

# Real Estate (Regulation & Development) Act, 2016

## Part 2

## Procedures & Practices

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**Procedures and Practice of Real Estate (Regulation and Development) Act, 2016 - Part 2**

**Important Sections of the Act**

Section	Verbatim Section	Our Remarks
Sec 9 – Real Estate Agent	No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.	All the real estate agents also to seek registration under the act. The registration is to be single for that particular state. The registration number so obtained is to be quoted by the agent in all his sales. Further they are also required to maintain books and records.
Sec 10 – Liabilities of Real Estate Agent	<p>Every real estate agent registered under section 9 shall—</p> <p>a) Not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any.</p> <p>b) maintain and preserve such books of account, records and documents as may prescribed;</p> <p>c) Not involve himself in any unfair trade practices, namely:—</p> <p>a. the practice of making any statement, whether orally or in writing or by visible representation which—</p> <p>i. Falsely represents that the services are of a particular standard or grade;</p> <p>ii. represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;</p> <p>iii. makes a false or misleading representation concerning the services;</p> <p>b. Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.</p> <p>d) Facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of</p>	<p>As per the provisions of the act the broker / agent have also been given the equal responsibility of ensuring that the proposed amenities with which flats are being sold is actually correct and not misleading.</p>

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	booking of any plot, apartment or building, as the case may be;	
Sec 11 - Duties of project promoter	<p>At the website of the authority the promoter shall provide</p> <ol style="list-style-type: none"> <li>a) Details of the registration granted by the Authority;</li> <li>b) Quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;</li> <li>c) quarterly up-to-date the list of number of garages booked;</li> <li>d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;</li> <li>e) quarterly up-to-date status of the project; and</li> <li>f) Such other information and documents as may be specified by the regulations made by the Authority.</li> </ol> <p>(2) The advertisement or prospectus issued or published by the promoter shall mention</p> <ol style="list-style-type: none"> <li>g) prominently the website address of the Authority, wherein all details of the registered project</li> <li>h) have been entered and include the registration number obtained from the Authority and such</li> <li>i) Other matters incidental thereto.</li> </ol>	<p>The promoter of the project is required to maintain a webpage at the authorities' website stating several mandatory disclosures as mentioned.</p> <p>Further the advertisement and prospectus published shall mention the address of the webpage where the information is to be displayed.</p>
Sec 11(4)	The promoter shall ..... ..... Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;.....	It would be imperative for the promoters to constitute the association of the allottees once majority (greater than 50%) of the flats have been booked (not registered).
Sec 12	Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:	The act specifically states that not only the advertisement / prospectus should not be misleading even the model flats which are shown to the prospective buyers if later determined to be false then also the builder would be liable for returning

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		the buyers money along-with applicable interest.
Sec 13 - No Deposit without entering into an agreement	A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.	Not more than 10% be accepted by the promoter towards cost of the apartment without first registering into a written agreement which highlights the details of the property being sold.
Sec 14 - Adherence to the sanctioned plan	<p>Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—</p> <p>a) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:</p> <p>b) Any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.</p> <p>c) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by</p>	<p>The promoter is debarred from changing any alternation which is “major alteration” without getting consent from 2/3<sup>rd</sup> of the allottees. In case one person has bulk bookings in his name then he shall be constituted to be a single allottee.</p> <p>In case there is structural defect or defect in workmanship the builder shall be liable for maintenance of the same for the period of 5 years from the date of handing over possession. Further such defects would need to be rectified within 30 days of receiving such a complaint at the cost of the builder.</p>

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	<p>the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.</p>	
<p>Sec 15 - Transfer of project ownership</p>	<p>The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.</p>	<p>The promoter is not allowed to sell his majority rights in a project unless the same is approved by 2/3<sup>rd</sup> of the allottees and the RERA authority.</p>
<p>Sec 18 - Return of amount and compensation.</p>	<p>he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.</p>	<p>In case the promoter is unable to complete the project then he may offer exit to the allottees and return the amount alongwith the applicable compensation.  If the allottee does not wish to cancel his booking then the promoter shall be liable for interest for every month of delay.</p>
<p>Sec 19 - Rights and Duties of Allottees</p>	<p>.....(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges,</p>	<p>The allottees are also equally liable for payment of interest in case of delayed payment of the due instalment.</p>

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	maintenance charges, ground rent, and other charges, if any. (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).....	

The above sections along-with those mentioned in our Part 1 (<http://tinyurl.com/hq2pq3x>) completes a very brief and bird's eye view of the substantive provisions of the act. The rest of the act more relate to the procedural aspects such as setting up of the authority, tribunal and power to make rules along-with appeal to the High Court.

It is expected that during the course of the enactment in the next few quarters changes can be witnessed since many sections of the act are infructuous and would not be possible to be enacted actually at ground level. Further rules which would support the various sections are still to be propagated and notified. These rules can iron out a lot of issues which the people are facing at large. Hence with the enactment of the act only half the job of the legislature is done. Moreover, the state governments are also to form various authorities for each state and thereafter only would the act gain traction.

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