

BILL No. XLVI OF 2013

THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013

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BILL No. XLVI OF 2013

THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013

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BILL

to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Real Estate (Regulation and Development) Act, 2013.
- 5 (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commencement.

10 Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires, —

(a) “adjudicating officer” means the adjudicating officer appointed under sub-section (1) of section 61;

(b) “advertisement” means any document described or issued as advertisement through any form of media and includes any notice, circular or other documents 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 purposes;

(c) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise, but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(d) “apartment” whether called dwelling unit, flat, premises, suite, tenement, unit or by any other name, means a separate and self-contained part of any immovable property located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for residential purposes, or for any other type of independent use ancillary to the purpose specified and includes any covered garage, whether or not adjacent to the 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;

(e) “Appellate Tribunal” means the Real Estate Appellate Tribunal established under section 37;

(f) “appropriate Government” means in respect of matters relating to,—

(i) the Union territory without Legislature, the Central Government;

(ii) the Union territory of Puducherry, the Union territory Government;

(iii) the Union territory of Delhi, the Central Ministry of Urban Development;

(iv) the State, the State Government;

(g) “architect” means a person registered as an architect under the provisions of the Architects Act, 1972;

(h) “Authority” means the Real Estate Regulatory Authority established under sub-section (1) of section 18;

(i) “building” includes any structure or erection or part of a structure or erection which is intended to be used for residential or other related purposes;

(j) “carpet area” means the net usable floor area of an apartment, excluding the area covered by the walls;

(k) “Chairperson” means the Chairperson of the Real Estate Regulatory Authority appointed under section 19;

(l) “commencement certificate” means any certificate issued by the competent authority to allow or permit the promoter to begin development works on an immovable property;

(m) “common areas” mean —

(i) the part of the site or plot not occupied by buildings;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes and common entrances and exits of buildings;

(iii) the common basements, parks, play areas, parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating;

5 (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) community and commercial facilities as may be provided;

(viii) all other portion of the property necessary or convenient for its maintenance, safety, etc., and in common use;

10 (n) “company” means a company incorporated and registered under the Companies Act, 1956 and includes,—
1 of 1956.

(i) a corporation established by or under any Central Act or State Act;

(ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

15 (o) “competent authority” means the local authority or any authority created under any law made by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

20 (p) “completion certificate” means the completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any building under any law for the time being in force;

25 (q) “development” with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

(r) “development works” means the external development works and internal development works on immovable property;

30 (s) “engineer” means a person who possesses a bachelor's degree or equivalent from an institution recognised by the All India Council of Technical Education or is registered as an engineer under any law for the time being in force;

(t) “estimated cost of real estate project” means the total cost involved in developing the real estate project and includes the land cost;

35 (u) “external development works” includes roads and road systems, landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station of any other work which may have to be executed in the periphery of, or outside, a colony for its benefit, as may be specified under the rules or bye-laws of the competent authority;

40 (v) “immovable property” includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

(w) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be;

45 (x) “internal development works” means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and silage water, social infrastructure such as

educational, health and other public amenities or any other work in a colony necessary for its proper development;

(y) “local authority” means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction; 5

(z) “Member” means the member of the Real Estate Regulatory Authority appointed under section 19 and includes the Chairperson;

(za) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly; 10

(zb) “person” includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm; 15

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies; 20

(viii) any such other entity as the appropriate Government may, by notification specify in this behalf;

(zc) “planning area” means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force; 25

(zd) “prescribed” means prescribed by rules made under this Act;

(ze) “project” means the real estate project under this Act; 30

(zf) “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 and also includes a buyer who purchases in bulk for resale; or 35

(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; or

(iii) any development authority or any other public body in respect of allottees of— 40

(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; or

(b) plots owned by such authority or body or placed at their disposal by the Government, 45

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

5 (v) any other person who acts himself as a builder, colonizer, 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 colony is developed for sale; or

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

10 *Explanation.*—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a colony for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters;

15 (zg) “prospectus” means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;

20 (zh) “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

25 (zi) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of a colony into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings and includes the development works thereof;

30 (zj) “regulations” means the regulations made by the Authority under this Act.

CHAPTER II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

35 **3.** No promoter shall book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project, or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that no such registration shall be required,—

40 (a) where the area of land proposed to be developed does not exceed one thousand square meters or the number of apartments proposed to be developed does not exceed twelve, inclusive of all phases, or an area or number of apartments as notified by the Central Government on recommendations from the appropriate Government, which may be different for different States or Union territories but not more than one thousand square meters or twelve apartments, as the case may be;

45 (b) where the promoter has received all requisite approvals and the commencement certificate for the development of the real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve re-allotment and marketing of the real estate project.

Prior registration of real estate project with Real Estate Regulatory Authority.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered as a stand alone real estate project, and the promoter shall obtain registration under the Act for each phase separately.

Application to Authority.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. 5

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority) and the particulars of registration; 10

(b) an authenticated copy of the commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approval and sanction from the competent authority for each of such phases; 15

(c) the layout plan of the proposed project or the phase thereof, and also the layout plan of the whole project as sanctioned by the competent authority;

(d) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof; 20

(e) proforma of the agreements proposed to be signed with the allottees;

(f) the number and the carpet area of apartments for sale in the project;

(g) the names and addresses of his real estate agents, if any, for the proposed project; 25

(h) the names and addresses of the contractors, architect, structural engineer, if any, and other persons concerned with the development of the proposed project;

(i) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating,—

(A) that he has a legal title to the land on which the development is proposed along with a legally valid authentication of such title if such land is owned by another person; 30

(B) that the land is free from all encumbrances, or as the case may be, of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; 35

(C) the likely period of time within which he undertakes to complete the project or phase thereof;

(D) that seventy per cent., or such lesser per cent. as notified by the appropriate Government, of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank within a period of fifteen days of its realisation to cover the cost of construction and shall be used only for that purpose. 40

Explanation.— For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934; 45

2 of 1934.

(E) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(f) such other information and documents as may be prescribed.

5. (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of fifteen days—

Grant of registration.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within two days of the expiry of the said fifteen days, provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (i) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

6. The registration granted under section 5 may be extended by the Authority on an application made by the promoter under such conditions as may be prescribed and in such form and on payment of such fee as may be specified by the regulations made by the Authority:

Extension of registration.

Provided that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

7. (1) The Authority may, on receipt of a complaint in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

Revocation of registration.

(a) the promoter makes wilful default in doing anything required of him by or under the Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.— For the purposes of this clause, the term “unfair practice” means a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether orally or writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation. 5

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter. 10

(4) Upon the revocation of the registration, the Authority,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters on its website and also inform the other Real Estate Regulatory Authorities in other States and Union territories about such cancellation; 15

(b) may recommend to the competent authority to facilitate the balance of the development works to be carried out in accordance with the provisions of section 8;

(c) may, to protect the interest of prospective buyers or in the public interest, issue such directions as it may deem necessary. 20

Obligation of Authority consequent upon lapse of or on revocation of registration.

8. Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority: 25

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act.

Registration of real estate agents.

9. (1) 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. 30

(2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed. 35

(3) The Authority shall, within such period, in such manner and satisfying itself of the fulfilment of such conditions, as may be prescribed—

(a) grant registration to the real estate agent;

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: 40

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered. 45

(5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under the Act.

(6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

(7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

10. Every real estate agent registered under section 9 shall—

Functions of real estate agents.

(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 planning area, which is not registered with the Authority;

(b) maintain and preserve such books of account, records and documents as may be prescribed;

(c) not involve himself in any unfair trade practices, namely:—

(i) the practice of making any statement, whether orally or in writing or by visible representation which—

(A) falsely represents that the services are of a particular standard or grade;

(B) represents that the promoter has approval or affiliation which such promoter does not have;

(C) makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered;

(d) facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be;

(e) discharge such other functions as may be prescribed.

CHAPTER III

FUNCTIONS AND DUTIES OF PROMOTER

11. (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) of section 5 or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, including—

Functions and duties of promoter.

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date status of the project; and

(d) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project

have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter, upon entering into an agreement of sale with the allottee shall be responsible to make available to the allottee, the following information, namely:—

(a) site and layout plans along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority; 5

(b) the stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity.

(4) The promoter shall— 10

(a) be responsible to obtain a completion certificate from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(b) be responsible for providing and maintaining the essential services, as may be specified in the service level agreements, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees; 15

(c) take steps for the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. 20

(5) The promoter may cancel the allotment only in terms of the agreement of sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement of sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority. 25

Obligations of promoter regarding veracity of advertisement or prospectus.

12. Where 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 incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: 30

Provided that if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed.

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

13. (1) 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. 35

(2) The agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed. 40

Adherence to approved plans and project specifications by promoter.

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the plans and structural designs and specifications as approved by the competent authorities. 45

(2) In case any structural defect in such development is brought to the notice of the promoter within a period of two 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 reasonable time, 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.

5 **15.** (1) The promoter shall take all necessary steps to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas including the handing over of the possession of the plot, apartment or building, as the case may be, in a real estate project, and the other title documents pertaining thereto.

Transfer of title.

10 (2) After obtaining the completion 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.

15 **16.** (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

Return of amount and compensation.

 (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 developer on account of suspension or revocation of his registration under this Act or for any other reason,

20 he shall be liable on demand to the allottees, 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.

25 (2) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

CHAPTER IV

RIGHTS AND DUTIES OF ALLOTTEES

30 **17.** (1) The allottee shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and the regulations made thereunder or the agreement signed with the promoter.

Rights and duties of allottees.

 (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity.

35 (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, as per the declaration given by the promoter under sub-clause (C) of clause (i) of sub-section (2) of section 4.

40 (4) The allottee shall be entitled to claim the refund of amount paid, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or the regulations made thereunder.

 (5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building, as the case may be, to the allottee by the promoter.

45 (6) Every allottee, who has entered into an agreement of 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 and shall pay at the proper time and place, the proportionate share of the registration charges, municipal

taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, in accordance with such agreement.

(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).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee. 5

(9) Every allottee after taking possession of the apartment, plot or building, as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same. 10

CHAPTER V

THE REAL ESTATE REGULATORY AUTHORITY

Establishment and incorporation of Real Estate Regulatory Authority.

18. (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act: 15

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be. 20

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the 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.

Composition of Authority.

19. The Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the appropriate Government. 25

Qualifications of Chairperson and Members of Authority.

20. The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration: 30

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government: 35

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a Member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government. 40

Term of office of Chairperson and Members.

21. (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier.

(2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member. 45

22. (1) 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 and shall not be varied to their disadvantage during their tenure.

Salary and allowances payable to Chairperson and Members.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 21, the Chairperson or a Member, as the case may be, may,—

(a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 24 of this Act.

(3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of six months from the date on which such vacancy occurs.

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

Administrative powers of Chairperson.

24. (1) The appropriate Government may, by order, remove from office, the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,—

Removal of Chairperson and Members from office in certain circumstances.

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving 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; 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.

25. (1) The Chairperson or a Member, ceasing to hold office as such, shall not—

(a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under the Act, from the date on which he ceases to hold office:

Restrictions on Chairperson or Members on employment after cessation of office.

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in section 617 of the Companies Act, 1956;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for, or provided advice to, the Authority;

(c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;

(d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

Officers and other employees of Authority.

26. (1) The appropriate Government may, in consultation with the Authority, appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under subsection (1) shall be such as may be prescribed.

Meetings of Authority.

27. (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings), as may be specified by the regulations made by the Authority.

(2) The Chairperson if for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

Vacancies, etc., not to invalidate proceeding of Authority.

28. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Functions of Authority for promotion of real estate sector.

29. The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on,—

(a) protection of interest of the allottees and promoter;

(b) measures to improve the processes and procedures for clearance and sanction of plans and development of projects;

(c) measures to encourage construction of environmentally sustainable and affordable housing, promote standardisation, including grading and use of appropriate construction materials, fixtures, fittings and construction techniques;

(d) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;

(e) any other issue that the Authority may think necessary for the promotion of the real estate sector.

Functions of Authority.

30. The functions of the Authority shall, *inter alia*, include—

(a) to render advice to the appropriate Government in matters relating to the development of real estate sector;

(b) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;

(c) to maintain a database, on its website, and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, and enter the names of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;

5 (e) to fix through regulations for each areas under its jurisdiction the standard fees, to be levied on the allottees by the promoter or the association of allottees, as the case may be;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

10 (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

15 **31.** (1) Where the Authority considers it expedient to do so, on a complaint relating to the Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agents, as the case may be.

Powers of Authority to call for information, conduct investigations.

20 (2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in
5 of 1908. respect of the following matters, namely:—

25 (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

30 **32.** The Authority may, for the purpose of discharging its functions under the provisions of this Act or the rules or the regulations made thereunder, issue such directions from time to time, to the promoters and allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Powers of Authority to issue directions.

35 **33.** (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

Powers of Authority.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

40 (3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

45 (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may, *suo motu*, make reference in respect of such issue to the Competition Commission of India.

Recovery of interest or penalty or compensation.

34. If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under this Act, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed.

CHAPTER VI

CENTRAL ADVISORY COUNCIL

Establishment of Central Advisory Council.

35. (1) **The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.**

(2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the *ex officio* Chairperson of the Central Advisory Council. 5

(3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Planning Commission, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified. 15

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector. 20

Functions of Central Advisory Council.

36. (1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government—

- (a) on all matters concerning the implementation of the Act;
- (b) on major questions of policy; 25
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1). 30

CHAPTER VII

THE REAL ESTATE APPELLATE TRIBUNAL

Establishment of Real Estate Appellate Tribunal.

37. (1) **The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the ---- (State/Union territory) Real Estate Appellate Tribunal:** 35

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.

(2) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal which shall have jurisdiction over the matter. 40

Application for settlement of disputes and appeals to Appellate Tribunal.

