

LEGAL PUNDITS
Conference on
Maharashtra Housing
(Regulation and Development)
Bill, 2012
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Present Position:

The Bill has been passed by the Legislative Assembly and Legislative Council and is awaiting the assent of the President.

Objectives:

- To repeal MOFA 1963, from the appointed day (s.56).
- To provide relief to flat purchasers against malpractices and difficulties.
- To establish a Housing Regulatory Authority and Housing Appellate Tribunal.
- To remove information asymmetry by ensuring full disclosure and compliance.
- To usher in transparency
- To promote planned and healthy development.
- To facilitate smooth and speedy construction and maintenance.

Sec.3 (2) Disclosures to be made by Promoter.

- A Promoter who intends to construct or is constructing or constructs a block or building or flats which is not for personal use, shall, in all transactions be liable to give or produce the information and the documents specified and as may be prescribed. (Flat is defined in Clause 2(m) as including residence, office, showroom, shop or godown)
- This refers even to “is constructing”, i.e. all ongoing constructions, even though they may have begun earlier. (a) Promoter shall make full and true disclosure of the Title, which should have been certified and which should have been duly entered in the Property Card or Village Forms VI or VII and XII or any other relevant revenue record.

- If land is owned by another, the registered copy of the agreement or Power of Attorney shall also be disclosed.
- (b) All encumbrances and rights of others to be disclosed.
- (c) Full and true disclosure of Promoter's enterprise details, such as name, registered addresses, type of entity, registration details etc.
- (d) Names and addresses of architects, structural Engineers and Contractors including turn-key contractors, if any, retained shall be disclosed.
- (e) disclose the information relating to number and size of plots, layout plan, carpet area, utility area, FSI/TDR/additional FSI consumed, limited common area and facilities and common area and amenities and facilities of the lay out proposed.
- (f) Give inspection with 7 days notice or demand of the plans/structure, design and specification, duly certified by an Architect till they are approved; and after approval, such approved plans and specifications.
- (g) to disclose the building-wise time schedule of completion of the Phase of the project, which shall always be subject to force majeure event.
- (h) Disclose the time schedule for connecting the project with the Municipal services, such as sewerage, water supply, electricity, drainage etc. but subject to force majeure.
- (i) disclose the nature of fixtures and fittings with regard to the flooring and sanitary fittings, lifts, brand of the items of fixtures, fittings and lifts if they are branded, or otherwise price range of the items if not branded.

- (j) disclose on reasonable notice or demand, if the Promoter is the builder, the design, type of concrete, materials used, technology such as pre-fab, pre-cast, earthquake resistant etc. If the Promoter is not himself a builder, disclose all written agreements and details of oral agreements, with architects, structural engineer and Contractors including only turn-key contractors regarding design, materials and construction.
- (k) specify in writing the date by which possession is to be handed over.
- (l) Prepare and maintain a list of flats with numbers, built or to be built.
- (m) prepare and maintain the list of parking spaces provided or to be provided and identified by separate numbers.
- (n) state in writing the nature of the organization to which Title is to be passed and the terms and conditions thereof.
- (o) Display or keep all the documents at the site and at the promoter's registered office and permit inspection thereof to persons intending to take flats.
- (p) Disclose names and addresses and contact numbers of agents, property dealers, brokers or middlemen by whatever named called, duly authorized by the Promoter.
- (q) Give such other information and documents as may be prescribed.

Sec.3(3) In the case of a layout, in addition, the Promoter shall disclose:

- (a) The phase-wise layout plan of the housing project.
- (b) The plan of the phases of the development work in which flats for sale are marketed in the project.

- (c) Details of common areas, amenities and facilities of the phase of the layout.
- (d) Aggregate area in sq.meters of the parks, recreational grounds, gardens and playgrounds.

