

No.O-17034/18/2009 - Housing
Government of India
Ministry of Housing & Urban Poverty Alleviation
(Housing Section)

Nirman Bhawan, New Delhi
23rd September, 2009

OFFICE MEMORANDUM

SUB : A MODEL REAL ESTATE (REGULATION OF DEVELOPMENT) ACT 200 ____

The undersigned is directed to forward herewith the hard and soft copy of the draft Model Real Estate (Regulation of Development) Act 200____ for uploading on the website of the Ministry. This may put under "What is new" ticker. It may also be indicated clearly on the link that comments on the draft may be submitted to the Ministry on the following e-mail address within 45 days from issue of this OM i.e. 6th November, 2009.

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In view of the time line prescribed, the draft Legislation may be put on the web-site immediately.

This has the approval of the Competent Authority.

(Yash Paul)
Under Secretary to the Government of India
Tele. No. 23061285

To,

Shri R K Kumania
Under Secretary (A & C)
Ministry of Housing & Urban Poverty Alleviation
New Delhi

**A MODEL REAL ESTATE (REGULATION OF DEVELOPMENT) ACT
200__**

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**A MODEL ACT FOR REAL ESTATE (REGULATION OF DEVELOPMENT)
200__**

AN ACT

To establish a Regulatory Authority and an Appellate Tribunal to regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential buildings, apartments and other similar properties, and to host and maintain a website containing all project details, with a view to protecting, on the one hand the public interest in relation to the conduct and integrity of promoters and other persons engaged in the development of such colonies and to facilitating on the other the smooth and speedy construction and maintenance of such colonies, residential buildings, apartments and properties and for matters connected therewith or incidental thereto.

Be it enacted by _____ Assembly in the _____ Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement:

- (1) This Act shall be called the _____ Real Estate (Regulation of Development) Act, 200__.
- (2) It extends to the State of _____.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act.

2. Definitions:

In this Act, unless the context otherwise requires, -

- (a) ~~%a~~advertisement+ means visible representation made to the general public either through announcement or display or in any other manner whatsoever, offering for sale, lease or approval of a plot, residential building or apartment or inviting persons to take such plot, residential building or apartment to make advances or deposits for such purposes;
- (b) ~~%a~~allottee+, in relation to a residential building, apartment, premises, flat or plot, means the person to whom such residential building or apartment or premises or flat or plot has been allotted, sold or given on rent, lease, licence or otherwise transferred by the promoter;
- (c) ~~%a~~apartment+, whether called dwelling unit, flat, premises, suite, tenement, unit or by any other name, means a separate and self-contained part of any property located in a basement or cellar or on one or more floors or any part thereof, in a residential building or on

a plot of land, used or intended to be used for residence, or for any other type of independent use ancillary to the purpose specified and includes any garage or room, whether or not adjacent to the residential building in which such apartment is located which has been provided by the promoter for the use of the allottee for parking any vehicle, or as the case may be, for the residence of any domestic help employed in such apartment;

- (d) ~~%Appellate Tribunal+~~ means the Real Estate Appellate Tribunal established by the _____ Government under section 33 of the Act;
- (e) ~~%architect+~~ means a person registered as an architect under the provisions of the Architects Act, 1972 (20 of 1972);
- (f) ~~%association+~~ means an association consisting of majority of the apartment owners, occupants in a residential building or colony acting as a group in accordance with the provisions of this Act or any other law for the time being in force;
- (g) ~~%building+~~ means a residential building constructed on any land from any construction material for residential use and includes an apartment or any structure used for human habitation;
- (h) ~~%building regulations+~~ means the rules or regulations or bye- laws made under any law for the time being in force for the erection or re-erection of buildings or parts thereof and for the purpose of this Act includes zoning or development control regulations framed under such law;
- (i) ~~%Chairperson+~~, means the Chairperson of the Regulatory Authority appointed under section 20 of the Act;
- (j) ~~%colony+~~ means an area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purpose, but does not include an area of land divided or proposed to be divided -
 - i. for the purpose of agriculture; or
 - ii. as a result of family partition, inheritance, succession or partition of joint holding not with the intention of earning profit; or
 - iii. in furtherance of any scheme sanctioned under any other law for the time being in force; or
 - iv. for setting up a housing colony for the labourers or the employees working in a factory without any profit motive; or
 - v. when it does not exceed one thousand square meters;

(k) ~~%~~common areas and facilities+, in relation to an apartment or a residential building, means all parts of the apartment or residential building or the land on which it is located and all easements, rights and appurtenances belonging to such apartment, residential building or land, which are neither in the exclusive possession or enjoyment of an apartment owner or allottee in terms of his conveyance deed of apartment, nor are handed over or intended to be handed over to the local authority or other public service agency and includes the limited common areas and facilities as may be prescribed;

(l) ~~%~~common expenses+means, -

- i. all sums lawfully assessed against the apartment owners by the Association for meeting the expenses of administration, maintenance, repair or replacement of the common areas and facilities;
- ii. any expenses incurred under the provisions of this Act or under the provisions of any other law for the time being in force, or agreed upon by the Association, as common expenses;
- iii. the Government and municipal taxes including ground rent and property tax, which is not assessed separately for each apartment;

(m) ~~%~~company+ means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes, -

- i. a corporation established by or under the Central Act or State Act;
- ii. a development authority or public authority established by the Government in this behalf under any law for the time being in force;

(n) ~~%~~Competent authorityq means the local authority or any authority created under law by the Government of -----, which exercises authority over land under its jurisdiction, and has powers to give permission for development or construction on that land, such as urban development authority, town planning authority etc.

(o) ~~%~~contractor+means a person who has entered into a contract with the promoter or any other person authorized by him, for execution of any work, supply of goods, services, materials or equipment and includes, .

