

New Legislative Developments in Real Estate Sector

Introduction

Contributing nearly 6% to India's Gross Domestic Product, the real estate sector is a key industry of the Indian economy that also drives various other industries such as cement, steel, paints, building materials, consumer durables, retail, etc. The second largest employment generator after agriculture, the Indian real estate sector has shown healthy growth in the post-1991 liberalized economy, encouraged by rapid urbanisation, favourable demographics, increasing purchasing power, entry of foreign investors, rapid growth of housing finance, influx of international property consultancies, etc. And yet, this sector has not realised its true potential. With the exception of Tier-I cities, the real estate market in India remains largely fragmented and unorganised. The absence of any single industry-specific regulatory body has resulted in all sorts of unfair trade practices by builders as highlighted in 2011 when the Competition Commission of India imposed a hefty penalty of Rs. 630 crores on DLF for abusing its dominant position. The sector faces some problems with regard to regulatory framework. The legal framework governing the sector is over a century old and completely out of sync with the times. Title verification is a tedious process resulting in uncertainty and litigation. Registration of real estate transactions cannot be done online and usually involves illegal gratification. Properties are always undervalued to reduce stamp duty and other tax liabilities. Compulsory acquisition of land by Government usually results in claims for enhancement of compensation by litigating land owners and the purchaser who bought the land from Government is ultimately forced to bear the financial burden once the claims are successful. Keeping these problems in mind, the Government of India has been working on some legislative changes which would be coming into force in the near future as these changes are pending before Parliament at different stages. This newsletter aims to provide a preview of these developments and how they might impact the real estate sector.

A. Real Estate (Regulation and Development) Bill 2013

Piloted by the Union Ministry of Housing and Urban Poverty Alleviation, the Real Estate (Regulation and Development) Bill, 2013 aims at transparency and accountability in real estate and housing transactions. The Bill was introduced in the Rajya Sabha on 14 August, 2013. The Bill has been prepared by the Government after extensive consultations with states, experts and stakeholders. The Bill is being proposed under Entries 6, 7 and 46 of the Concurrent List of the Constitution of India, which deal with Transfer of Property, Registration of Deeds and Documents and Contracts.

Salient features of the Bill are:

- i. **Applicability of the Bill:** The proposed Bill applies to residential real estate i.e. housing and any other independent use ancillary to housing.
- ii. **Important Definitions:** The Bill aims at bringing about standardization in the sector through introduction of definitions such as 'apartment', 'common areas', 'carpet area', 'advertisement', 'real estate project', 'prospectus' etc. Significantly, it introduces the concept of

'carpet area' instead of ambiguous terms such as super area, super built up area etc. to curb unfair trade practices.

iii. Establishment of Real Estate Regulatory Authority: The Bill provides for the establishment of Real Estate Regulatory Authority and Real Estate Appellate Tribunal in every State with specified functions, powers, and responsibilities to exercise oversight of real estate transactions, to appoint adjudicating officers to settle disputes between parties, and to impose penalty and interest.

iv. Registration of Real Estate Projects and Real Estate Agents: The Bill provides for mandatory registration of real estate projects and real estate agents who intend to sell any immovable property with the Real Estate Regulatory Authority on real time basis.

v. Mandatory Public Disclosure of all project details: The Bill provides for mandatory public disclosure norms for all registered projects, including details of the promoters, project, layout plan, plan of development works, land status, carpet area and number of the apartments booked, status of the statutory approvals and disclosure of proforma agreements, names and addresses of the real estate agents, contractors, architect, structural engineer etc.

vi. Functions and Duties of Promoter: The Bill lays down the duties of promoters towards disclosure of all relevant information and adherence to approved plans and project specifications, obligations regarding veracity of the advertisement for sale or prospectus, responsibility to rectify structural defects, and to refund monies in cases of default.

vii. Compulsory deposit: The Bill requires compulsory deposit of seventy percent (or such lesser percent as notified by the Appropriate Government) of funds received by the Promoter in a separate bank account to cover the construction cost of the project.