38. (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the 45

Authority is received by the appropriate 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:

5 Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing 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 as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

10 (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 within a period of ninety days from the date of receipt of appeal:

15 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 that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

20 **39.** The Appellate Tribunal shall consist of a Chairperson and two other Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Composition of Appellate Tribunal.

Explanation.—For the purposes of this Chapter,—

25 (i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 40;

(ii) “Technical or Administrative Member” means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 40.

40. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

Qualifications for appointment of Chairperson and Members.

30 (a) in the case of Chairperson, is or has been, a Judge of the High Court; and

(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least seven years or has been a member of the Indian Legal Service and has held the post in Grade I of that service or any equivalent post for at least three years, or has been an advocate for at least fifteen years with experience in dealing with real estate matters; and

35

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least fifteen years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Joint Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

40

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

45

(3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

Term of office of Chairperson and Members.

41. (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years: 5

Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

(2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such Member. 10

Salary and allowances payable to Chairperson and Members.

42. (1) **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 and shall not be varied to their disadvantage during their tenure.**

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 41, the Chairperson or a Member, as the case may be, may:— 15

(a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months;

(b) be removed from his office in accordance with the provisions of section 43.

(3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of six months from the date on which such vacancy occurs. 20

Removal of Chairperson and Member from office in certain circumstances.

43. (1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member of the Appellate Tribunal, who — 25

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or 30

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. 35

(3) The appropriate Government may suspend from the office of the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference. 40

(4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

(5) The Technical or Administrative Member may be removed from his office by an order of the appropriate Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the appropriate Government: 45

Provided that the Technical or Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

44. (1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

Officers and other employees of Appellate Tribunal.

5 (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) **The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.**

10 45. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

15 46. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

5 of 1908.

Powers of Tribunal.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

1 of 1872. 20 (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

5 of 1908. (4) 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 in respect of the following matters, namely:—

25 (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;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

30 (f) dismissing an application for default or directing it *ex parte*; and

(g) any other matter which may be prescribed.

45 of 1860. 35 (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

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

Administrative powers of Chairperson of Appellate Tribunal.

40 48. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal representation.

Explanation.—For the purposes of this section,—

38 of 1949. 45 (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 56 of 1980.

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 5 23 of 1959.

(d) “legal practitioner” means an advocate, *vakil* or an attorney of any High Court, and includes a pleader in practice.

Orders passed by Appellate Tribunal to be executable as a decree.

49. (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. 10

(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.

Appeal to High Court.

50. (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of ninety days from the date of communication of the decision or order of the Appellate Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908: 15 5 of 1908.

Provided that the High Court may, entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. 20

Explanation.—The expression “High Court” means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties. 25

CHAPTER VIII

OFFENCES, PENALTIES AND ADJUDICATION

Punishment for non-registration under section 3.

51. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority. 30

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend to a further ten per cent. of the estimated cost of the real estate project, or with both. 35

Penalty for contravention of section 4.

52. If any promoter knowingly provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.

Penalty for contravention of other provisions of this Act.

53. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or the regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority. 40

Penalty for non-registration and contravention under sections 9 and 10.

54. If any real estate agent wilfully fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority. 45

55. If any promoter, who wilfully fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority.

Penalty for wilful failure to comply with orders of Authority by promoter.

5 56. If any promoter, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project as determined by the Appellate Tribunal.

Penalty for wilful failure to comply with orders of Appellate Tribunal by promoter.

10 57. If any allottee, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

Penalty for wilful failure to comply with orders of Authority by allottee.

15 58. If any allottee, who wilfully fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, as determined by the Appellate Tribunal.

Penalty for wilful failure to comply with orders of Appellate Tribunal by allottee.

20 59. (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:

Offences by companies.

25 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.

30 (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,—

35 (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.

2 of 1974. 40 60. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under section 51 of this Act may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed:

Compounding of offences.

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

45 61. (1) For the purpose of adjudging compensation under sections 12, 14 and section 16, the Authority shall appoint any officer not below the rank of Joint Secretary to the State Government to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Power to adjudicate.

Provided that any person whose complaint in respect of matters covered under sections 12, 14 and section 16 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act. 68 of 1986. 5

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of ninety days from the date of receipt of such application: 10

Provided that where any such application could not be disposed of within the said period of ninety days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. 15 20

Factors to be taken into account by adjudicating officer.

62. While adjudging the quantum of compensation or interest, as the case may be, under section 61, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; 25
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default.

CHAPTER IX

FINANCE, ACCOUNTS, AUDITS AND REPORTS

Grants and loans by Central Government.

63. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary. 30

Grants and loans by State Government.

64. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act. 35

Constitution of Fund.

65. (1) The appropriate Government shall constitute a Fund to be called the “Real Estate Fund” and there shall be credited thereto—

- (a) all Government grants received by the Authority;
- (b) the fees received under this Act;
- (c) the interest accrued on the amounts referred to in clauses (a) to (b). 40

(2) The Fund shall be applied for meeting —

- (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal;
- (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act. 45

(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

5 **66.** (1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.

Crediting sums realised by way of penalties to Consolidated Fund of India or State account.

(2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

10 **67.** (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor General of India.

Budget, accounts and audit.

15 (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

20 (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

25 (4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

30 **68.** (1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government,—

Annual report.

(a) a description of all the activities of the Authority for the previous year;

(b) the annual accounts for the previous year; and

(c) the programmes of work for the coming year.

35 (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

CHAPTER X

40 MISCELLANEOUS

45 **69.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer 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.

Bar of jurisdiction.

Delegation.	<p>70. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 74) as it may deem necessary.</p>	
Power of appropriate Government to supersede Authority.	<p>71. (1) If, at any time, the appropriate Government is of the opinion,—</p> <p style="padding-left: 2em;">(a) that, on account of the circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or</p> <p style="padding-left: 2em;">(b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or</p> <p style="padding-left: 2em;">(c) that circumstances exist which render it necessary in the public interest so to do,</p> <p>the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act:</p> <p>Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.</p> <p>(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—</p> <p style="padding-left: 2em;">(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;</p> <p style="padding-left: 2em;">(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and</p> <p style="padding-left: 2em;">(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.</p> <p>(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.</p> <p>(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.</p>	5 10 15 20 25 30 35 40
Powers of appropriate Government to issue directions to Authority and obtain reports and returns.	<p>72. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time:</p> <p>Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.</p>	45

(2) If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final.

(3) The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

73. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

Power of appropriate Government to make rules.