- i. his legal representatives,
- ii. successors in title or permitted assignees,

- iii. unless otherwise excluded, all sub-contractors who have similar arrangement with the contractor for execution of any work, supply of goods, services, materials or equipment;
- (p) ~~%~~Current rate of interest+ has the same meaning as assigned to it in clause (b) of section 2 of the Interest Act, 1978 (14 of 1978);
- (q) ~~%~~development+ with its grammatical variations and cognate expressions, means the carrying out development of building, engineering or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment;
- (r) ~~%~~development charges+ means the cost of development works;
- (s) ~~%~~development works+ means the internal development works and external development works;
- (t) ~~%~~Director+, in relation to a firm, means a partner of the firm, and in relation to a development authority or public authority means a person who takes decisions on matters of policy in his office or designated as such by the said authority.
- (u) ~~%~~engineer+ means a person who possesses a bachelors degree or equivalent from an institution recognized by the All India Council of Technical Education or is registered as an engineer under any law for the time being in force;
- (v) ~~%~~external development works+, includes roads and road systems, landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station or any other work which may have to be executed in the periphery of, or outside, a colony for its benefit;
- (w) ~~%~~Government+ means the Government of _____;
- (x) ~~%~~internal development works+ includes roads, footpaths, water supply, sewers, drains, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water or any other work in a colony necessary for its proper development;
- (y) ~~%~~joint family+ means a Hindu undivided family and in the case of other person, a group the members of which are by custom jointly in possession of residence;
- (z) ~~%~~land+ means a portion of the surface of the earth, comprising the ground or soil and everything under it or over it, and things which are attached to the earth, such as buildings, structures and trees, things which are permanently fastened to the earth or things attached to the earth, easements, rights and appurtenances belonging to them and

the benefits arising out of such earth and includes the sites of villages or towns;

(za) ~~%~~local authority+ means the _____ Corporation or Municipality or Local Body constituted under any law for the time being in force;

(zb) ~~%~~market+ means a place,-

(a) to sell;

(b) to offer to sell; or

(c) to engage in any transaction or other activities which shall or is likely to lead to a sale.

(zc) ~~%~~member+ in relation to Real Estate Regulatory Authority, means the member of the Regulatory Authority appointed under section 20 and includes the Chairperson;

(zd) ~~%~~owner+ means the owner of apartment having undivided interest in common areas and facilities appurtenant to such apartment in the percentage specified in the deed of allotment executed under the _____ Apartment Ownership Act, _____, and includes a person having any right or liability under the agreement or passed by assignment or by operation of law;

(ze) ~~%~~person+ includes, -

i. an individual,

ii. an individual in partnership with others,

iii. a company,

iv. a firm,

v. a local authority, an association of persons or a body of individuals, whether incorporated or not,

vi. joint family, and

vii. any such other entity as the Government may, by notification in the Official Gazette, specify in this behalf;

(zf) ~~%~~prescribed+ means prescribed by rules made under this Act;

(zg) ~~%~~project+ means the real estate project under this Act;

(zh) ~~%~~promoter+ means, -

i. a person who constructs or causes to be constructed a residential building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

ii. a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon;

Explanation:- For the purposes of sub-clauses (i) and (ii), where the person who constructs a residential building or converts a residential

building into apartments or develops a colony, and the person who sells apartments or plots are different persons, both the persons shall be deemed to be the promoters;

- iii. any development authority or any other public body, as the Government may, by notification in the Official Gazette, specify in respect of allottees of -
 - a. residential buildings or apartments constructed by them on lands owned by them or placed at their disposal by the Government; or
 - b. plots owned by them or placed at their disposal by the Government.
 - iv. a Cooperative Housing Society or a local authority who constructs apartments or residential buildings for its members, in respect of the allottees of such apartments or residential buildings;
 - v. any other person who poses himself as a builder, colonizer, contractor, developer, promoter or by any other name or claims to be acting the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or colony is developed;
 - vi. such other person who constructs any building or apartments for sale to general public or for its own use as the Government may, by notification in the Official Gazette, specify;
- (zi) ~~Property~~ means the land, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and includes every type of right and interest in land which a person can have to the exclusion of other persons, such as possession, use and enjoyment free from interference, right of disposition and franchises;
- (zj) ~~Real estate management~~ includes the activities of,
- i. development of colonies and their management;
 - ii. promotion of construction, sale, transfer and management of residential buildings, apartments or other similar properties;
- (zk) ~~Regulatory Authority~~ means the Real Estate Regulatory Authority established under sub-section (1) of section 19 of the Act;
- (zl) ~~Schedule~~ means the Schedule annexed to this Act.

CHAPTER II

REGULATION OF DEVELOPMENT OF COLONIES AND PROMOTION OF CONSTRUCTION, SALE, AND TRANSFER OF RESIDENTIAL BUILDINGS, APARTMENTS AND OTHER SIMILAR PROPERTIES

3. No development of land into colony or construction of apartments for marketing without Registration with Regulatory Authority:

No person shall develop land into a Colony of plots or construct a building or building or convert any existing building or part thereof into apartments, for the purpose of marketing all or some of the apartments, without registration of such project with the Regulatory Authority under this Act:

Provided that no such registration shall be required, when the area of land proposed to be developed into a colony does not exceed one thousand square meters or the number of apartments proposed to be constructed does not exceed four.

4. Registration by Regulatory Authority:

- (1) Every promoter shall make an application to the Regulatory Authority in such form, with such fee and such other information as may be prescribed.

Explanation:- For the removal of doubts it is hereby clarified that, the form shall include the information relating to the number and size of plots, layout plan, carpet area and plinth area of the flats or apartments and the facilities provided therefor.

- (2) Every promoter shall furnish a bank guarantee equal to five percent of the estimated cost of the development works to the Competent Authority:

Provided that the Competent Authority shall not discharge the bank guarantee furnished by the promoter unless the same is recommended by the Regulatory Authority in accordance with the provisions of section 14 and section 29 of this Act;

- (3) The promoter shall enclose the following documents along with the application for registration under sub-section (1), namely:-

- a) a copy of the approval and sanction from the Competent Authority, obtained in accordance with the building regulations and all others laws as are applicable for any real estate project which shall be self-authenticated;
- b) a copy of the bank guarantee furnished to the Competent Authority;
- c) a declaration undertaking to complete the development work in accordance the conditions of the registration and to payment of external development charges, if any, which shall be signed and sealed by the promoter;

Explanation:- For the purpose of this clause, the cost of the development works shall be determined by the promoter which shall be mentioned as a part of the application for registration under this Act, duly authenticated by a practicing Chartered Accountant.

- (4) The promoter shall make an application in such form as may be prescribed for allotment of a password for access to the website of the Regulatory Authority for entering details as provided under section 8 of this Act.
- (5) On receipt of the application under sub-section (1), the Regulatory Authority may, by order, after making enquiry into the authenticity of the approval and sanction accorded by the Competent Authority, the title of the promoter to the land, extent and situation of the land, and such other matters as it may deem fit, and after having ascertained that valid planning permission and building approvals have been obtained by the promoter, grant or refuse to grant such registration in writing, within a period of thirty days from the date of receipt of application, and provide a password to the promoter for access to its website:

Provided that no order refusing the registration shall be passed without affording the applicant a reasonable opportunity of being heard.