viii. Functions of Real Estate Agents: According to the Bill, real estate agents which are not registered with the Authority shall not facilitate the sale of immovable property. Registered agents have the obligation to: (a) keep, maintain and preserve books of accounts, records and documents; (b) not involve in any unfair trade practices; (c) facilitate the possession of documents to allottees as entitled at the time of booking; and (d) comply with such other functions as specified by Rules made in that regard.

ix. Rights and Duties of Allottees: The Bill gives allottees the right to: (a) obtain information relating to the property booked; (b) know stage-wise time schedule of project completion; (c) claim possession of the apartment or plot or building as per promoter declaration; (d) get refund with interest in case of default by the promoter; (e) get necessary documents and plans. It imposes on them the duty to make necessary payments and carry out other responsibilities as per the agreement.

x. Promotional role of Real Estate Regulatory Authority: According to the Bill, the Real Estate Regulatory Authority shall act as the nodal agency to co-ordinate efforts regarding development of the real estate sector and render necessary advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector.

- xi. Fast Track Dispute Settlement Mechanism:** The Bill provides for the establishment of fast track dispute resolution mechanisms for settlement of disputes, through adjudicating officers to be appointed by the Authority and establishment of an Appellate Tribunal to hear appeals from the orders of the Authority and the adjudicating officer.
- xii. Establishment of Central Advisory Council:** The Bill provides for the establishment of Central Advisory Council to advise the Central Government on matters concerning implementation of the Act, with a mandate to make recommendations on major questions of policy, protection of consumer interest and to foster growth and development of the real estate sector.
- xiii. Establishment of Real Estate Appellate Tribunal:** The Bill provides for the establishment of Real Estate Appellate Tribunal by the State Government to hear appeals from the orders or decisions or directions of the Authority and the adjudicating officer. The Appellate Tribunal is to be headed by a sitting or retired Judge of the High Court with one judicial and one administrative/technical member.
- xiv. Punitive Provisions:** The Bill contains many punitive provisions for violations such as: (a) Non registration of a real estate housing project: Penalty which may extend up to 10% of the estimated cost of the real estate project as determined by the Authority; (b) Continued violation or non-compliance of order for registration: Punishment with imprisonment for a term which may extend up to three years or with fine which may extend to a further 10% of the estimated cost of the real estate project, or with both as determined by the Authority; and (c) Knowingly providing false information or willful contravention at the time of applying for registration and for other contraventions under the law: A penalty which may extend up to 5% of the estimated cost of the real estate project as determined by the Authority.

B. The Registration (Amendment) Bill, 2013

In an effort to weed out corruption in land and real estate deals, the Government of India (through the Ministry of Rural Development) has introduced a bill in the Parliament to amend the more than century-old Registration Act, 1908.

Salient features of the Bill are:

- i.** At present, Book 4, i.e. the 'Miscellaneous Register' which contains details of all registered documents (except Wills) is not open for access by the general public. This Book 4 is proposed to be made open to inspection by the public to ensure greater transparency.
- ii.** Currently, in the Act, only the documents relating to the adoption of a son are required to be registered. To ensure gender equity documents relating to the adoption of daughters will be added to the clause.
- iii.** Registration will now be allowed anywhere in a given State or Union Territory, keeping in mind the convenience of the people, transparency and also to help promote the electronic registration of documents.

- iv. Provision has been made for electronic registration of documents.
- v. The 1908 Act does not require mandatory registration of Power of Attorney. This loophole has been used to transfer property without registering and avoiding paying the requisite stamp duty and registration charges. Documents such as Power of Attorney, Developers/Promoters Agreements and any other Agreements relating to the sale or development of immovable property now need to be mandatorily registered. This will also minimize cases of document forgery.
- vi. At present the Sub-Registrar's Office has no power to refuse registration of documents. This allows unauthorized individuals to get false registrations done. Accordingly a new section 18A is proposed to be inserted to provide for prohibition of registration of certain types of properties such as those belonging to charitable institutions and the Government.
- vii. Section 28 of the Registration Act, 1908 provides that if any person has immovable properties in more than one state, then he can register documents relating to their transfer in any of these states. Unscrupulous elements have abused this provision and they have registered their properties in the states with the lower registration fee and stamp duty. This causes a loss to the state where the property is actually situated. This section is proposed to be omitted.