(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) the information and documents for application to Authority for registration under clause (j) of sub-section (2) of section 4;

(b) the conditions under which registration of a promoter may be renewed under section 6;

(c) the form and manner of making an application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;

(d) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;

(e) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;

(f) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;

(g) the discharge of other functions by the real estate agent under clause (e) of section 10;

(h) the rate of interest payable under section 12;

(i) the form and particulars of agreement under sub-section (2) of section 13;

(j) the rate of interest payable under clause (b) of sub-section (1) of section 16;

(k) the rate of interest payable under sub-section (7) of section 17;

(l) the constitution of a Selection Committee for the appointment of Chairperson and Members of Authority, and the manner of selection under section 20;

(m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 22;

(n) the administrative powers of the Chairperson under section 23;

(o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 26;

(p) the details to be published and maintain on the website as under clauses (b) and under clause (d) of section 30;

(q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 31;

(r) the manner of recovery of interest, penalty and compensation under section 34;

(s) the recommendations received from the Central Advisory Council under sub-section (2) of section 36;

(*t*) the form and manner and fee for filing of appeal under sub-section (2) of section 38;

(*u*) the constitution of a Selection Committee for the appointment of Members of the Tribunal, and the manner of selection under sub-section (3) of section 40;

(*v*) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 42; 5

(*w*) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 43;

(*x*) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 44; 10

(*y*) any other powers of the Tribunal under clause (*h*) of sub-section (4) of section 46;

(*z*) the powers of the Chairperson of the Appellate Tribunal under section 47; 15

(*za*) the terms and conditions and the payment of such sum for compounding of the offences under section 60;

(*zb*) the manner of inquiry under sub-section (1) of section 61;

(*zc*) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 67; 20

(*zd*) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 68;

(*ze*) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules. 25

Power to make regulations.

74. (1) The Authority may, by notification, make regulations, after it is approved by the appropriate Government, in consistent with 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:— 30

(*a*) the form and manner of making application and fee payable herewith under sub-section (1) of section 4;

(*b*) the fee for extension of registration under section 6;

(*c*) such other information and documents required under clause (*d*) of sub-section (1) of section 11; 35

(*d*) display of site and layout plans along with specifications, approved by the competent authority, for display under clause (*a*) of sub-section (3) of section 11;

(*e*) preparation and maintenance of other details under sub-section (6) of section 11;

(*f*) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 27; 40

(*g*) standard fees to be levied by the promoter on the allottees or the association of allottees under clause (*e*) of section 30;

(*h*) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by the regulations. 45

5 **75. (1)** Every rule made by the Central Government, every regulation made by the Authority and every notification issued under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 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 sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, 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 or notification, as the case may be.

Laying of rules.

15 (2) Every rule made by a State Government or the Union territory Government, as the case may be, under this Act shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

45 of 1860. **76.** The Chairperson, Members and other officers and employees of the Authority and the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, etc., to be public servants.

20 **77.** The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

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

Act to have overriding effect.

25 Provided that where a State has enacted a law for regulation of the real estate sector, and such State law is not inconsistent with this Act, then, the State Government, to that extent, may not apply the provisions of this Act in the State.

30 **79.** No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

80. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

35 Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

4. The Real Estate (Regulation and Development) Bill, 2013, *inter alia*, provides for the following, namely:—

(a) to impose an obligation upon the promoter not to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority;

(b) to make the registration of real estate project compulsory in case where the area of land proposed to be developed exceed one thousand square meters or number of apartments proposed to be developed exceed twelve;

(c) to impose an obligation upon the real estate agent not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority;

(d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;

(e) to establish an Authority to be known as the Real Estate Regulatory Authority by the appropriate Government, to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation;

(f) the functions of the Authority shall, *inter alia*, include— (i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for

which registration has been given, with such details as may be prescribed; *(iii)* to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation;

(g) to establish an Advisory Council by the Central Government to advise and recommend the Central Government on— *(i)* matters concerning the implementation of the proposed legislation; *(ii)* major questions of policy; *(iii)* protection of consumer interest; *(iv)* growth and development of the real estate sector;

(h) to establish the Real Estate Appellate Tribunal by the appropriate Government to hear appeals from the direction, decision or order of the Authority or the adjudicating officer;

(i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14 and 16 of the proposed legislation;

(j) to make provision for punishment and penalties for contravention of the provisions of the proposed legislation and for non-compliance of orders of Authority or Appellate Tribunal;

(k) to empower the appropriate Government to supersede the Authority on certain circumstances specified in the proposed legislation;

(l) to empower the appropriate Government to issue directions to the Authority and obtain reports and returns from it.

5. The Notes on clauses explain in detail the various provisions contained in the Real Estate (Regulation and Development) Bill, 2013.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 22nd July, 2013.

DR. GIRIJA VYAS

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

(Copy of letter No. O-17034/18/2009-H dated 24th July, 2013 from Dr. Girija Vyas, Minister of Housing and Urban Poverty Alleviation to the Secretary-General, Rajya Sabha)

“The Hon'ble President having been informed of the subject matter of the proposed ‘the Real Estate (Regulation and Development) Bill, 2013’, recommends *** ** to the House the consideration of the Bill under article 117(3) of the Constitution.”

Notes on clauses

Clause 1.—This clause relates to the short title, extent and commencement of the proposed legislation.

Clause 2.—This clause contains the definitions of various expressions used in the proposed legislation.

Clause 3.—This clause relates to the prior registration of real estate project with the Real Estate Regulatory Authority.

This clause provides that no promoter shall book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project, or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the proposed legislation. However, no such registration shall be required where the area of land proposed to be developed does not exceed one thousand square meters or the number of apartments proposed to be developed does not exceed twelve or where the promoter has received all requisite approvals and the commencement certificate for the development of immovable property prior to commencement of the proposed legislation or for the purpose of renovation or repair or redevelopment which does not involve re-allotment and marketing of immovable property.

Clause 4.—This clause relates to the application to Authority.

Sub-clause (1) of this clause provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

Sub-clause (2) of this clause of the Bill provides the list of documents that the promoter is required to enclose along with the application for registration.

Clause 5.—This clause relates to the grant of registration.

Sub-clause (1) of this clause provides that the Authority shall within a period of fifteen days—(a) grant registration subject to the provisions of the proposed legislation and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the proposed legislation or the rules or regulations made thereunder.

Sub-clause (2) of this clause of the Bill provides that if the Authority fails to grant the registration or reject the application, as the case may be, as provided within the said fifteen days, the project shall be deemed to have been registered, and the Authority shall within two days of the expiry of the said fifteen days, provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

Sub-clause (3) of this clause of the Bill provides that the registration granted under this clause shall be valid for a period declared by the promoter.

Clause 6.—This clause relates to the extension of registration.

This clause provides that the registration granted may be extended by the Authority on an application made by the promoter under such conditions as may be prescribed and in such form and on payment of such fee as may be specified by the regulations made by the Authority.

Clause 7.—This clause relates to the revocation of registration.

Sub-clause (1) of this clause provides that the Authority may on receipt of a complaint in this behalf or on the recommendation of the competent authority, revoke the registration granted after being satisfied that the promoter has made wilful default in doing anything required of him by or under the proposed legislation or the rules or the regulations made thereunder; the promoter has violated any of the terms or conditions of the approval given by the competent authority; the promoter is involved in any kind of unfair practice or irregularities.