- (6) If the Regulatory Authority fails to take any action on the application for registration within thirty days from the date of receipt of such application, the project shall be deemed to have been registered.
- (7) The registration under this section shall be valid for a period of three years from the date of registration:

Provided that if the promoter makes an application for renewal of the registration on the ground that delay in completion of the project was for reasons beyond his control, the Regulatory Authority, if satisfied after making such inquiries as it may consider necessary, renew the registration for a period of one year;

Provided further that the Regulatory Authority shall not grant more than two yearly renewals;

Provided also that the Regulatory Authority shall, on failure of the promoter to complete the project within the period of renewal of registration, cause the balance of the development works to be carried out in accordance with the provisions of section 29.

- (8) The promoter shall apply for renewal of registration on such form and on payment of such fee as may be prescribed.

5. Cancellation of Registration:

- (1) Upon receiving a complaint in this behalf, or suo-motu, or on the recommendation of the Competent Authority, for violation of any provisions

of the Act by the promoter, the Regulatory Authority may, after being satisfied that the conditions of the registration have been violated and after giving an opportunity of being heard to the parties concerned, it may by order in writing, cancel the registration granted by it and inscribe the names of such promoter in the list of defaulters on its website.

(2) Upon issuing the order of cancellation, the Regulatory Authority-

- a) shall debar the promoter from accessing its website;
- b) may recommend the Competent Authority to enforce the bank guarantee furnished by the promoter under sub-section (2) of section 4;
- c) may recommend the Competent Authority to cause the balance of the development works to be carried out, in accordance with the provisions of section 29.

CHAPTER III

ROLE OF PROMOTER

6. Responsibility of the promoter to make available for inspection, all documents and information to persons intending to take plot or building or apartment in the real estate project:

A promoter who develops or intends to develop a real estate project, shall be liable to make available or cause to be made available for inspection the sanction accorded by the Competent Authority, the registration granted by the Regulatory Authority, to all persons taking or intending to take a plot, a building or an apartment on ownership basis in the project, all such information and documents as may be prescribed or recommended by the Regulatory Authority, which shall include but not be limited to the following, namely:-

- (a) details of the sanction accorded by the Competent Authority;
- (b) details of the registration granted by the Regulatory Authority;
- (c) full and true disclosure of his enterprise details such as name, registered address, type of enterprise (proprietorship, societies, partnership companies, local authority etc.), registration details under the law registered etc.;
- (d) a full and true disclosure of the nature of his title to the land on which the real estate project is developed or intended to be developed:

Provided that if such land is owned by another person, the consent of the owner of such land for the development of the real estate project shall also be furnished.

Explanation:- For the purpose of this sub-section title to the land shall be duly certified by a revenue authority not below the rank of Sub-divisional Magistrate of the area or any other officer authorized in this regard by the government;

- (e) details of all encumbrances on such land, including any rights, title, interest or claim of any party in or over such land;
- (f) the layout plan of the real estate project;
- (g) the plan of development works to be executed in the real estate project as approved by the local authority;
- (h) the plan and specifications of the building or apartments constructed or to be constructed on the land, common areas, carpet built up and super built up areas, facilities and common services proposed including supply of electricity and water, sewerage and drainage systems, lifts, fire-fighting equipment as required or approved by the

local authority concerned in accordance with the provisions of the building regulations in force;

- (i) the details of the parts of the colony or apartments and the appurtenant areas that are intended to be kept as common areas and facilities;
- (j) the estimated cost of the building or apartments proposed to be constructed, or of the colony to be developed and the manner in which valid escalation in such cost may be decided by mutual agreement;
- (k) the names and addresses of the authorized agents, property dealers, brokers or middlemen by whatever name called;
- (l) the names and addresses of the architect, engineer and contractor retained for construction of the building or apartments; and
- (m) such other information and documents as may be prescribed.

7. Issuing of advertisement or prospectus inviting advance or deposit:

- (1) No promoter shall issue or publish an advertisement or prospectus, offering for sale any plot, building or apartment, or inviting persons who intend to take such plots, buildings or apartments to make advances or deposits without registering with the Regulatory Authority under section 3, and without first filing a copy of the advertisement or prospectus in the office of the Regulatory Authority.
- (2) The advertisement or prospectus issued or published after complying with sub-section (1), shall contain true statement and disclose the details of the registration granted under section 3, the extent and situation of the land, the area of the plots, building or apartments offered for sale, nature of title to the land, the cost payable, names of the agents or property dealers or brokers or middlemen known by any other name through whom the property proposed to be marketed and such other matters as may be prescribed.

8. Responsibility of the Promoter to enter all record or details on the Website of the Regulator:

The Promoter shall within a period of fifteen days from the date of receiving the password from the Regulatory Authority, through a system of self entry, access the website and enter the required details of the real estate project for which registration has been granted which shall include the names and addresses of his authorized agents or property-dealers or brokers or middlemen by whatever name called and thereupon the Regulatory Authority shall host the details on its website after verifying the factual accuracy of the information so furnished by the promoter.

9. Responsibility of promoters regarding veracity of the advertisement or prospectus:

When any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus and sustains any loss or damage by reason of any untrue statement included therein, he shall be compensated by the promoter for any loss that he may have sustained consequent to such information:

Provided that if the person affected intends to withdraw from the project, he shall be returned his entire investment along with interest at a rate not exceeding the current rate of interest.

10. No deposit or advance to be taken by promoter without first entering into an agreement of sale:

(1) Notwithstanding anything contained in any other law for the time being in force, a promoter shall not accept any sum of money as advance payment or deposit, from a person who comes forward to take a plot, building or apartment, as the case may be, without first entering into a written agreement for sale, including as provided for in Schedule-I which shall be registered under the Registration Act, 1908 (16 of 1908).

(2) The agreement referred to in sub-section (1) shall be in the form as may be prescribed and shall specify inter alia, the schedule of development of the project including the construction of building and apartments, along with specifications and external development, works, the dates and manner by which payments towards the cost of the plot, building or apartment are to be made by the allottees and the date on which the possession of the plot, building or apartment is to be handed over.