Sec.4(1) Every promoter shall make an application to HRA for registration of its project and for displaying the project on the website of the HRA and shall pay the fees prescribed, which shall not exceed Rs.50,000/-

Provided that no registration and display shall be required for the following:

- (i) If land in a project or phase is upto 250 sq.mt.
- (ii) When the total number of flats or apartments proposed to be developed into the project including all Phases is less than 5.
- (iii) Where the Promoter has received O.C for the building of phase prior to this Section coming into force.
- (iv) Where the project is for renovation, repair or reconstruction or redevelopment project which does not involve fresh or new allotment of flats or marketing or sale.

Explanation.

- (i) For the purpose of this Act, where any project is proposed to be marketed and sold in phases, then every such phase shall be considered an independent project.
- (ii) If a single purchaser of all the flats in a project registered by HRA intends to dispose of such flat by sale or otherwise, then such single purchaser shall also be able to register and display the project under this Act.

Sec.4(2) The Promoter shall include documents as under:

- (a) Chartered Engineer's or Chartered Architect's Self or architect's authenticated copy of the proposed development of each Phase of the project.
- (b) Proof of submission of plan for approval of the local authority. The approval and sanction shall be uploaded within 72 hours of obtaining the same from the local authority.

Sec.4(3) The HRA shall within 7 days of receiving an application register and allot a password to the Promoter for access to the website of the HRA.

Sec.5(1). No Promoter shall start any transaction including sale or marketing in a new project or phase without displaying such flats on the website.

For ongoing projects where the O.C. is yet to be obtained, a Promoter shall make an application to HRA for registration within the period prescribed.

Sec.5(2). Such percentage as may be prescribed, upto a maximum of 10% of each building shall be treated as "Retained Flats" and the details of such flats shall be shown on the website. The marketing and sale of these flats shall be done only after receipt of the OC or BCC of that building.

Sec.6. The Promoter shall, on receiving the password from the HRA through a system of self entry access the website and enter the details within the prescribed period.

Sec.7. The HRA may, after giving a hearing, cancel the registration of a Project in the event it is finally declared by a Court of Law that the agreement under which the Promoter derives the right to the land, is invalid.

7 (2) Upon issuing the order of cancellation, HRA shall debar the Promoter from accessing the website in respect of the cancelled project.

Sec.8. No Promoter shall issue or publish an advertisement or prospectus offering for sale or otherwise any flat or inviting advance payments or deposits without displaying on the HRA website.

Sec.9(1) Upto 20% advance can be accepted by the Promoter.

Registration of agreement compulsory to accept more than 20%.

9(2) Agreement to contain particulars and have documents attached.

a) Particulars.

- (i) The plans and specifications approved.
- (ii) Date by which possession is to be handed over.
- (iii) Carpet area.
- (iv) Extent of utility area.
- (v) The price of the flat including proportionate price of the limited common areas and facilities and parking spaces which should be shown separately to be paid by the purchaser and the intervals for instalments.
- (vi) Allotment of fixed parking space to purchaser, provided that no parking spaces shall be allotted in minimum open space.
- (vii) Nature of organization to be constituted.
- (viii) Nature, extent and description of limited common areas and facilities.
- (ix) Aggregate area of park, garden, recreation ground and playground proposed in the layout.
- (x) Nature and extent and description of common areas and amenities and facilities of layout.
- (xi) Statement of use for which the flat is intended and registration on its use.
- (xii) Percentage of undivided interest in the limited common areas and facilities.

b) Documents and Certificate of Title.

- (i) Certificate of Title by an Advocate under section 3(2)(a).
- (ii) Property Card or Village forms or other relevant revenue record showing the nature of the title.
- (iii) Plans and specifications approved.

Section 9(3) – Agreement for Sale must be registered by the Promoter or a duly authorized representative.

If the person who has executed does not appear before the Registration Officer, a summons shall be issued under Section 36 of the Registration Act requiring the executants to appear either in person or by duly authorized Power of Attorney holder. If the executants fail to appear, the document shall be deemed to be admitted and shall be registered. If the executants appear but deny execution, there shall be a hearing and the Registrar may register or not.