Sub-clause (2) of this clause provides that the registration granted to the promoter under clause 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

Sub-clause (3) of this clause provides that the Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

Sub-clause (4) of this clause provides that upon the revocation of the registration, the Authority,—(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters on its website and also inform the other Real Estate Regulatory Authorities in other States and Union territories about such cancellation; (b) may recommend to the competent authority to facilitate the balance of the development works to be carried out in accordance with the provisions of clause 8; (c) may, to protect the interest of prospective buyers or in the public interest, issue such directions as it may deem necessary.

Clause 8.—This clause relates to the obligation of Authority consequent upon lapse of or revocation of registration.

This clause provides that upon lapse of the registration or on revocation of the registration under the proposed legislation, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority. However, that no direction, decision or order of the Authority under this clause shall take effect until the expiry of the period of appeal provided under the provisions of the proposed legislation.

Clause 9.—This clause relates to the registration of real estate agents.

Sub-clause (1) of this clause provides that 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 the proposed legislation, being sold by the promoter in any planning area, without registering with the Authority.

Sub-clause (2) of this clause provides that the registration shall be in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

Sub-clause (3) of this clause provides that the Authority shall, within such period, in such manner and satisfying itself of the fulfillment of such conditions, as may be prescribed—(a) grant registration to the real estate agent; (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the proposed legislation or the rules or regulations made thereunder. However, no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Sub-clause (4) of this clause provides that if on the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the

deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

Sub-clause (5) of this clause provides that every real estate agent who is registered as per the provisions of the proposed legislation or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under the proposed legislation.

Sub-clause (6) of this clause provides that every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

Sub-clause (7) of this clause provides that where any real estate agent who has been granted registration under the proposed legislation commits breach of any of the conditions thereof or any other terms and conditions specified under the proposed legislation or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under the proposed legislation, revoke the registration or suspend the same for such period as it thinks fit. However, no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

Clause 10.—This clause relates to the functions of real estate agents.

This clause provides that every real estate agent registered under clause 9 shall—
 (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 planning area, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may be prescribed; (c) not involve himself in any unfair trade practices, namely:—(i) the practice of making any statement, whether orally or writing or by visible representation which—(A) falsely represents that the services are of a particular standard or grade; (B) represents that the promoter has approval or affiliation which such promoter does not have; (C) makes a false or misleading representation concerning the services; (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered; (d) facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed.

Clause 11.— This clause relates to the functions and duties of promoter.

Sub-clause (1) of this clause provides that the promoter shall, upon receiving his Login-Id and password under clause (a) of sub-section (1) of clause 5 or under sub-section (2) of clause 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of clause 4, in all the fields as provided, including those specified.

Sub-clause (2) of this clause provides that the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

Sub-clause (3) of this clause provides that that the promoter, upon entering into an agreement of sale with the allottee shall be responsible to make available to the allottee information as specified.

Sub-clause (4) of this clause provides that the promoter shall—(a) be responsible to obtain a completion certificate from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (b) be responsible for providing and maintaining the essential services, as may be specified in the service level agreements, on

reasonable charges, till the taking over of the maintenance of the project by the association of the allottees; (c) take steps for the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable.

Sub-clause (5) of this clause provides that the promoter may cancel the allotment only in terms of the agreement of sale. However, the allottee may approach the Authority for relief if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement of sale, unilateral and without any sufficient cause.

Clause 12.—This clause relates to the obligations of promoter regarding veracity of the advertisement or prospectus.

This clause provides that where 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 incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under the proposed legislation. However, if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed.

Clause 13.—This clause relates to no deposit or advance to be taken by promoter without first entering into an agreement of sale.

Sub-clause (1) of this clause provides that 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.

Sub-clause (2) of this clause provides that the agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed.

Clause 14.—This clause relates to the adherence to approved plans and project specifications by the promoter.

Sub-clause (1) of this clause provides that the proposed project shall be developed and completed by the promoter in accordance with the plans and structural designs and specifications as approved by the competent authorities.

Sub-clause (2) of this clause provides that in case any structural defect in such development is brought to the notice of the promoter within a period of two 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 reasonable time, 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 the proposed legislation.

Clause 15.—This clause relates to the transfer of title.

Sub-clause (1) of this clause provides that the promoter shall take all necessary steps to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas including the handing over of the possession of the plot, apartment or building, as the case may be, in a real estate project, and the other title documents pertaining thereto.

Sub-clause (2) of this clause provides that after obtaining the completion 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.

Clause 16.—This clause relates to the return of amount and compensation.

Sub-clause (1) of this clause provides that 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 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 developer on account of suspension or revocation of registration under the proposed legislation or for any other reason, he shall be liable on demand to the allottees, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, or 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 the proposed legislation.

Sub-clause (2) of this clause provides that if the promoter fails to discharge any other obligations imposed on him under the proposed legislation or the rules or regulations made thereunder, he shall be liable to pay such compensation to the allottees, in the manner as provided under the proposed legislation.

Clause 17.—This clause relates to the rights and duties of allottees.

Sub-clause (1) of this clause provides that the allottee shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority and such other information as provided in the proposed legislation or the rules and regulations made thereunder or the agreement signed with the promoter.

Sub-clause (2) of this clause provides that the allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity.

Sub-clause (3) of this clause provides that the allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, as per the declaration given by the promoter under sub-clause (c) of clause (i) of sub-section (2) of clause 4.

Sub-clause (4) of this clause provides that the allottee shall be entitled to claim the refund of amount paid, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of the proposed legislation or the rules or regulations made there under.

Sub-clause (5) of this clause provides that the allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, to the allottee by the promoter.

Sub-clause (6) of this clause provides that every allottee, who has entered into an agreement of sale to take an apartment, plot or building as the case may be, under clause 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall pay at the proper time and place, the proportionate share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, in accordance with such agreement.

Sub-clause (7) of this clause provides that 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).

Sub-clause (8) of this clause provides that the obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

Sub-clause (9) of this clause provides that every allottee after taking possession of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same.

Clause 18.—This clause relates to the establishment and incorporation of the Real Estate Regulatory Authority.

Sub-clause (1) of this clause provides the appropriate Government shall, within a period of one year from the date of coming into force of the proposed legislation, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation. However, the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority, also if the appropriate Government deems fit, it may establish more than one Authority in a State or Union territory, as the case may be.

Clause 19.—This clause relates to the composition of the Authority.

This clause provides that the Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the appropriate Government.

Clause 20.—This clause relates to the qualification of Chairperson and Members of Authority.

This clause provides that the Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of atleast twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration. However, that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or in the State Government. It further provides that a person who is, or has been, in the service of the State Government shall not be appointed as a Member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or in the Central Government.

Clause 21.—This clause relates to the term of office of Chairperson and Members.

Sub-clause (1) of this clause provides that the Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier.

Sub-clause (2) of this clause provides that before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

Clause 22.—This clause relates to the salary and allowances payable to Chairperson and Members.

Sub-clause (1) of this clause provides that 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 and shall not be varied to their disadvantage during their tenure.

Clause 23.—This clause relates to the administrative powers of Chairperson.

This clause provides that the Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

Clause 24.—This clause relates to the removal of Chairperson and Members from office in certain circumstances.