Explanation:- Where only a refundable application fee is collected from the applicant before draw of lots for specific allotment, such agreement will be required only after such allotment.

(3) The promoter shall not cancel unilaterally the agreement of sale entered into under sub-section (1) and if he has sufficient cause to cancel it, he shall give due notice to the other parties to the agreement and tender a refund of the full amount collected together with interest at a rate not exceeding the current rate of interest.

11. Responsibility of Promoter to take measure for protection and safety of property:

Promoters shall take all measures including as provided in Schedule II, for protection and safety of property as per rules framed by State Government either on its own or on the recommendation of the Regulatory Authority.

12. Responsibility of the Promoter regarding the account of sums taken from or on behalf of the allottees:

Promoters shall maintain, including as provided in Schedule III, all accounts of sums taken from and on behalf of allottees, register and record for audit purposes to be audited by a Chartered Accountant in practice, in such form and manner as may be prescribed.

13. Responsibility of the promoter to the allottees during project period:

- (1) Once the promoter enters into an agreement of sale with the allottee for transfer of the ownership by sale or lease of the plot or building or apartment, he shall be responsible to make available or cause to be made available, in addition to the information specified in section 6, the following in respect of the real estate project, namely:-
 - (a) display on site plans along with structural designs and specifications, approved by the local authority, at the site or such other place as may be specified in the registration before and during construction of the building or apartments and make them available for inspection to persons taking a plot, building or apartment on ownership basis;
 - (b) disclose the nature of fixtures, fittings and amenities, including the provision for one or more lifts, provided or to be provided;
 - (c) disclose the stage wise time schedule of completion of the project;
 - (d) disclose the time schedule for connecting the project with the municipal services such as sewerage, water supply, electricity, drainage etc. as applicable;
 - (e) disclose on reasonable notice or demand, the particulars or specifications in respect of the design and the materials to be used in construction, and disclose all agreements entered into by him with the architects, structural engineers and contractors regarding the design, materials and construction of the building;
 - (f) display on site certificate signed by the owner, architect and structural engineer regarding the compliance of statutory provisions related to the relevant revenue, planning, building and structural safety laws;
- (2) The promoter shall also be responsible to furnish on demand and on payment of such charges as may be prescribed, true copies of the aforesaid documents, to the allottees individually or collectively.
- (3) It shall be the responsibility of the promoter to obtain a completion certificate of the building or apartments from the concerned local authority as per building regulations in force and make it available to the allottees individually or to an authorized collective of allottees as the case may be.

- (4) If, after the construction of the building or apartments, the promoter does not apply, within a reasonable time, or is unable to so apply, for an occupation certificate from the concerned local authority, the allottee of the building or apartment may apply for such certificate to the said authority and such authority may grant the required certificate.
- (5) The cost incurred by the allottee in obtaining the above certificate shall be recoverable from the promoter.
- (6) The promoter shall also prepare and maintain all such other details as may be prescribed including the details as provided under Schedule IV.

14. Adherence to approved plans, and project specifications by the promoter:

- (1) After the layout plan of the plots in a colony or the plans and specifications of the building or apartment, as the case may be, are approved and the same are disclosed or furnished to the person who agrees to take the building or apartment, the promoter shall not make any alterations in the structures indicated therein without the previous consent of the person, project architect, project engineer and obtain the required permission of the Regulatory Authority, and in no case shall make such alterations that are not permissible as per building regulations:

Provided that after the possession of the building or apartment is handed over to the allottee, the promoter shall not be responsible if additions and alterations are done in the building or apartment by the allottee or occupier, in violation of the building regulations and without the consent of the promoter, project architect and project engineer.

- (2) Subject to the provisions of sub-section (1), the building or apartments shall be constructed and completed in accordance with the plans and structural designs and specifications as referred to in sub-section (1) and if any defect in the building or apartments or in the material used in the construction is brought to the notice of the promoter within a period of two years from the date of handing over possession, it shall, wherever possible, be rectified by the promoter without further charge to the persons who have taken the building or apartments, and in other cases such persons shall be entitled to receive reasonable compensation as may be as determined by the Regulatory Authority.
- (3) Where there is a dispute as regards any defect in the building or apartments or material used in the construction, or the reasonable possibility for the promoter to rectify any such defect or the amount of reasonable compensation payable in respect of any such defect, which cannot be or is not rectified by the promoter, the dispute shall, on payment of such fee as may be prescribed and within a period of two years from the date of handing over possession, be referred to the Regulatory Authority who shall, after giving a reasonable opportunity of being heard to the parties and after making further enquiry, if any, as it may deem fit, pass an order in this regard.

15. Handing over of apartment, common areas and documents to the Collective:

- (1) After obtaining the occupation certificate or completion certificate, as the case may be, the promoter shall submit a copy thereof to the Regulatory Authority and thereafter take all necessary steps to complete his title and convey the exclusive ownership of the apartment or building or plot and the undivided interest in the common areas and facilities appurtenant to such apartments to the person in whose favour he had executed an agreement of sale of that apartment or building or plot.
- (2) For the purpose of sub-section (1) the promoter shall execute a conveyance deed of the property containing such particulars as may be prescribed, within three months from the date of giving possession of the apartment or building or plot and also deliver all documents of title relating to that property which may be in his possession.
- (3) The promoter shall not reserve any right in that property except to the extent of the apartments which he is taking up in his own name and the apartments which are meant for sale but are yet to be sold.
- (4) After obtaining the completion certificate as provided in sub-section (3) of section 13 and handing over physical possession of the plots or buildings or apartments to the allottees in terms of this section, it shall be the responsibility of the promoter to hand over the possession of the common areas and appurtenants and also the originals of the plans and documents to the Association of the allottees formed and registered under any other law for the time being in force:

Provided that such handing over of physical possession of the common areas and appurtenants shall be completed within a period of one year from the date of issue of the completion certificate or the date by which at least seventy-five percent of the plots, buildings or apartments have been handed over to the allottees, whichever event occurs earlier, subject to the condition that the promoter shall be responsible for the sale and transfer of the balance plots, buildings or apartments and for the expenditure on the maintenance of the common areas and appurtenants till such time as seventy-five percent of the plots, buildings or apartments are not sold or transferred by the promoter.