Section 10 – Effect of non-registration.

If an agreement remains unregistered, then notwithstanding anything contained in any law of judgment, decree or order, it may be received as evidence of a contract in a suit for specific performance under the Specific Relief Act, 1963 or as evidence of part performance of a contract or as evidence of any collateral transaction not required to be effected by registered instrument.

Section 11(1) – Responsibilities of Promoter

If a person makes an advance or a deposit on the basis of an advertisement or prospectus and sustains any loss by reason of any wilful untrue statement, he shall be compensated by the Promoter.

If the purchaser withdraws from the project on account of wilful untrue statement, the investment shall be returned along with interest at the prescribed rate but not exceeding 15% p.a.

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Section 11(2) – Promoter shall take all measures provided in Schedule 1 for protection and safety of a building.

Section 11(3) – Promoter must obtain OC or BCC and give a copy to the flat purchasers individually or to the co-operative society or collective body.

Section 11(3)(b) – Promoter shall not allow persons to take possession until the OC or BCC is given and no person shall take possession until then.

Section 11(4) – After possession of the flat is handed over to the purchaser, he “shall not be permitted to carry out any additions or alterations in the flat” and “the promoter shall not be responsible, if additions and alterations are done in the flat” by the purchaser “in violation of the building regulations”.

Section 11(5) – Essential services such as water supply, electricity, light in passages, lift, sanitary services shall be provided and such services shall not, except with notice, be cut off or curtailed. Responsibility is of service provider. Promoter shall not be responsible.

Section 11(5)(ii) – Details of essential supplies and services shall be kept by the Promoter in the form of a statement and made available to the purchasers.

Section 11(5)(iii) – If the purchaser fails to pay the outgoings to the promoter for more than three months, the promoter may approach the Competent Authority, who, after 7 days notice, may cut-off, withhold or in any manner curtail or reduce any essential supply or service.

Section 11(6) – Redevelopment Project. This Act shall apply only to open market sales and not for rehab flats, which shall be governed by other applicable statutes.

Section 12 – The Promoter shall maintain a building-wise separate account in any Bank of sums taken, deposits including for share capital, outgoings, ground rent, taxes, water charges etc. and shall hold and disburse the moneys

for those purposes, make full disclosure of all transactions to a State Government officer.

The Promoter shall also follow the instructions in Schedule II.

Accounts must be audited by a Chartered Accountant.

Section 13 – Outgoings. Promoter may collect from purchasers for payment of outgoings and it shall be Promoter’s responsibility to pay the outgoings until he transfers the property to the purchasers or to the organization of such persons. If he has not paid, he shall continue to be liable even after the transfer of property, to pay such outgoings and penal charges.

Section 14(1) – No alterations or additions without consent after plans are disclosed.

(1) If single building:

(i) Any alteration in the structure in respect of any flat requires consent of that purchaser;

(ii) Any additional floors or wings – consent of all persons or purchasers in the building or wing. However, no consent for changes required by Government or due to change in law or which are disclosed in the agreement.

(2)(a) Layout or township, after plans are approved and disclosed to purchaser,

(i) Any alteration of a flat requires consent of that purchaser

(ii) Any additional floors or wing requires consent of all purchasers in that building or wing.

(iii) Any modification in the location of the recreation ground or garden requires the consent of the persons who have agreed to take flats on the basis of the disclosure of the location and such fact is mentioned in the Agreement.

(b) modification in the layout of the recreation grounds or garden etc. can be made in accordance with the DC Regulations for the utilization of the full development potential.

(c) In case of development of a layout or township, the Promoter shall be entitled to further construction of any new building after obtaining approval. However, the Promoter shall not reduce the approved compulsory open spaces or the aggregate area of recreational grounds without the consent of all purchasers, except if consent is required by the authorities or by law.