Sub-clause (1) of this clause provides that the appropriate 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 an insolvent; or (b) has been convicted of an offence, involving 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; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

Sub-clause (2) of this clause provides that 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.

Clause 25.—This clause relates to the restrictions on Chairperson or Members on employment after cessation of office.

Sub-clause (1) of this clause provides that the Chairperson or a Member, ceasing to hold office as such, shall not—(a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under the proposed legislation from the date on which he ceases to hold office, except under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in section 617 of the Companies Act, 1956; (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

Sub-clause (2) of this clause provides that the Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

Clause 26.—This clause relates to the officers and other employees of the Authority.

Sub-clause (1) of this clause provides that the appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under the proposed legislation who would discharge their functions under the general superintendence of the Chairperson.

Sub-clause (2) of this clause provides that the salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

Clause 27.—This clause relates to the meetings of the Authority.

Sub-clause (1) of this clause provides that the Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.

Sub-clause (2) of this clause provides that if the Chairperson, if for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

Sub-clause (3) of this clause provides that all questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

Clause 28.—This clause relates to the vacancies, etc., not to invalidate proceeding of the Authority.

This clause provides that no act or proceeding of the Authority shall be invalid merely by reason of—(a) any vacancy in, or any defect in the constitution of the Authority; or (b) any defect in the appointment of a person acting as a Member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Clause 29.—This clause relates to the functions of Authority for promotion of real estate sector.

This clause provides that the Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority as the case may be, on,—(a) protection of interest of the allottees and promoter; (b) measures to improve the processes and procedures for clearance and sanction of plans and development of projects; (c) measures to encourage construction of environmentally sustainable and affordable housing, promote standardisation including grading and use of appropriate construction materials, fixtures, fittings and construction techniques; (d) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; (e) any other issue that the Authority may think necessary for the promotion of the real estate sector.

Clause 30.—This clause relates to the functions of the Authority.

This clause provides that the functions of the Authority shall, *inter alia*, include—(a) to render advice to the appropriate Government in matters relating to the development of real estate sector; (b) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted; (c) to maintain a database, on its website, and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the proposed legislation, with reasons therefor, for access to the general public; (d) to maintain a database, on its website, and enter the names of real estate agents who have applied and registered under the proposed legislation, with such details as may be prescribed, including those whose registration has been rejected or revoked; (e) to fix through regulations for each areas under its jurisdiction the standard fees, to be levied on the allottees by the promoter or the association of allottees, as the case may be; (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation and the rules and regulations made thereunder; (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under the proposed legislation; (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the proposed legislation.

Clause 31.—This clause relates to the powers of the Authority to call for information, conduct investigations.

Sub-clause (1) of this clause provides that where the Authority considers it expedient to do so, on a complaint relating to the proposed legislation or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agents, as the case may be.

Sub-clause (2) of this clause provides that notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:— (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents; (iv) any other matter which may be prescribed.

Clause 32.—This clause relates to the powers of the Authority to issue directions.

This clause provides that the Authority may, for the purpose of discharging its functions under the provisions of the proposed legislation or the rules or the regulations made thereunder, issue such directions from time to time, to the promoters and allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Clause 33.—This clause relates to the powers of the Authority.

Sub-clause (1) of this clause provides that the Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under the proposed legislation or the rules and the regulations made thereunder.

Sub-clause (2) of this clause provides that the Authority shall be guided by the principles of natural justice and, subject to the other provisions of the proposed legislation and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

Sub-clause (3) of this clause provides that where an issue is raised relating to agreement, action, omission, practice or procedure that—(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may, *suo motu*, make reference in respect of such issue to the Competition Commission of India.

Clause 34.—This clause relates to the recovery of interest or penalty or compensation.

This clause provides that if a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under the proposed legislation, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed.

Clause 35.—This clause relates to the establishment of Central Advisory Council.

Sub-clause (1) of this clause provides that the Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.

Sub-clause (2) of this clause provides that the Minister to the Government of India in charge of the Ministry of the Central Government dealing with housing shall be the *ex officio* Chairperson of the Central Advisory Council.

Sub-clause (3) of this clause provides that the Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Planning Commission, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

Sub-clause (4) of this clause provides that the Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry,

consumers, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

Clause 36.— This clause relates to the functions of the Central Advisory Council.

Sub-clause (1) of this clause provides that the functions of the Central Advisory Council shall be to advise and recommend the Central Government:—(a) on all matters concerning the implementation of the proposed legislation; (b) on major questions of policy; (c) towards protection of consumer interest; (d) to foster the growth and development of the real estate sector; (e) on any other matter as may be assigned to it by the Central Government.

Sub-clause (2) of this clause provides that the Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

Clause 37.—This clause relates to the establishment of Real Estate Appellate Tribunal.

Sub-clause (1) of this clause provides that the appropriate Government shall, within a period of one year from the date of coming into force of the proposed legislation, by notification, establish an Appellate Tribunal to be known as the — (State/Union territory) Real Estate Appellate Tribunal. However, the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.

Sub-clause (2) of this clause provides that any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the proposed legislation may prefer an appeal before the Appellate Tribunal which shall have jurisdiction over the matter.

Clause 38.—This clause relates to the application for settlement of disputes and appeals to Appellate Tribunal.

Sub-clause (1) of this clause provides that the appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

Sub-clause (2) of this clause provides that every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of any direction or decision or order made by the Authority is received by the appropriate 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. However, the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

Sub-clause (3) of this clause provides that 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 as it thinks fit.

Sub-clause (4) of this clause provides that the Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

Sub-clause (5) of this clause provides that 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 within a period of ninety days from the date of receipt of appeal. However, 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 that period.

Sub-clause (6) of this clause provides that the Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

Clause 39.—This clause relates to the composition of the Appellate Tribunal.

This clause provides that the Appellate Tribunal shall consist of a Chairperson and two other Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Clause 40.—This clause relates to the qualifications for appointment of Chairperson and Members.

Sub-clause (1) of this clause provides that 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 the High Court; and (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least seven years or has been a Member of the Indian Legal Service and has held the post in Grade I of that service or any equivalent post for at least three years, or has been an advocate for at least fifteen years with experience in dealing with real estate matters; and (c) in the case of a Technical or Administrative Member he is a person who is well versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least fifteen years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Joint Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

Sub-clause (2) of this clause provides that the Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

Sub-clause (3) of this clause provides that the Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

Clause 41.—This clause relates to the term of office of Chairperson and Members.

Sub-clause (1) of this clause provides that the Chairperson of the Appellate Tribunal or a member of the Appellate Tribunal shall hold office as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment. However, in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years. Also, no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

Sub-clause (2) of this clause provides that before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

Clause 42.—This clause relates to the salary and allowances payable to Chairperson and Members.

This clause provides that 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 and shall not be varied to their disadvantage during their tenure.

Clause 43.—This clause relates to the removal of Chairperson and Member from office in certain circumstances.

