

CHAPTER III OF THE REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016

**FUNCTIONS & DUTIES OF
PROMOTER**

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PROMOTER defined under section- 2 (zk) of Real Estate (Regulation and Development) Act, 2016

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a 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 land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;

PROMOTER defined under section- 2 (zk) of Real Estate (Regulation and Development) Act, 2016

Continued

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

CHAPTER III – FUNCTIONS AND DUTIES OF PROMOTER

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REGISTRATION OF THE REAL ESTATE PROJECT

UNLESS PROJECT IS REGISTERED, PROMOTER IS NOT SUPPOSED TO

- ADVERTISE PROJECT
- SELL ANY OF THE UNITS
- ACCEPT BOOKING MONEY

ONCE THE PROJECT IS REGISTERED, PROMOTER IS REQUIRED TO

- DELIVER
- DELIVER IN TIME
- DELIVER AS PROMISED

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

QUARTERLY UPDATES

- quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- quarterly up-to-date the list of number of garages booked;
- quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate:
- Update about Legal suits or court cases, if any.
- quarterly up-to-date status of the project

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

- ADVERTISEMENT
- Section 2(b) of the Real Estate (Regulation and development) Act, 2016 defines advertisement as *“any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing person about real estate project or offering for sale of a plot , building or apartment or inviting persons to purchase in any manner such plot , building or apartment or to make advances or deposits for such purpose”*
- While advertising, Promoter is required to “Prominently disclose” following details
 - Website Address of the Authority (MahaRERA Website)
 - MahaRERA Registration Number of Promoter

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

The “Promoter” Shall

- Be responsible to obtain “Completion Certificate” or the “Occupancy Certificate” or both as applicable from Competent Authority.
- Be responsible to obtain the “Lease Certificate”, where the real estate project is developed on “Leasehold Land” specifying the period of lease and certifying that all dues and charges in regard to the leasehold land has been paid.
- Be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of Allottees.
- Pay all outgoings until he transfers the physical possession of the real estate project to allottee or the association of allottees which he has collected from allottees for the payment of outgoings.

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

FORMATION OF ASSOCIATION OF ALLOTTEES

- In case of Single building not being part of the layout; or in case of layout of more than one building or a wing of one building in the layout – Promoter shall submit application for formation of the Association of Allottees to Competent Authority within **three months** from the date on which **Fifty one percent** of the total number of allottees in such a building or wing have booked their apartment.
- Where Promoter is required to form an apex body either as a federation of separate and independent Co-operative housing Societies or Companies or Any other Legal Entity – Promoter Shall Submit application for formation of such entity with Competent Authority within **three months** from the date of receipt of the **Occupancy Certificate** of the last of the building which was to be constructed in the layout.

SECTION 12 – Obligation of Promoter regarding veracity of the advertisement or prospectus.

- 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:
- Provided that if the person affected by such incorrect, false statement contained in the notice advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

SECTION 13 – No deposit or advance to be taken by Promoter without first entering into Agreement for Sale

- 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.
- The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with the specification and internal development works and external development works, the dates and manner by which payment towards the cost of the apartment, plot or building, as the case may be are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to promoter in case of default, and such other particulars as may be prescribed.

SECTION 14 – Adherence to Sanctioned Plans and Project Specification by Promoter

- Promoter is not allowed to make 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 Allottee.
- Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

SECTION 14 – Adherence to Sanctioned Plans and Project Specification by Promoter

- **Explanation.**—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment etc.

SECTION 14 – Adherence to Sanctioned Plans and Project Specification by Promoter

- Any other alteration 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.
- **Explanation.**—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals etc. by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

SECTION 14 – Adherence to Sanctioned Plans and Project Specification by Promoter

DEFECT LIABILITY

- 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 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.

Section 15 – Obligation of Promoter in case of transfer of a real estate project to a third party

- 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.
- **Explanation.**—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

Section 15 – Obligation of Promoter in case of transfer of a real estate project to a third party

- The transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:
- **Provided** that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

Section 16 – Obligation of Promoter regarding Insurance of real estate project

- The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —
 - Title of the land and building as a part of the real estate project; and
 - construction of the real estate project.
- The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.
- The insurance as specified under sub-section shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.
- On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

Section 17 – Transfer of Title

- The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:
- **Provided** that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

Section 17 – Transfer of Title

- After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:
- Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Section 17 – Transfer of Title

IN CASE OF PLOTS

- Within Three months from the date the allottees in such plot have paid full consideration to the promoter

SINGLE BUILDING PROJECT

Promoter shall execute conveyance within the period of three months from the date of

- Issue of Occupancy Certificate Or,
- Fifty One Percent of the total number of allottees in such building have paid full consideration to the promoter

WHICHEVER IS EARLIER

(Please Refer - (Rule 9(2) of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017)

Section 17 – Transfer of Title

IN CASE OF LAYOUT

- In case of Building or wing of building in Layout – Promoter shall execute conveyance of the structure of the building or wing of that building -
- Within one month from the date on which association of the allottees is duly registered with Competent Authority Or,
- Within Three months from the date of issue of Occupancy Certificate

WHICHEVER IS EARLIER

In case of Layout – Conveyance with respect to entire undivided or inseparable land underneath all buildings /wings along with the structures of basements and podiums constructed in the layout,

- within three months from the date on which the Apex Body or Federation or any other association of allottees is duly constituted Or,
- Within three months from the date of issue of Occupancy Certificate to the last building or wing in the layout

WHICHEVER IS EARLIER

(Please Refer - (Rule 9(2) of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017)

Section 17 – Transfer of Title

- **Provided that** after conveying title to the association of allottees under Section 17, the Promoter shall continue to have right and entitlement to advertise, market, book, sell or offer to sell or allot to person to purchase any apartment or building or plot which is still not sold or allotted and shall be allowed to do so by association of allottees without any restriction or entry of the building and development of common areas.
- **Provided Further that** in such case, the promoter shall be permitted the entry of the premises of the building and common areas to also discharge his obligation u/s 14(3)
- **Provided also that** , in respect of the real estate project for which development or redevelopment permissions are subject to approvals under the provisions of specific local laws such as MHADA, SRA, MMRDA, MRTTP etc, the conveyance of title shall be made by the respective public authority, within such specific period as may be provided within the relevant law applicable to such authority or rules or regulations framed thereunder.

(Please Refer - (Rule 9(2) of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017)

Section 18 – Return of Amount and Compensation

- If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
 - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
 - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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.

Section 18 – Return of Amount and Compensation

(2)The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3)If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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