the Code of Civil	Chapter V and Section 35 establishes Real Estate Appellate Tribunal (“Tribunal”)



Clause No.	Page No.	Issues	Suggestions
		<p>Procedures 1908, but shall be guided by principles of natural justice.</p> <p>(3) Appellate Tribunal not bound by rules of evidence, contained in Indian evidence act 1872.</p>	<p>which takes within its sweep various disputes between the Promoter and the Allottee, Promoter and the Authority and Government and Authority. However, under Section 44(1), the Bill provides that the Tribunal will not be bound by Civil Procedure Code, 1908 and by the Indian Evidence Act, 1872. The Bill proposes to oust the jurisdiction of Civil Court to adjudicate all the disputes and vests the Tribunal with the power to decide such matters. There is no justification or need to do away with the applicability of Civil Procedure Code, 1908 and Indian Evidence Act, 1872. The Tribunal is not expected to be Lok-Adalat or merely Arbitral Tribunal, but the Tribunal is "SPECIAL COURT" for Real Estate Industry. The Tribunal as envisaged by the Bill ought to be bound by the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872.</p>



Clause No.	Page No.	Issues	Suggestions
			The regular civil court procedure to be followed wherein a fair opportunity is given to either party.
44(4)(a-h)	21 22	Appellate Tribunal has power to summon and enforce the attendance /ask for production of the document / examine the witness	The regular civil court procedure to be followed wherein a fair opportunity is given to either party.
47(1)(2)(3)	22	Appeal to Supreme Court	There is provision under Section 47 of the Bill that appeal shall lie against the order of the Tribunal only to the Supreme Court. First of all, the Tribunal is expected to be a "SPECIAL COURT" and therefore the regular right of two appeals should be available to any litigant who approaches the Tribunal. The Government must consider to provide for right of first appeal to the High Court and the right of second appeal to the Supreme Court from the order of the High



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			<p>Court.</p> <p>Further, it should be specifically provided that the appeal shall lie even against the interim orders. Experience shows that interim orders are of far reaching consequences and if any litigant is rendered remediless, then such a provision will be struck down by the Courts.</p>
48(4)	23	The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, construction labourers, nongovernmental organizations and academic and research bodies in the real estate sector.	National Apex Real Estate Industry Associations and Consumer Forum should be included in the Central Advisory Council.
50 to 53	23 - 24	Punishment for non registration. Penalty for contravention of other	Chapter VII and Sections 50, 51, 52 and 53 provide for punishment for non-



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		<p>provisions of Act. Penalty for willful failure to comply with orders of Authority. Penalty for willful failure to comply with orders of Appellate Tribunal.</p>	<p>registration, penalty for contravention of provisions of this Act and punishment for willful failure to comply with the orders of the Authority and Appellate Tribunal.</p> <p>Prime facie, the aforesaid Sections indicate that there is excessive and/or disproportionate punishment or penalty provided in the Bill. For example, non registration of Real Estate Project can attract imprisonment for three years or penalty which may extend to 10% of the estimate cost of Real Estate Project. The punishment has to be commensurate with the offence or violation. The aforesaid provision is evidently disproportionate, excessive and arbitrary.</p> <p>Further, the penalty upto 5% of the estimated cost of the Real Estate Project for “contravention of any other provisions</p>



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			<p>of the Act” is too wide and sweeping and there is complete lack of proportionality between the contravention on the one hand and penalty on the other.</p> <p>Further, the punishment of penalty of one lakh rupees per day which may extend to 5% of estimate cost for contravention of orders or directions of RERA, is also similarly excessive and disproportionate. Non-compliance of orders of Court or Authority can have provision for execution of such orders or for contempt of orders of the Court (which is applicable to RERA). Further, higher penalty can be prescribed for willful failure of compliance of specific orders or directions and cannot be for any order or direction of the Authority across the board.</p> <p>The main provision applies to non</p>