Sub-clause (1) of this clause provides that the appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member of the Appellate Tribunal, who – (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the appropriate Government

involves moral turpitude; or (c) has become physically or mentally incapable; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

Sub-clause (2) of this clause provides that the Chairperson or Judicial Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by Judge of the High Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Sub-clause (3) of this clause provides that the appropriate Government may suspend from the office of the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

Sub-clause (4) of this clause provides that the appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

Sub-clause (5) of this clause provides that the Technical or Administrative Member may be removed from his office by an order of the appropriate Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the appropriate Government.

Clause 44.—This clause relates to the officers and other employees of the Appellate Tribunal.

Sub-clause (1) of this clause provides that the appropriate Government shall provide the Appellate Tribunal with such officers and employees as, it may deem fit.

Sub-clause (2) of this clause provides that the officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

Sub-clause (3) of this clause provides that salary and allowances payable to, and the terms and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Clause 45.—This clause relates to the vacancies.

This clause provides that if, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of the proposed legislation to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Clause 46.—This clause relates to the powers of Tribunal.

Sub-clause (1) of this clause provides that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

Sub-clause (2) of this clause provides that subject to the provisions of the proposed legislation, the Appellate Tribunal shall have power to regulate its own procedure.

Sub-clause (3) of this clause provides that the Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

Sub-clause (4) of this clause provides that the Appellate Tribunal shall have, for the purpose of discharging its functions under the proposed legislation, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 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; (d) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or directing it *ex-parte*; and (h) any other matter which may be prescribed.

Sub-clause (5) of this clause provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 47.—This clause relates to the administrative powers of Chairperson of the Appellate Tribunal.

This clause provides that the Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of the Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

Clause 48.—This clause relates to the right to legal representation.

This clause provides that the applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Clause 49.—This clause relates to the orders passed by the Appellate Tribunal to be executable as a decree.

Sub-clause (1) of this clause provides that every order made by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

Sub-clause (2) of this clause provides that 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.

Clause 50.—This clause relates to the appeal to High Court.

Sub-clause (1) of this clause provides that any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of ninety days from the date of communication of the decision or order of the Appellate Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. However, the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Sub-clause (2) of this clause provides that no appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Clause 51.—This clause relates to the punishment for non-registration under clause 3.

Sub-clause (1) of this clause provides that if any promoter contravenes the provisions of clause 3, he shall be liable to a penalty which may extend upto ten per cent. of the estimated cost of the real estate project as determined by the Authority.

Sub-clause (2) of this clause provides that if any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of clause 3, he shall be punishable with imprisonment for a term which may extend upto three years or with fine which may extend to a further ten per cent. of the estimated cost of the real estate project, or with both.

Clause 52.—This clause relates to the penalty for contravention of clause 4.

This clause provides that if any promoter knowingly provides false information or contravenes the provisions of clause 4, he shall be liable to a penalty which may extend upto five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 53.—This clause relates to the penalty for contravention of other provisions of the Act.

This clause provides that if any promoter contravenes any other provisions of the proposed legislation, other than that provided under clause 3 or clause 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 54.—This clause relates to the penalty for non-registration and contravention under clauses 9 and 10.

This clause provides that if any real estate agent wilfully fails to comply with or contravenes the provisions of clause 9 or clause 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of immovable property, for which the sale or purchase has been facilitated as determined by the Authority.

Clause 55.—This clause relates to the penalty for wilful failure to comply with orders of the Authority by Promoter.

This clause provides that if any promoter, who wilfully fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Clause 56.—This clause relates to the penalty for wilful failure to comply with orders of Appellate Tribunal by Promoter.

This clause provides that if any promoter, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project as determined by the Appellate Tribunal.

Clause 57.—This clause relates to the penalty for wilful failure to comply with orders of the Authority by allottee.

This clause provides that if any allottee, who wilfully fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the apartment cost as determined by the Authority.

Clause 58.—This clause relates to the penalty for wilful failure to comply with orders of Appellate Tribunal by allottee.

This clause provides that if any allottee, who wilfully fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to ten per cent. of the apartment cost as determined by the Appellate Tribunal.

Clause 59.—This clause relates to the offences by Companies.

Sub-clause (1) of this clause provides that where an offence under the proposed legislation 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. However, nothing

contained in this sub-section, shall render any such person liable to any punishment under the proposed legislation 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.

Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-section (1), where an offence under the proposed legislation 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.

Clause 60.—This clause relates to the compounding of offences.

This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause 51 of the proposed legislation may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed. However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Clause 61.—This clause relates to the power to adjudicate.

Sub-clause (1) of this clause provides that for the purpose of adjudging compensation under clauses 12, 14 and 16 the Authority shall appoint any officer not below the rank of Joint Secretary to the State Government to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard. However, if any person whose complaint, in respect of matters covered under clauses 12, 14 and 16 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of the proposed legislation, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under the proposed legislation.

Sub-clause (2) of this clause provides that the application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of ninety days from the date of receipt of such application. However, where any such application could not be disposed of within the said period of ninety days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

Sub-clause (3) of this clause provides that while holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

Clause 62.—This clause relates to the factors to be taken into account by the adjudicating officer.

This clause provides that while adjudging the quantum of compensation or interest, as the case may be, under section 61, the adjudicating officer shall have due regard to the following factors, namely:— (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default.

Clause 63.—This clause relates to the grants and loans by the Central Government.

This clause provides that the Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

Clause 64.—This clause relates to the grants and loans by the State Government.

This clause provides that the State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of the proposed legislation.

Clause 65.—This clause relates to the Constitution of Fund.

Sub-clause (1) of this clause provides that the appropriate Government shall constitute a fund to be called the “Real Estate Fund” and there shall be credited thereto—(a) all Government grants received by the Authority; (b) the fees received under the proposed legislation; (c) the interest accrued on the amounts referred to in clauses (a) to (b).

Sub-clause (2) of this clause provides that the Fund shall be applied for meeting – (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal; (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation.

Sub-clause (3) of this clause provides that the Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

Sub-clause (4) of this clause provides that the committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

Clause 66.—This clause relates to the crediting sums realised by way of penalties to Consolidated Fund of India or State account.

Sub-clause (1) of this clause provides that all sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.

Sub-clause (2) of this clause provides that all sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

Clause 67.—This clause relates to the budget, accounts and audit.

Sub-clause (1) of this clause provides that the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor-General of India.

Sub-clause (2) of this clause provides that the accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

Sub-clause (3) of this clause provides that the Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority under the proposed legislation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

Sub-clause (4) of this clause provides that the accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 68.—This clause relates to the annual report.

Sub-clause (1) of this clause provides that the Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government— (a) a description of all the activities of the Authority for the previous year; (b) the annual accounts for the previous year; and (c) the programmes of work for the coming year.

Sub-clause (2) of this clause provides that a copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 69.—This clause relates to the bar of jurisdiction.

This clause provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under the proposed legislation 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 the proposed legislation.

Clause 70.—This clause relates to the delegation.

This clause provides that the Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under the proposed legislation (except the power to make regulations under clause 74) as it may deem necessary.

Clause 71.—This clause relates to the power of appropriate Government to supersede the Authority.