C. Land Titling Bill, 2011

The Govt. of India has been working on Land Titling Bill, 2011 to bring to an end the current system of presumptive titles, which is based on complex documentation of past transfers. It proposes to replace this system with a single register of land titles for the entire country, conclusively establishing the names of current owners. The new system would significantly reduce litigation over land and also help secure credit. Given that land is a state subject, the Bill is meant to be a model law for adoption by the states individually.

Salient features of the Bill are:

- i. **Land Titling Authority and Preparation of Records:** The Bill establishes a Land Titling Authority at the State level to prepare a record of all immovable properties in its jurisdiction. These records will contain (a) survey data of boundaries of each property; (b) a unique identification number for each property, which may be linked to a UID number; (c) any record created by an officer of the state or UT government authorized by the laws of that state to make such records; and (d) a record of title over each property.
- ii. **Title Registration Officer and Registration Process:** The Bill provides for the Government to create Title Registration Offices at various places, and for a Title Registration Officer (TRO) to function under the supervision of the Land Titling Authority. The TRO will have powers of a civil court and is charged with the task of creating an e- Register of Titles. Steps for the registering of titles include: (a) notification of available land records data by the TRO; (b) invitation to persons with interest in such properties to make objections to the data; and (c) registration of properties by the TRO for which no dispute is brought to his notice in writing. In the case the absoluteness of the title to a property is disputed, the TRO will make an

entry into the Register of Titles to that effect and refer the case to the District Land Titling Tribunal.

iii. District Land Titling Tribunal and State Land Titling Appellate Tribunal: The Bill proposes to set up a District Land Titling Tribunal, consisting of one or more serving officers not below the rank of Joint Collector/Sub-Divisional Magistrate of the District. The government may also establish one or more State Land Titling Appellate Tribunals, to be presided over by serving Judicial Officers in the rank of District Judge. Revisions to the orders of the State Land Titling Appellate Tribunal may be made by a Special Bench of the High Court. The Bill bars civil courts from having jurisdiction to entertain proceedings in respect to matters that the TRO, District Land Titling Tribunal, and State Land Titling Appellate Tribunal are empowered to determine.

iv. Completion of Records and Notification: When preparation of the Record for whole or part of a specific is complete, it will be notified. Any person aggrieved by the notified entry in the Register of Titles may file an objection before the District Land Titling Tribunal within three years of the notification. Additionally, the person may file an application with the TRO for an entry to be made in the Register of Titles. The TRO shall do so when the application has been admitted to the Tribunal. Minor errors in the Title of Registers can be rectified through an application to the TRO.

v. Register of Titles: After completion of records is notified by the Authority, the Register of Titles is prepared and maintained by the Authority. For each property, the Register will include: (a) general description, map, and locational details of the immovable property; (b) descriptive data such as a unique identification number, plot number, total area, built up and vacant area, address, site area, and undivided share in the land; (c) detail of survey entry, provisional title record, conclusive title record and status, mortgage, charges, other rights and interests in the property; (d) details of transfer of the property and past transactions; and (e) disputes pertaining to the property. Entries in the Register of Titles will serve as conclusive evidence of ownership. These entries shall be maintained in electronic form, indemnified, and kept in the public domain.

Conclusion

The aforementioned developments in the real estate sector are long impending. The laws governing real estate sector are archaic as they were drafted in British era. Today, with liberalisation in the real estate sector and growth of foreign players, it is necessary to replace and suitably amend the existing laws. The legislations discussed above seek to bring in more transparency into the system. Once they come into force, these new legislations will help Indian real estate sector to grow faster and become more mature.

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