

The Real Estate Regulation & Development Bill (2011)

The Union Cabinet has approved a much awaited draft bill – The Real Estate Regulation and Development bill in this session i.e. monsoon session of year 2013. The bill is an iconic piece of legislation and will regulate the real estate sector. This bill is primarily intended to protect the interest of the buyers and the land owners against the unscrupulous builders. If the bill is implemented in the same form, it will regulate the real estate sector.

Important Provisions of the bill -

Real Estate Tribunals - The bill provides for setting of Real Estate Tribunals giving an alternate judicial mechanism to resolve the disputes between builder/developers and flat purchasers. The tribunal is expected to have a much wider jurisdiction on the issues than those which can be adjudicated in the consumer forums presently. If the Real Estate Tribunals are established on time, it would lessen the woes of property buyer and the Co-operative Housing Societies who have been at the receiving end for a long time.

Mandatory Registration – A developer or builder, who intends to sell any immovable property, has to register mandatorily with the Real Estate Regulatory Authority as a system of accreditation.

Mandatory public disclosure norms for all registered developers, including details of developer, project, land status, statutory approvals and contractual obligations

Developer should fulfill all compliances before a project start - The other noteworthy provision which has upset the entire builder lobby is the condition that no builder is allowed to sell or open booking of the flats/premises in any project unless he has all the permissions necessary to complete the project in hand. This provision has seen much uproar in the builders' lobby as it attacks the revenue model of the most builders in this country. The revenue model of most of the builder/developers involves only paying a small percentage of the price for the land. After which, the project is announced and marketed. Consequently, the entire project is funded by the flat purchasers and/or the investors. If for any reason, builder or developer fails to obtain any of the permission or if the project is stuck in the litigation, the risk devolves on the flats purchasers who suffer the most. This provision shall certainly bring much relief to common man in this area. Besides this, the bill also has provisions to restrict builders from diverting money collected for one project to another etc.

Obligations of promoters to adhere to approved plans and project specifications, and to refund amount in cases of default

Obligations of allottee to make necessary payments and other charges agreed to under the agreement and payment of interest in case of any delay

Provision to compulsorily deposit a portion of funds received from the allottees in a separate bank account, to be used for that real estate project only

The bill has a long way to go before it is implemented as a law. The strong builders lobby is opposing the bill upfront. As per the builders associations, the bill if implemented as it is will hit the development in the real estate sector.

Where the bill goes silent -

Title -One of the requirements to regulate the real estate sector was more transparency on the term – “Title”. The bill does not touch upon it. The word is most commonly used in the real estate transactions, but is widely misunderstood.

The land registers maintained by the revenue department of the government of various states in India gives information of the survey number of the land, the name of the owner of the land and its cultivator, the area of the land, the type of cultivation - whether irrigated or rain fed, the crops planted in the last cultivating season. It is commonly misbelieved that these land registers indicates the title of the land. Whereas the title of the land can only be pronounced by the District Judge in whose jurisdiction the land is situated. The decision of the District judge is appealable in the High Court and right to appeal to the Supreme Court is a constitutional right which cannot be taken away. Therefore, pronouncement of title is one of the most complex, tedious and expensive process which affects the builders and purchasers very badly and has been the nuisance of the industry.

In the complex web of land laws and procedures, the title though most important, has been the worst ignored concept. This has been so since the British who laid the foundation of these laws were, as colonial masters, never concerned about the title but were only preoccupied in collecting land revenue from their subjects. In last 66 years of independence there has been no serious application of legislative mind to this aspect.

There is a much need of a “Title Certifying Authority” which co-ordinate jurisdiction with the High Court which can conclusively and finally certify “The Title” of the piece and parcel of the land. The authority must be on same footing as the Registrar of Companies whose decision to incorporate a company cannot be brought under judicial review. This would go a long way in helping the builders, investors and the common man. This would also pave the



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way to professionally managed development companies and multinationals in this sphere of industry and the competition shall put a much superior product in the hands of the final consumer.

The bill in totality would be a good piece of law, if passed and implemented as a law.

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