Sub-clause (1) of this clause provides that if, at any time, the appropriate Government is of the opinion,—(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the proposed legislation; or (b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under the proposed legislation or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of the proposed legislation and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do; the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under the proposed legislation. However, before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

Sub-clause (2) of this clause provides that upon the publication of a notification under sub-section (1) superseding the Authority,— (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions

and duties which may, by or under the provisions of the proposed legislation, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.

Sub-clause (3) of this clause provides that on or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

Sub-clause (4) of this clause provides that the appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this clause and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

Clause 72.—This clause relates to the powers of appropriate Government to issue directions to the Authority and obtain reports and returns.

Sub-clause (1) of this clause provides that without prejudice to the foregoing provisions of the proposed legislation, the Authority shall, in exercise of its powers and in performance of its functions under the proposed legislation, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time. However, the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

Sub-clause (2) of this clause provides that if any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final.

Sub-clause (3) of this clause provides that the Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.

Clause 73.—This clause relates to the power of appropriate Government to make rules.

This clause empowers the appropriate Government to make rules for carrying out the provisions of the proposed legislation.

Clause 74.—This clause relates to the power to make regulations.

This clause empowers the Authority to make regulations for carrying out the provisions of the proposed legislation.

Clause 75.—This clause relates to the laying of rules.

This clause provides that every rule, regulation and notification made under the proposed legislation shall be laid, as soon as may be after it is made, before the House of Parliament or State Legislature, as the case may be.

Clause 76.—This clause relates to the Members, etc., to be public servants.

This clause provides that the Chairperson, Members and other officers and employees of the Authority and the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 77.—This clause relates to the application of other laws not barred.

This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 78.—This clause relates to the act to have overriding effect.

This clause provides that the provisions of the proposed legislation shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force. However, where a State has enacted a law for regulation of the real estate sector, and such State law is not inconsistent with the proposed legislation, then, the State Government, to that extent, may not apply the provisions of the proposed legislation in the State.

Clause 79.—This clause relates to the protection of action taken in good faith.

This clause provides that no prosecution or other legal proceedings can be instituted against the appropriate Government or the Authority or any of their officers, etc., for anything done in good faith under the proposed legislation or the rules or regulations made thereunder.

Clause 80.—This clause relates to power to remove difficulties.

Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make provisions, by order, published in the Official Gazette, for removing the difficulty. These orders must be consistent with the provisions of the proposed legislation. However, no order shall be made under this clause after the expiry of two years from the commencement of the proposed legislation.

Sub-clause (2) of this clause provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 18 of the Bill provides for the establishment of the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation. Sub-clause (1) of clause 22 of the Bill provides for the salary and allowances payable to the Chairperson and the Members of the Authority. Sub-clause (2) of clause 26 of the Bill provides for salary and allowances payable to the officers and employees of the Authority.

2. Sub-clause (1) of clause 35 of the Bill provides for the establishment of the Central Advisory Council to perform the functions assigned to it under the proposed legislation.

3. Sub-clause (1) of clause 37 of the Bill provides for the establishment of the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority or the adjudicating officer. Sub-clause (1) of clause 42 of the Bill provides for the salary and allowances payable to the Chairperson and the Members of the Appellate Tribunal. Sub-clause (3) of clause 44 of the Bill provides for salary and allowances payable to the officers and employees of the Appellate Tribunal.

4. Clause 63 of the Bill provides for grants and loans by the Central Government to the Authority of such sums of money as considered necessary.

5. Clause 64 of the Bill provides for grants and loans by the State Government to the Authority, of such sums of money as considered necessary for the purposes of the proposed legislation.

6. The establishment of the Real Estate Regulatory Authorities and Real Estate Appellate Tribunal for the Union territories without legislatures, namely—Andaman and Nicobar Islands; Lakshadweep; Dadra and Nagar Haveli; Daman and Diu; and Chandigarh, may not be necessary at this stage and thus no expenses are likely to be incurred. However, if the need for an Authority or an Appellate Tribunal is felt for any of the said Union territories in future, the responsibility and functions may be entrusted to the Authority or the Appellate Tribunal of the adjoining State or Union territory.

7. The establishment of the Real Estate Regulatory Authorities and the Real Estate Appellate Tribunal for the Union territory of Delhi is to be carried out by the Ministry of Urban Development, which is the appropriate Government in relation to the Union territory of Delhi, for which some expenses are likely to be borne.

8. The total financial implication in terms of recurring and non-recurring expenditure involved in carrying out the various functions under the Bill would be borne respectively by the State Government and the Central Government. However, it is not possible to estimate the exact recurring and non-recurring expenditure from the Consolidated Fund of India at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 73 of the Bill seeks to empower the appropriate Government to make rules to provide for—(a) information and documents for application to the Authority for registration under clause (j) of sub-section (2) of section 4; (b) conditions under which registration of a promoter may be renewed under section 6; (c) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9; (d) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9; (e) the validity of the period of registration and the manner and fee for renewal under sub-section (7) of section 9; (f) the maintenance and preservation of books of account, records and documents under clause (b) of section 10; (g) the discharge of other functions by the real estate agent under clause (e) of section 10; (h) the rate of interest payable under section 12; (i) the form and particulars of agreement under sub-section (2) of section 13; (j) the rate of interest payable under clause (b) of sub-section (1) of section 16; (k) the rate of interest payable under sub-section (7) of section 17; (l) constitution of a Selection Committee for the appointment of Chairperson and Members of the Authority, and the manner of selection under section 20; (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 22; (n) the administrative powers of the Chairperson under section 23; (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 26; (p) details to be published on the website as under clause (b) and under clause (d) of section 30; (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 31; (r) the manner of recovery of interest, penalty and compensation under section 34; (s) recommendations received from the Central Advisory Council under sub-section (2) of section 36; (t) the form and manner and fee for filling of appeal under sub-section (2) of section 38; (u) constitution of a Selection Committee for the appointment of Members of the Tribunal, and the manner of selection under sub-section (3) of section 40; (v) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 42; (w) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 43; (x) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 44; (y) any other powers of the Tribunal under clause (h) of sub-section (4) of section 46; (z) the powers of the Chairperson of the Appellate Tribunal under section 47; (za) the terms and conditions and the payment of such sum for compounding of the offences under section 60; (zb) the manner of inquiry under sub-section (1) of section 61; (zc) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 67; (zd) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 68; and (ze) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

2. Clause 74 of the Bill empowers the Authority to make regulations to provide for—(a) the form and manner of making application and fee payable herewith under sub-section (1) of section 4; (b) the fee for extension of registration under section 6; (c) such other information and documents required under clause (d) of sub-section (1) of section 11; (d) display of site and layout plans along-with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11; (e) preparation and maintenance of other details under sub-section (6) of section 11; (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 27; (g) standard fees to be levied by the promoter on the allottees or the association of allottees

under clause (*e*) of section 30; and (*h*) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

3. The matters in respect of which the said rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

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to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto.

(Dr. Girija Vyas, Minister of Housing and Urban Poverty Alleviation)