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			<p>compliance of orders of the Appellate Tribunal and the punishment provided under Section 53 is of imprisonment for a term which may extend to one year with a penalty which may extend to 10% of the estimated cost of the Real Estate Project or with both! The aforesaid provision requires review by the Government.</p> <p>We suggest that Imprisonment should be deleted and a fine / compensation, maximum 2 times of the damages suffered by the person should be allowed like any other industry. No imprisonment clause to be kept, which is outdated and also removed by authorities like SEBI, FEMA, FERA. etc.</p> <p>Maharashtra Housing (Regulation and Development) Act 2011 caters for maximum monetary punishment of upto</p>



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			<p>Rs. 1 crore and a minimum of Rs. 1,000 per day as under</p> <ul style="list-style-type: none">(a) punishment for non registration of flats/apartments for sale – penalty upto Rs. 1,000 per day of default.(b) Penalty for contravention wrt veracity of advertisements, non refund of amount with interest on failure to give possession within specified time and creation of mortgage without consent of parties after execution of agreement of sale – Rs. 10 thousand each day during which such non compliance continues, or Rs. 50 lakh whichever is lower.(c) Penalty for nonpayment by allottee – Rs. 10 thousand or 1% of sale price of the property whichever is higher.(d) Penalty for non compliance of orders or directions of regulatory authority or appellate tribunal – upto Rs. 10 lakhs.



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			<p>(e) Penalty for contravention of other provisions of the act – upto Rs. 50 thousand.</p> <p>(f) Penalty for non registration of agreement of sale, non operating of separate account, additions/alterations without consent after plans are disclosed, non adherence to defect rectification, non formation of cooperative society/association and non conveyance of title etc – punishment upto Rs. 1 crore.</p> <p>(g) Promoter, without reasonable excuse fails to comply with or contravenes any other provision of the act or rule – punishment upto Rs. 10 lakhs.</p>
54(1)	24	Offences by Companies – Companies' Directors its officials and every person responsible to the company will be liable for the offence	Company nominates one project coordinator who will be liable and responsible for the company affairs. All



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			directors working either executive / non executive cannot be held responsible as they are not involved in day to day interactions, at times with thousands of customers and their issues.
71	29	Protection of action taken in good faith – No suit / prosecution / legal proceedings lies before appropriate authority / officer / member and order passed are presumed that they are passed in good faith.	If corruption case is established it should be tried under the law of land.
		General	The purpose of this Act is to protect consumer. Consumer also should not have any other option to remaining judicial mechanism such as consumer forums, criminal courts, civil courts, CCI. He can simply make prayer to the regulatory Authority who in turn will direct the concerned court to register the offence and



Clause No.	Page No.	Issues	Suggestions
			proceed.

General points

1.	<p>The Real Estate Regulatory Bill encompasses in its discipline not only the developers, but also others like engineers, architects, real estate agents and so on. Its vast coverage must commensurate with the time of submission. Hence Ministry is requested to extend the last date of submission of the response to the draft bill from December 8th to March 31st 2012 for the reason that the draft bill has far reaching implications for the developers as well as other stake holders of the Real Estate Sector. This will provide adequate time to all to go into all aspects of the Draft bill and to assist Government to enact Real Estate Bill which is in the overall interest of Realty Sector and all the Players/ Beneficiaries of the Sector.</p>
2.	<p>The Draft Real Estate (Regulation & Development) Bill, 2011, in its current form, gives the picture as if the Developers are criminals. The sector, that is number two in India in the Industry rating, is getting raw treatment, through this bill.</p> <p>Draft bill has Penal Provisions which contemplate criminal action including imprisonment. No other Business sector in India has been specifically sought to be controlled under an Act with such imprisonment.</p>