Section 15 – Defects to be rectified within five years. Disputes to be referred by HRA to the Executive Engineer or a higher officer of State Government.

Section 16 – Effect of non-completion of project - If the Promoter fails to give complete construction and obtain OC by the date specified or any further date agreed by the parties or as may be decided by the HRA, then after giving a hearing, the HRA may pass an appropriate order to enable completion of construction and obtain OC. Such order may provide for (i) formation and registration of a legal entity of 60% of the flat purchasers who have come before the HRA (ii) appointment of the legal entity as an escrow agent for taking over the possession (iii) directing the Competent Authority to transfer the Retained Flats in the name of the escrow agent (iv) authorizing the escrow agent to appoint contractors, consultants and other agencies required to complete the construction and obtain OC. Stamp duty shall not be payable on Retained Flats being transferred to the escrow agent under the order of the HRA.

16(b) If the Promoter for reasons beyond his control, is unable to give possession of the flat by the date specified or a further agreed date and a further three months and three months, then the Promoter shall be liable to refund the amount received with interest at the prescribed rate and penalty as may be determined by HRA.

Section 17 – No mortgage etc. No Promoter shall after executing an Agreement of Sale, without the previous consent of the purchaser, mortgage a

flat and if any such mortgage or charge is created after registration of the agreement, it shall not affect the rights and interest of such persons.

Section 18(1) – Promoter to form co-operative society/company/apex body/federation.

(1) If single building - Promoter shall apply for registration of co-op. society or company or other legal entity within four months from the date of the OC or if minimum 60% of the flat purchasers have taken possession or the Promoter has received full consideration and other amounts for the same, whichever is earlier.

2(a) Separate Co-op.Soc. etc. to be formed for each building or wing.

2(b) If separate Co-op. Societies etc. have been formed, then the Promoter shall form and register an Apex Body or Federation consisting of all such entities in the layout, within the period prescribed.

(2)(a) If Layout – separate co-op. societies or companies etc. for each building or wing, to be applied for within four months from the date of the OC or possession given to 60% of flat purchasers, whichever is earlier.

4. If Condominium – then the Promoter shall inform the Registrar immediately after execution of Declaration and then it shall not be lawful to form a co-op. Society or Company.

5. If Promoter fails to register Co-op. Society or Apex Body or Federation the Competent Authority may direct the Registrar of Co.op. Societies to register the Society, Apex Body or Federation.

Section 18(5) (b) – Before giving a direction to form a society or apex body or federation, the Competent Authority must verify the authenticity of the applicants and give the Promoter a hearing.

Section 19 – Promoter shall normally execute the Conveyance within four months of formation of society or company.

In the case of condominium, a Deed of Apartment shall be executed within four months of possession.

Section 19(2) – Layout Conveyance shall only be in respect of the structures of the buildings in which a minimum number of 60% of the flats have been sold, along with FSI consumed in such building, subject to the right of the Promoter to dispose of the remaining flats, if any, and receive the entire consideration due. The Conveyance shall be subject to the right to use the internal access roads, recreation area developed in the layout and the open spaces allotted for such buildings.

Provided that, notwithstanding anything contained in this Act or in any agreement or judgment or other law, the Promoter shall be entitled to develop and continue to develop the remaining layout land with the right to use the internal access roads and all the facilities, amenities, services etc. in the layout and to construct any additional structures thereon by consuming the balance FSI and TDR-FSI and any future increases.

However, subsequent to Conveyance if there is an increase in FSI, of the plot in a layout, subsequent to conveyance of a structure, then it shall belong proportionately to the organization of flat purchasers. It shall not be necessary for the promoter to obtain any consent or permission from the organizations in the said layout land, to utilize FSI and/or TDR-FSI and/or additional FSI.

Section 19(3) - Where the title of the Promoter is in respect of the entire undivided or inseparable land underneath all such buildings in a layout, then the conveyance shall be executed after forming the Apex Body or Federation.