16. No mortgage without consent:

- (1) No promoter shall, after he executes an agreement to sell any plot, building or apartment, mortgage or create a charge on such plot, building or apartment without the previous written consent of the person who has taken or agreed to take such plot, building or apartment and if any such mortgage or charge is made or created without such previous consent after the registration of the agreement under section 10, then notwithstanding anything contained in any other law for the time being in force, it shall not

affect the right and interest of the person who has taken or agreed to take such plot, building or apartment.

- (2) Where a promoter has executed an agreement of sale of plot, building or apartment with a person and has not yet received from such person all the amounts agreed to be paid, the latter shall not mortgage or create a charge against such plot, building or apartment without the previous written consent of the promoter:

Provided that the promoter shall not withhold consent if the mortgage or charge is proposed to be made or created for the purpose of obtaining finance for the payment of the amounts due to the promoter.

17. Supply of essential services:

- (1) 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 allottee 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 or as directed by the Regulatory Authority, and such services shall not, except with just and sufficient notice, be cut-off, withheld, or curtailed.
- (2) The details of the essential supplies and services referred to in sub-section (1) shall be kept by the promoter in the form of a statement and shall, be made available on demand to the allottee or Association of allottees, or the Regulatory Authority.
- (3) In case of the failure of the promoter to provide services as provided for in this section, the Regulatory Authority shall upon receipt of an application in this behalf or suo-motu, make an enquiry into the matter and pass such order as it may deem necessary.

18. General liabilities of allottees:

Every allottee who has entered into an agreement of sale to take a plot or an apartment under section 10 shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall after taking possession of the plot or apartment or building under section 15 pay at the proper time and place, the proportionate share of the municipal taxes, water and electricity charges, ground rent, if any, and other charges, in accordance with such agreement.

CHAPTER IV

REAL ESTATE REGULATORY AUTHORITY

19. Establishment of Real Estate Regulatory Authority:

- (1) With effect from such date as the _____ Government may, by notification appoint, there shall be established, for the purposes of this Act, an authority to be called the ~~%~~Real Estate Regulatory Authority+.
- (2) The Regulatory Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable and to contract, and shall, by the said name, sue or be sued.

20. Composition of Regulatory Authority:

The Regulatory Authority shall consist of a Chairperson and two Members to be appointed by the _____ Government from amongst persons who have special knowledge of, and professional experience in, the field of public administration, urban development, finance, law, or management:

Provided that a person, who is, or has been, in the service of Government shall not be appointed as a Chairperson unless such person has held the post of Principal Secretary to the State Government or any equivalent post to the Government of India.

21. Term of office of Chairperson and other members:

- (1) The Chairperson and other Members shall hold office for a term not exceeding three years, from the date on which they enter upon their offices or until they attain the age of sixty five years, whichever is earlier.
- (2) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed.
- (3) The salary, allowances and other conditions of service of the Chairperson and other Members shall not be varied to their disadvantage after their appointment.
- (4) All members, officers and other employees of the Regulatory Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code 1860 (45 of 1860).
- (5) The Chairperson or Member may relinquish his office by giving in writing to the State Government notice of not less than three months or be removed from his office in accordance with the provisions of section 23.

22. Administrative Powers of the Chairperson:

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

23. Removal of Chairperson and Member from office in certain circumstances:

- (1) The ____ Government may, by order remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,-
 - (a) has been adjudged as insolvent; or
 - (b) has been convicted of an offence, which, in the opinion of the ____ Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as a member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
 - (e) has so abused his position, as to render his continuance in office prejudicial to the public interest.
- (2) No such Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

24. Officers of the Regulatory Authority:

- (1) The ____ Government shall provide the Regulatory Authority with such officers and employees as it may deem fit.
- (2) The officers and employees of the Regulatory Authority shall discharge their functions under the general superintendence of its Chairperson.

25. Meeting of Regulatory Authority:

- (1) The Regulatory Authority shall meet at such places and times, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations;
- (2) The Chairperson, if for any reason, is unable to attend a meeting of the Regulatory Authority, the senior-most Member present at the meeting shall preside:

Provided that any decision relating to registration or cancellation of registration is taken under the Act, the same shall not be executed unless the same is decided in a meeting attended by all the three members;

- (3) All questions which come up before any meeting of the Regulatory Authority shall be decided by a majority of the members present and voting and, in the event of an equality of votes, the Chairperson or the Member presiding shall have the right to exercise a second or casting vote.

26. Powers and functions of Regulatory Authority :

- (1) The Regulatory Authority shall perform the following functions, namely:-

- (a) to ensure compliance of the obligations cast upon the promoters and the allottees under this Act and the rules made there under;
- (b) to cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act;
- (c) to host and maintain a website of records of all real estate projects within its jurisdiction as database, with all details as provided in the application for registration under the Act, for projects, for which registration has either been granted or cancelled as the case may be;
- (d) to make recommendations on -
 - i. protection of interest of the allottees;
 - ii. measures to improve the processes and procedures for clearance and sanction of building plans and development projects from the Competent Authority; and
 - iii. construction and maintenance of structurally safe, environmentally sustainable, and low cost buildings, apartments and properties and any other form of assistance or advocacy to promote competition and efficiency in the real estate sector.
- (e) to render advice to the _____ Government in matters relating to the development of real estate industry; or
- (f) perform such other functions as may be entrusted to the Regulatory Authority by the _____ Government as may be necessary to carry out the provisions of the Act.

- (2) Upon receiving a complaint in this behalf or suo-motu, the Regulatory Authority shall, after making such enquiry as it deems fit, pass an order in writing on any dispute between a promoter and an allottee regarding failure on either part to meet the obligations cast upon them under the Act and the rules made thereunder, which shall be within a period of two months from the date of such complaint or as the case may be:

Provided that every such order shall be passed after giving an opportunity to the parties of being heard.

- (3) The order passed by the Regulatory Authority shall be final and binding on the parties.

27. Powers of Regulatory Authority to call for information, conduct Investigations, etc.:

Where the Regulatory Authority considers it expedient so to do, it may, by order in writing-

- (a) call upon any promoter at any time to furnish in writing such information or explanation relating to its affairs as the Regulatory Authority may require; or
- (b) appoint one or more persons to make an inquiry in relation to the affairs of any promoter;
- (c) direct any of its officers or employees to inspect the books of accounts or other documents of any promoter; and
- (d) direct the promoter to produce all such books of accounts or other documents in his custody having a bearing on the subject matter of such inquiry and also any other information relating thereto.