	<p>Any Business misdemeanor in other sectors by the promoters is governed under the general laws of the country, and so far Criminal Punishment are not meted out to any of the other sector's or industry. The legal implication of each clause in the Draft needs to be understood fully by the entire affected Stake holders with proper legal advice.</p>
3.	<p>The Regulation Act 2011 has given a mortal blow to the Developer's basic right of cancellation of the allotments in the event of a default in payment by the allottees in accordance with the terms of an Agreement in as much as that the Act obliges the Developer to refund the money collected along with interest. Developers are not banks & money goes into land and building and cannot be taken out so easily (opportunity be given to resale to be able to refund money)</p> <p>The Regulation Act while obliging the Developers to keep their commitments with respect to the terms of allotments to allottees, has totally kept the allottees away from their accountability and commitments to the Developers in terms of the allotment Agreements. Defaulting customers should be made accountable in some way</p> <p>Cancellation is the only available instrument with the Developer which deters buyers from defaulting. If this provision of cancellation is diluted, and the buyers eligible to full refund with interest, why would anyone pay?</p> <p>The Bill unjustly grants immunity, provides security and encourages customers to not pay and has in fact created a financial instrument to speculate on the realty prices.</p>

	<p>It is inconceivable how the Govt. could guarantee full refund with interest even if the customers do not pay their installments on time. Needless to say, when some of the customers do not pay, construction gets stalled affecting interests of all those who pay on time.</p> <p>The bill in its present form has several such grave conditions that petrifies the Indian Real Estate Developers hence it is not at all acceptable.</p>
<p>4.</p>	<p>The Real Estate Regulatory Bill obligates the Developer to form societies / associations of the residents or allottees for handing over the management of maintenance of buildings. Despite implementation of Apartment Act, on the one hand, and indifference of Land and Development Office, as Competent Authority, on the other, management of maintenance function continues to remain with the Developer even as the Developers are very keen to handover the maintenance to resident Welfare Associations (RWAs).</p> <p>There is no provision in the Act to levy penalty on allottees who refuse to become members of society/association. The Bill also does not provide penalties for non-payment of any maintenance dues – past, present & future by the allottees/residents/occupants - with the result that the buildings do not get maintained as per plans. There is a need for levying strict penalties on allottees to secure timely payments for planned maintenance.</p>
<p>5.</p>	<p>Arbitration mechanism through the Chambers or the Indian Arbitration and Reconciliation is completely eliminated neither mentioned (Arbitrator to resolve the dispute first and then refer to</p>



	<p>Tribunal).</p> <p>Infrastructure and services - Promoter is only liable for Occupation Certificate without any onus on the government agencies, no force majeure clause.</p>
6.	<p>Only single regulator - The consumer may have right to approach before the regulatory authority as well as civil courts, consumer courts, Competition Commission of India (CCI), high court, etc. (multiple litigation by consumer is permissible). This needs to be restricted to Regulatory Authority and no other forum till authority directs.</p>
7.	<p>The undivided share in a large layout is not specified which will prejudice the rights of the developer on the remaining development.</p>
8.	<p>The consumer who are to pay on time, no specific action specified by the authority, where authority compensates to the developer?</p>
9.	<p>The consumer who undertakes structural changes without permission or such activities, will it fall within the jurisdiction of the regulatory authority?</p>
10.	<p>All stake holders in real estate development including local authority, government playing role in NOCs and approvals, vendors, banking institutions be covered under this regulation and regulator should be able to direct them and penalize in case of default.</p>



11.	All transactions between a single client and promoter above a sum of Rs.10 Cr. /or 10% of Project cost decided prior to commencement of work be kept outside the purview of this Act.
12.	If the purchaser carries out additional/alteration to the flat/unit in violation of the approved plans and/or without the permission of the Developer causing leakages, electrical short circuit or fire, damage to structure, stability of the building etc. and who does not co-operate to comply or refuses to correct or demolish such illegal construction and/or rectify such leakages and/or damage to the construction, then such purchaser should be heavily penalized/prosecuted with equally deterrent clauses.
13.	<p>Customers must comply with the terms of agreement; otherwise they should be made accountable as the misconduct of some of the customers might affect larger interest of the complex/project/ ability of the developer to deliver as per the schedule, quality & commitment. Authority must act to modify archaic bylaws, acts and controls of FAR/ Density/ Land controls to ensure free and adequate supply of housing & other real estate and discourage land hoarding by government authorities and land owners falling under master plans so that the cheaper, affordable and competitive supplies can be maintained and speculation discouraged.</p> <p>Authority should also be able to direct augmentation of infrastructure to authorities and corporations, commensurate with the free supply of housing stock for mass housing.</p>