Section 19(4) – Promoter shall file with the Competent Authority a copy of Conveyance. If the Conveyance is not executed, the purchasers or the society

or Apex Body etc. may apply to the Competent Authority for a unilateral deemed Conveyance and the same may be registered.

Section 19(5) – Within six months of an application, the Competent Authority may certify that it is a fit case for enforcing unilateral execution of Conveyance Deed as deemed conveyance and shall issue a certificate to the Sub-Registrar, who shall register it.

An appeal may be filed against the order of the Competent Authority to the Housing Appellate Tribunal (HAT).

Section 19(7) – Upon the Conveyance or unilateral deemed Conveyance, the organization shall be entitled, in any reconstruction/redevelopment, to the FSI, TDR-FSI and/or additional FSI consumed and proportionate share in increase as per sub-clause (1) above and shall be entitled to the portion of land allocated to such building, without prior permission of the Promoter..

Section 19(8) – A layout plot/land shall be conveyed to the apex body or federation subject to the right of the promoter to dispose of the remaining flats and to receive the payment of outstanding dues. If additional FSI becomes available after the Conveyance, then such additional FSI shall be apportioned to the respective legal entities.

Section 19(9) – The Apex Body shall manage and administer the common areas and facilities without having a legal interest in the buildings.

Section 20 – General liabilities of flat purchaser. Every purchaser shall pay the price and proportionate taxes, water and electricity charges etc.

Section 20(2) – Contravention of sub-section (1) shall be punishable with fine which may extend to the amount defaulted.

Section 21 – Competent Authority. The State Government may, by notification, appoint an officer not below the rank of District Deputy Registrar of Co-operative Societies to be the Competent Authority.

Section 22 – Establishment of HRA. HRA shall be a body corporate, having perpetual succession and a common seal and may acquire, hold and dispose of property both movable and immovable and may contract and sue or be sued.

Section 23 – Composition of HRA. Chairperson and two or more members who have special knowledge of and professional experience in public administration, urban development, housing, finance, law or management.

Section 29 – Functions of HRA.

- (i) To ensure compliance of obligations upon Promoters and allottees;
- (ii) Enquiry into compliance;
- (iii) To levy fees and charges;
- (iv) To report matter to the appropriate authority for taking action against the Promoter or an allottee for commission of any offence under any law in force.
- (v) To host and maintain a website of records of all projects within its jurisdiction;
- (vi) To take measures under section 33, i.e. for planned development and promotion of housing.
- (vii) Perform such other functions relating to housing projects as may be entrusted to HRA;
- (viii) To make recommendations in relation to DC Regulations, changes in FSI and other related matters;
- (ix) Recommendations are not binding and the State Government shall take final decisions.

Section 29(2) – Upon receiving a complaint application, HRA shall, after enquiry and hearing, pass a reasoned order within three months or such further time as found appropriate by HRA.

HRA shall not enter into adjudication of restrictive practices.

Section 29(3) – A dispute shall be heard by a single member of HRA on all matters other than those under the Competition Act, 2002.

Section 30 – HRA may call upon any Promoter to furnish in writing information and explanations with regard to compliances.

b) direct the Promoter to produce books of account or other documents relating to the project or flat.

Section 31- HRA may issue directions to Promoters, purchasers and organizations and such directions shall be binding on all concerned.

Section 32- Powers of HRA: Upon cancellation of registration under section 7(i) HRA shall prohibit the Promoter from marketing and selling of flats constructed for the project of which the registration is cancelled.