28. Power of Regulatory Authority to Issue directions:

The Regulatory Authority may, for the discharge of its functions under section 26 and section 27, issue such directions from time to time to promoters and allottees, as it may consider necessary and such directions shall be binding on all concerned.

29. Powers of the Regulatory Authority consequent upon lapse of or cancellation of registration of the promoter:

- (1) Upon lapse of the registration under sub-section (7) of section 4 or on cancellation of the registration under sub-section (2) of section 5, the Regulatory Authority, may recommend to the Competent Authority to have the remaining development works referred to in sub-section (7) of section 4 or sub-section (2) of section 5 as the case may be, carried out from the proceeds of the enforcement of the bank guarantee, and further recover the charges incurred on the said development works due from the promoter in such manner as may be prescribed:

Provided that in case the lapse of registration under sub-section (7) of section 4 is beyond the control of the promoter, the liability of the promoter for payment of charges for the said development works shall not exceed the amount actually recovered by the promoter from the allottees less the amount actually spent by him on such development works.

- (2) The promoter shall be liable to pay interest at a rate not exceeding the current rate of interest.
- (3) The liability of the allottees shall not exceed the amount, which they would have to pay to the promoter towards the expenses of the said development works under the terms of the agreement of sale or transfer entered into between them:

Provided that the Competent Authority may, on recommendation from the Regulatory Authority recover from the allottees, with their consent, an amount in excess of the amount payable by them under the terms of agreement of sale or transfer with the objective of completing the remaining development work.
- (4) If there is any balance of amount leftover after meeting the expenses on development works, such balance amount shall be payable by the Competent Authority on recommendation of the Regulatory Authority, to the allottee or as the case may be, to the promoter.
- (5) Notwithstanding anything contained in the foregoing provisions of this section, the Regulatory Authority may upon lapse of the registration or its cancellation, as the case may be, direct the promoter to transfer the possession of, and the title to, the land to the allottees within a specified time, and if the promoter fails to do so, the Regulatory Authority shall, on behalf of the promoter, transfer the possession of, and the title to, the land to the allottees on receipt of the amount which was so due from the allottees.

30. Functions of the Regulatory Authority for planned land development and promotion of the real estate sector:

The Regulatory Authority shall take all possible measures for the growth and promotion of a healthy, transparent, efficient and competitive real estate market and in particular take the following measures, namely:-

- (1) Evolve a consensus among the central or state governments, the Bureau of Indian Standards, urban local bodies, builders, developers and colonizers, associations of engineers and architects and other stake holders to follow, on mandatory basis, the structural safety norms as may be prescribed for the area concerned by the National Building Code or Bureau of Indian Standards or statutory provisions of the local building bye-laws.
- (2) In consultation with the state government or the competent authority or the urban local bodies, establish a framework of standard procedures and norms for speedy processing and grant of planning permissions, building approvals and licenses by the local bodies or the competent authority for projects proposed to be taken up by promoters, builders and colonizers.
- (3) Promote the rating of real estate projects and the rating of promoters, by the association of promoters, to improve the confidence level of both

investors and consumers through a system of self-regulation, which may be based on the rating parameters developed by the National Real Estate Development Council or the Confederation of Real Estate Developers Association of India.

- (4) On behalf of the real estate sector, take up, with government, financial institutions, local bodies, regulatory authorities and other concerned stakeholders, advocacy of issues like prompt and easy access to credit or home loans, credible and reliable land title certification system, speedy and transparent registration of properties, effective institutional arrangements for proper upkeep and maintenance of built-up properties, statutory framework for equitable and balanced relationship between landlord and tenant.
- (5) Promote construction of Leadership Energy and Environmental Design rated environment friendly or green buildings and measures for conservation of water and its re-cycling.
- (6) With a view to encouraging construction of structurally safe and affordable housing, promote standardization and use of appropriate construction materials, fixtures, fittings and construction techniques.

31. Power of Regulatory Authority to regulate its own procedure:

- (1) The Regulatory Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the State Government, the Regulatory Authority shall have powers to regulate its own procedure.
- (2) The Regulatory Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) 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 documents;
 - (c) receiving evidence on affidavits; and
 - (d) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) any public record or document or copy of such record or document from any office.

32. Execution of orders of Regulatory Authority imposing monetary penalty:

If a person fails to pay any penalty imposed on him under this Act, the Regulatory Authority shall proceed to recover such penalty, in such manner as may be prescribed.

CHAPTER V

APPELLATE TRIBUNAL

33. Establishment of Appellate Tribunal:

- (1) The _____ Government shall, by notification in the Official Gazette, establish an Appellate Tribunal to be known as the ~~%~~Real Estate Appellate Tribunal+to adjudicate any dispute and hear and dispose of appeal against any direction, decision or order of the Regulatory Authority under this Act.
- (2) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed by the _____ Government and the selection of Chairperson of the Appellate Tribunal shall be made by the Government in consultation with the Chief Justice of _____.
- (3) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,-
 - (a) in the case of Chairperson, is or has been, a Judge of a High Court;
 - (b) in the case of a Member, has held the post of Principal Secretary to the State Government or any equivalent post to the Government of India, or a person who is well versed in the field of urban development, finance, law or management.

34. Term of office of Chairperson and other Members:

- (1) The Chairperson and other Members shall hold office for a term not exceeding three years, from the date on which they enter upon their offices or until they attain the age of sixty-eight years, whichever is earlier.
- (2) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed.
- (3) The salary, allowances and other conditions of service of the Chairperson and other Members shall not be varied to their disadvantage after their appointment.
- (4) The Chairperson or Member may relinquish his office by giving in writing to the _____ Government notice of not less than three months or be removed from his office in accordance with the provisions of section 35.

35. Removal of Chairperson and Member from office in certain circumstances:

- (1) The _____ Government may remove from office, the Chairperson or any Member of the Appellate Tribunal who .

- (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as the Chairperson or a Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-section (1), the Chairperson or Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the ____ High Court, on a reference being made to it in this behalf by the State Government, has, on an enquiry, held by it recommend that the Chairperson or a Member ought to be removed on such ground.
- (3) The ____ Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal as the case may be in respect of whom a reference has been made to the ____ High Court under sub-section (2), until the State Government has passed an order on receipt of the report of the ____ High Court on such reference.

