

THE MAHARASHTRA HOUSING (REGULATION AND DEVELOPMENT) BILL, 2012

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The Maharashtra Legislative Assembly, on 16 July 2012, passed the Maharashtra Housing (Regulation and Development) Bill, 2012^[1] ("the proposed Act") which, on receiving the Governor's assent, will replace the existing Maharashtra Ownership of Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA"). The MOFA had envisaged to regulate the promotion of construction, sale, management and transfer of flats but has not given the flat purchasers an effective implementing arm, which is now envisioned in the proposed Act.

Object of the Bill:

In addition to regulating and promoting the construction, sale, management and transfer of flats in Maharashtra, the proposed Act seeks to establish Housing Regulatory Authority ("HRA") and Housing Appellate Tribunal ("HAT"). The Bill, when enacted, is expected to ensure transparency and discipline in the transactions of flats and to keep a check on malpractices.

Applicability of the Bill:

The proposed Act will be made applicable to the whole of the State of Maharashtra. It is however restricted in its scope to private developers and does not include within its fold government bodies such as the Maharashtra Housing and Area Development Authority ("MHADA").

Salient Features of the Bill:

1. Establishment of the Housing Regulatory Authority and the Housing Appellate Tribunal:

The Bill proposes to establish the HRA and the HAT. The main functions of HRA would be to ensure compliance of obligations of the promoters, to ensure effective implementations of the penal provisions imposed, to maintain records of all housing projects and to take all possible measures for the growth and promotion for healthy, transparent, efficient and competitive real estate market in the State of Maharashtra. The HRA has

been empowered to hear and adjudicate complaints and disputes and pass reasoned orders. The HAT is the appellate tribunal established to hear and dispose of appeals against any direction, decision or order of the HRA. Both HRA and HAT for the purpose of discharging its functions under the proposed Act, shall have the same powers of a civil court under the Civil Procedure Code 1908. The Bill excludes the jurisdiction of the civil court in such matters.

2. Registration Process:

The Bill requires every developer to register his project with the HRA. Also, the HRA shall have to register such project within a period of 7 days from the receipt of an application from the promoter. The registration has been made mandatory even to ongoing projects where occupation certificate has not been granted. The Bill provides for the following four exceptions to registration of a housing project with the HRA:

1. Where the area of land proposed to be developed does not exceed 250 sq. mtrs.;
2. When the total number of flats is not less than five;
3. Where the promoter has received occupation certificate prior to the coming into force of the relevant section; and
4. Where the project is a renovation, repairs, reconstruction or redevelopment project which does not involve fresh or new allotment or marketing of flats.

3. Extensive Responsibilities and or Restrictions on the Promoter

The MOFA provides for various responsibilities and restrictions on the promoter of a housing project. The proposed Act has provided for additional and more stringent provisions as regards the responsibilities, disclosures and restrictions on the promoter. A few of the important newly added provisions are listed below:

- The concept of dual ownership is proposed to be introduced by requiring the promoter to convey the buildings in a layout to legal entities of the flat purchasers and to convey the land to the Apex Body or Federation which shall manage and administer the common areas and facilities in the layout.
- The promoter shall not be entitled to market any housing project or offer flats for sale or accept advances for such sale before registering the project as prescribed.
- The promoter shall have to disclose extensive details of the housing project by uploading on the website maintained by HRA such as the details as regards title to the land, the architect/contractor for the project, size of plots, layout plan, carpet areas, Floor Surface Index (FSI), Transfer of Development Rights (TDR), details of the Builders Enterprise etc. Further, where the land is owned by another person, the Developer would be required to disclose registered copies of the Power of Attorney (POA) or Agreement under which the development rights have been granted.
- The promoter shall have to take measures for the protection and safety of the property against natural calamities in accordance with the Building bye-laws and building code.
- The promoter is prevented from handing over possession of the flats without obtaining occupation or completion certificate.
- The promoter shall maintain building wise separate account(s) in any bank for taking advance or deposit from flat purchasers in respect of such building(s) and such account(s) may be required to be audited by a Chartered Accountant.
- The promoter shall have to allot fixed parking spaces to the flat purchasers and no parking spaces shall be allotted in the minimum open space.

- When the project involves construction of more than one building or development of huge tract of land ("layout"), the promoter has been permitted to amend, modify and vary the layout including recreation ground, park, garden, etc. in accordance with the prevailing laws for utilizing the full development potential available.
- The promoter shall have to form a society or other legal entity of flat purchasers in a building within four months from obtaining occupation certificate or minimum sixty per cent of flat purchasers have taken possession or the promoter has received full consideration and other amounts for the same, whichever is earlier.
- The promoter shall have to convey the building in favour of the legal entity of the flat purchasers within four months from its formation.

4. Penalties

The proposed Act contains provisions to curb malpractices by imposing penalties on builders contravening its provisions. These include penalties for non registration by the promoter, failure to enter details on the website by the promoter, failure to give possession within a specified time etc. The proposed Bill also contains penalties for persons who fail to comply with the directions of the HRA or the HAT. The aforementioned penalties range from INR 50,000 to INR 1,00,00,000.

Comparison with the Central Bill:

The proposed Act is a diluted version of the Centre's Draft Real Estate (Regulation and Development) Bill, 2011 ("the Central Bill"). The Central Bill contemplates punishment of imprisonment of upto three years in case of certain contraventions by the promoters, whereas the proposed Act provides only for penalty. Thus, the proposed Act appears to have diluted several pro-flat-purchaser provisions forming part of the Central Bill. For instance the provision of sending errant builders to jail has been dropped. The provision in the Central Bill stating that developers could be imprisoned for a term extending upto three years in case of violation has been replaced by a mere penalty (being ten per cent of the project cost) in the proposed Act.

Conclusion:

The proposed Act, though appears to be a step in the right direction, the same could have been further strengthened by providing more stringent provisions to curb prevalent malpractices. Nevertheless, the proposed Act enhances the scope for transparent practices in the real estate market in the State of Maharashtra. The proposed Act may pass the test of time if it is supplemented by effective judicial and administrative mechanism.

- By Ravi Raje Bhosale & Lalita Mantri

[1]: [Link](#)

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