Section 33- Measures to be taken by HRA for planned development and promotion of the Housing sector:

HRA shall take all possible measures for growth and promotion of a healthy, transparent, efficient and competitive real estate market, and shall:

- (1) Evolve consensus amongst Government and other bodies to follow, on mandatory basis structural safety norms;
- (2) suggest to the State Government to establish a framework of standard procedures and norms for speedy processing and grant of planning permissions;
- (3) promote the rating of real estate projects and of promoters;
- (4) on behalf of the real estate sector take up with the Government, financial institutions and other's issues such as easy access to credit or home loans, land title Certification system, registration procedure, maintenance of properties, statutory framework for equitable and balanced relationship between Promoters and purchasers;

(5) promote construction of environment friendly or green buildings and conservation of water;

(6) promote standardization and use of proper construction material and techniques;

Section 34-HRA shall be guided by the principles of natural justice and shall regulate its own procedure. It shall have the powers of a Civil Court and may summon and enforce attendance etc.

Section 36-Housing Appellate Tribunal shall be set up by State Government. It shall have a Chairperson and not more than two persons appointed by the State Government.

Section 40-Appeal may be filed against any order or decision of HRA, within sixty days of the date of the Order and shall as far as possible be decided in 60 days.

Section 42-Appeal to High Court.

Section 44-Punishment for non-registration of the project shall be upto Rs.1,000/- per day of default.

Section 45-Penalty for contravention of section 6, (entering required details on website), 16(not transferring Retained Flats to escrow agent) and 17(creating mortgage).

Penalty of Rs.10,000/- per day or Rs.50,00,000/- whichever is lower.

Section 46- If a flat purchaser or an organization contravenes the provisions of the Agreement for Sale, including non-payment of any amounts or charges, he shall be liable to pay a penalty of upto Rs.10,000/- or 1% of the sale price, whichever is higher.

Section 47- Any person who willfully fails to comply with an order of HRA or HAT shall be liable to imprisonment of upto 3 years or penalty of upto Rs.10 lakhs or both.

Section 48-Any person other than the Promoter failing to comply with this Act or Rules or not paying penalty imposed by HRA, shall be liable to penalty of upto Rs,50,000/-

Section 49(1)- Contravention by promoters of Section 9, 12, 14, 18 or 19 – Penalty upto Rs.1,00,00,000/-

Section 49(2)-Other provisions – Penalty upto Rs.10,00,000/-

Section 53-The provisions of this Act shall be in addition to the Transfer of Property Act and shall override contracts to the contrary.

Section 54-This Act shall not apply to the MHADA Authority or to Boards under MHADA.

Section 56 – MOFA shall stand repealed on a date to be notified.

SCHEDULE I- (Section 11(2))

I. Measures for protection and safety of property to be taken by the Promoter. The Promoter, the Architect and the Engineer shall comply with measures for safe construction etc.

II.Measures for insurance.

SCHEDULE II-

I. Promoter to maintain building-wise separate accounts in any Scheduled Bank of the sums taken by him towards maintenance and outgoings, including for formation of Co-operative Society etc.

Outgoings payable for the maintenance of layout land and Club House etc. shall be maintained in a separate account.

Promoter shall hold the sums for the purposes for which they were given and shall make full and true disclosure to the HRA or to the Purchaser individually or collectively of all transactions in respect of their account.

II. Promoters responsibility is till transfer of management to the Society etc.

The Promoter, who has collected money for outgoings shall pay all such charges till the amounts are fully depleted. Any balance remaining shall be handed over to the Society or apex body etc.

If the transfer of management from the promoter to the Society etc. - Such payment shall be made to the organization. The transfer of management shall be only if the Promoter is received all outstanding dues from the purchaser, and after the transfer of management of the building and/or let out land. Thereafter the organization shall maintain the building and/or the land.

The Promoter shall keep the balance in a separate account and shall be entitled to raise bills for further amounts.

III. Refund of amount - If a Promoter fails or unable to give possession in accordance with the Agreement or on account of cancellation of its registration, he shall be liable without prejudice to other remedies to refund the amount together with interest @ 15% p.a. and penalty as decided by the HRA.

HRA may inspect the accounts or records of the Promoters.

IV. Inspection of accounts or records of sums taken for and on behalf of flat purchasers.

Disclaimer: The material contained herein is not exhaustive and contains certain generalisations.