36. Officers of the Appellate Tribunal:

- (1) The _____ State Government shall provide the Appellate Tribunal with such officers and employees as, it may deem fit.
- (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

37. Appeals to the Appellate Tribunal:

- (1) The _____ State Government or the Competent Authority or any person aggrieved by any direction or order or decision of the Regulatory Authority may prefer an appeal to the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Regulatory Authority is received by the ____ State Government or the Competent Authority or the aggrieved person and it shall be in such form, and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of thirty days if it is satisfied that there was sufficient cause for not filling it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties an opportunity of being heard, pass such orders thereon as it thinks fit.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Regulatory Authority, as the case may be.
- (5) The appeal preferred under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within ninety days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

38. Powers and functions of Appellate Tribunal:

- (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act or rules made thereunder, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) 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 documents;
 - (c) receiving evidence on affidavits;
 - (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application for default or deciding it ex parte; and
 - (g) any other matter which may be prescribed.
- (3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code 1860 (45 of 1860)

and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

39. Order passed by the Appellate Tribunal to be executable as a Decree:

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

CHAPTER VI

OFFENCES AND PENALTIES

40. Punishment for non-registration under section 3:

Whoever, fails to comply with or contravenes the provisions of section 3, shall be liable to imprisonment for a term which may extend to three years, or to a penalty which may extend to ----- per cent of the cost of development works, or with both.

41. Penalty for contravention of sections 6, 7, 8 etc.

Whoever, without reasonable cause, fails to comply with, or contravenes, the provisions of section 6 or section 7 or section 8 or section 9 or section 10 or section 11 or section 12 or section 13 or section 14 or section 15 or section 16 or section 17 or section 28 shall be liable to a penalty of rupees - ----- for each day during which such non-compliance continues, or rupees ----- whichever is higher.

42. Penalty for non-payment by the allottee under section 18:

Any allottee, who without reasonable cause, fails to comply with, or contravenes, the provisions of section 18, shall be liable to a penalty which may extend rupees ----- or ----- percent of the sale price of the property specified in such agreement, whichever is higher.

43. Punishment for non-compliance of orders of Appellate Tribunal:

If any person, who willfully fails to comply with the orders of the Appellate Tribunal, shall be liable to imprisonment for a term which may extend to three years or with a penalty which may extend to rupees ----- or with both.

44. Penalty for Contravention of other provisions of the Act or rules made thereunder:

Any person, or promoter, or architect, or engineer, or estate agent, or contractor who, without reasonable cause, fails to comply with, or contravenes, any other provision of this Act or of any rules made there under, or does not pay the penalty imposed on him by the Regulatory Authority shall, if no other penalty is expressly provided for the offence under this Act, be liable to a penalty which may extend to rupees -----.

45. Offences by companies:

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the

offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section, -

- (a) ~~%~~company+ means any body-corporate and includes a firm or other association of individuals; and
- (b) ~~%~~director in relation to a firm, means a partner in the firm.

46. Compounding of offences:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also fine, may either before or after the institution of the proceeding, be compounded by the Appellate Tribunal or a court before which such proceedings are pending.

CHAPTER VII

Miscellaneous

47. Civil courts not to have jurisdiction:

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

48. Jurisdiction of court:

- (1) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence punishable under this Act.
- (2) No court shall take cognizance of an offence punishable under this Act or any rules or regulations made there under, except upon a complaint on writing made by the Regulatory Authority or by any officer of the Regulatory Authority duly authorized by it for this purpose.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for the Metropolitan Magistrate or Judicial Magistrate of the First Class to pass a sentence of imprisonment or of fine or both under this Act.

49. Power to make Rules:

- (1) The _____ Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - a) _____ ;
 - b) _____ ;
 - c) _____ ;

50. Power to make Regulations:

- (1) The Regulatory Authority may, by notification in the Official Gazette, and with the previous approval of the ----- Government, make regulations, not inconsistent with the provisions of this Act, and the rules made thereunder, to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- a) õ õ õ ;
- b) õ õ õ ;
- c) õ õ õ ;

51. Rules and Regulations to be laid before State Legislature:

Every rule made by the Government and every regulation made by the Regulatory Authority under this Act shall be laid, as soon as may be after it is made, before each House of the _____ Assembly, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

52. Protection of acts done in good faith:

No suit, prosecution or other legal proceedings shall lie against the Government or the Appellate Tribunal or Regulatory Authority or any member, officer or other employees thereof for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or rules and regulations made thereunder.

53. Act to have overriding effect:

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Schedule- I

[See sub-section (1) of section 10]

Form of the agreement and accompanying documents

The form of agreement shall contain, inter alia, in the case of apartments, and development of plots the following particulars, namely: -

- (1) details of the liability of the promoter to construct the apartments according to the plans and specifications, approved by the authority, which is required so to do under any law for the time being in force;
- (2) the date by which the possession of the apartment is to be handed over to the allottee;
- (3) the area of the apartments, including the area of the balconies which should be shown separately;
- (4) the price of the apartment, including the proportionate price of the common area and facilities which should be shown separately, to be paid by the allottee of the apartment and the intervals at which the installments thereof may be paid;
- (5) the precise nature of the association to be constituted of the persons who have taken or are to take the apartments;
- (6) the nature, extent and description of the common areas and facilities and the limited common areas and facilities, if any;
- (7) the percentage of undivided interest in the common areas and facilities, if any, pertaining to the apartment to be sold, such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of all the apartments;
- (8) the statement of the use for which the apartment is intended and restrictions on its use, if any;
- (9) the liability of the promoter to develop the requisite infrastructure as per approved standards.
- (10) the details of essential services to be provided and extent thereof such as water supply, electricity, passages, staircases, sanitary services, etc.

Schedule- II

[See section 11]

Measures for protection and safety of property to be taken by the promoter

- (1) A promoter and the architect and engineer engaged by him, shall comply with the measures for safe construction and protection of properties against natural calamities as per building bye-laws, provisions of the National Building Code and other standards published by the Bureau of Indian Standards and such other measures as the Government may, by notification in the Official Gazette, specify in this behalf.
- (2) For the purposes of compliance with the measures referred to in subsection (1), the promoter shall enter into separate agreements and engage the services of an architect and an engineer and at no stage the work of construction of the building or apartment may be continued without engaging the services of architect or engineer, as the case may be.
- (3) The promoter and the architect and engineer engaged by him shall jointly file a certificate, duly signed by all of them with the Regulatory Authority at such intervals as it may specify certifying that the building or apartments are being constructed in accordance with the plans approved by the concerned authority and that all the measures referred to in this schedule are being complied with in respect of the building or apartments under construction to ensure their safe construction and protection against the natural calamities.
- (4) If for any reason there is a change of architect or engineer during the construction of the building or apartments, the promoter shall:
 - (a) engage immediately another architect or engineer, as the case may be, and the incoming architect or engineer shall satisfy himself about the compliance of the measures as mentioned in the previous certificates submitted to the competent authority, before taking the responsibility of certificates in future regarding compliance of the said measures.
 - (b) inform the Regulatory Authority about the engagement of the other architect or engineer, as the case may be.
- (5) The promoter shall keep and maintain all records relating to the construction of the building or apartments by him.

Measures for Insurance against loss or death

- (1) The promoter shall obtain an insurance policy for the building or apartments, during the period of their construction and for a further period specified in the agreement, against loss or damage by natural calamities, for the cost of replacement of such property and loss of life and bodily injuries suffered by persons occupying such building or apartments or by

outsiders who may be inside or within the vicinity of such building or apartments at the time of occurrence of the natural calamity.

- (2) The insurance policy shall be in the name of such Manager or the Board of Managers as may be authorized by the promoter or the association of the apartment owners as trustee for each of the building or apartment owners in the percentage specified in the declaration.
- (3) The premium of insurance shall be deemed to be part of common expenses.
- (4) The provisions for insurance shall be without prejudice to the right of each apartment owner to insure his apartment for his benefit.
- (5) The promoter shall insure with any general insurance company and obtain an insurance policy or policies covering the liability of any loss or death caused by any defect in land, building or apartments and shall keep the Regulatory Authority informed of payment of premium from time to time against such insurance policy or policies.
- (6) The aforesaid policy or policies shall cover the risks of not less than ninety percent of the value or estimated value of the land, building or apartments, as the case may be, and of risk in respect of persons likely to occupy such property.
- (7) The insurance risks shall cover the period of construction of the building or apartments and a further period of not less than five years from the date of handing over possession of the last saleable apartment.
- (8) The liability of the insurance company shall extend up to the value of life and property lost or bodily injuries suffered but shall not exceed the insured amount.

Schedule- III

[See section 12]

Promoter's responsibility regarding the account of sums taken from or on behalf of the allottees

- (1) The promoter shall maintain a separate account in any Scheduled Bank of sums taken by him from, or on behalf of, persons intending to take or who have taken a plot, building or an apartment, as advance towards sale price or for any other purpose, or as deposit including any sum so taken towards the share capital for the formation of a cooperative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, charges for water or electricity, revenue assessment, interest on mortgages or other encumbrances, if any, stamp duty and registration fee for the agreement of sale and conveyance deed).
- (2) The promoter shall hold the said sums for the purposes for which they were given and shall disburse the sums for those said purposes including the development of the real estate project and shall on demand, in writing, by the Regulatory Authority or the allottees, individually or collectively, make full and true disclosure of all transactions in respect of that account on payment of charges and shall not utilize these sums for any purpose other than the purpose for which they were so collected.

Responsibility of promoter for outgoings till transfer

- (1) A promoter who has collected from the allottees, sums for the payment of outgoings shall pay all outgoings (including ground rent, municipal or other local taxes, charges for water or electricity, interest on mortgages or other encumbrances, if any) until he transfers the physical possession of the property to the allottees.
- (2) Where any promoter fails to pay all or any of the outgoings collected by him from the allottees before transferring the property to such allottees, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be responsible for the cost of any legal proceedings which may be taken therefore by such authority or person.

Refund of amount

- (1) If the promoter fails or is unable to give possession, of a plot or building or an apartment,
 - (a) in accordance with the terms of the agreement or, as the case may be, duly completed by the date specified therein or any further date agreed to by the parties; or

- (b) due to discontinuance of his business as a promoter on account of lapse of registration or cancellation of his registration under this Act or for any other reason,

he shall be liable on demand, without prejudice to other remedies to which he may be liable, to refund the amounts already received by him in respect of that plot, building, or apartment with interest at a rate not exceeding the current rate of interest, including penalty at such rate as may be determined by the Regulatory Authority.

- (2) The interest referred to in sub-section (1) shall be chargeable from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded and such amount and interest shall be a charge on the land and other structures thereon.

Promoter's responsibility to maintain accounts, registers and records and to get his accounts audited

- (1) A promoter who has registered under section 3 of this Act shall maintain accounts, register and records and make them available for inspection or audit as may be required by the Regulatory Authority.
- (2) The Regulatory Authority shall maintain such register as may be prescribed showing relevant particulars of all cases in which registration under section 3 is granted or refused by it and the said register shall be available for inspection, without any charges, by all interested persons and such persons shall be entitled to have relevant extracts therefrom.

AUDIT

- (3) The promoter or estate agent or contractor, as the case may be, shall get his accounts audited within six months after the close of every financial year by a Chartered Accountant, and shall produce a statement of accounts duly certified and signed by such chartered accountant in the manner prescribed and it shall be verified during the audit that the amounts collected for a particular purpose have been utilized for that purpose.

Inspection of accounts or records of business

- (4) The Regulatory Authority may inspect or cause to be inspected, at any time during business hours, any accounts or records of a promoter or an estate agent or a contractor, as the case may be, relating to his business in order to satisfy itself that the requirements of this Act and the rules made there under or the terms and conditions of the registration granted under section 3 to him are duly complied with.

Schedule- IV

[See sub-section (4) of section 13]

Promoter's responsibility to prepare and maintain a list of plots and apartments with their numbers, the names and addresses of the persons

- (1) The promoter shall also prepare and maintain a list of plots and apartments with their numbers, the names and addresses of the persons, who have taken or agreed to take plots or apartments, the price charged or agreed to be charged and the terms and conditions, if any, on which the plots or apartments are taken or agreed to be taken:

Provided that the provisions of this schedule shall not apply where there is no agreement for allotment of specific plot or apartment and such allotment is made by draw of lots.

Provided further that the promoter shall provide for apartments belonging to weaker sections of the society, as per the Government orders or policy guidelines in this regard, who may be rendering certain services to the allottees of the apartments or occupiers thereof, or allotted in such manner as the Government may specify in this behalf, to obtain a completion certificate of the building or apartments from the concerned local authority as per building regulations in force.