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**STANDING COMMITTEE ON URBAN DEVELOPMENT  
(2013-2014)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION**

**THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013.**

**THIRTIETH REPORT**



**LOK SABHA SECRETARIAT**

**NEW DELHI**

**February, 2014/ Magha, 1935 Saka**

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**THIRTIETH REPORT**



**STANDING COMMITTEE ON  
URBAN DEVELOPMENT  
(2012-2013)**

**(FIFTEENTH LOK SABHA)**

**MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION**

**THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013.**

**Presented to Lok Sabha on 17.02.2014**

**Laid in Rajya Sabha on 13.02.2014**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**February, 2014/ Magha, 1935 Saka**

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**COMPOSITION OF THE STANDING COMMITTEE ON  
URBAN DEVELOPMENT (2013-2014)**

**Shri Sharad Yadav      -      Chairman**

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4.	Smt. Rangamani N.	-	Under Secretary
5.	Dr.(Maj.) Jagmohan Khatry	-	Committee Officer
6.	Shri Sumit Kumar Grover	-	Executive Assistant

## INTRODUCTION

I, the Chairman of the Standing Committee on Urban Development(2013-14) having been authorized by the Committee to submit the Report on their behalf, present the Thirtieth Report (Fifteenth Lok Sabha) on "The Real Estate (Regulation and Development) Bill, 2013 " pertaining to the Ministry of Housing and Urban Poverty Alleviation.

2. The Real Estate (Regulation and Development) Bill, 2013 was introduced in Rajya Sabha on 20 August, 2013 and was referred to Standing Committee on Urban Development on 9 September, 2013 for examination and Report thereon, by the Speaker Lok Sabha under Rule 331 E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee had sought public opinion through a press release and analysed the memoranda/suggestions received from various stakeholders/experts such as CII, FICCI and Associations working in the field of real estate on various provisions of the Bill (List of organizations is given at Annexure- I).The Committee had the briefing of the representatives of the Ministry of Housing and Urban Poverty Alleviation on the Bill on 8 October, 2013. The Committee heard the views of some of the NGOs working in the field of Real Estate. The Committee also took oral evidence of the representatives of the Ministry of Housing and Urban Poverty Alleviation, Ministry of Finance (Department of Financial Services, Department of Revenue)/Reserve Bank of India, State Bank of India, Bank of India, Punjab National Bank, National Housing Bank, Ministry of Consumer Affairs, Ministry of Law and Justice(Department of Legal Affairs and Legislative Department) and sought clarifications on various issues that were brought to their notice by various stakeholders during their sittings held on 6 November, 6 and 12 December, 2013 respectively.

4. The Committee considered and adopted the draft Report at their sitting held on 12<sup>th</sup> February, 2014.

5. The Committee express their thanks to the officials of all the above Ministries and banks for placing before them the material and information desired from time to time in connection with examination of the Bill and appearing before them for further clarifications. The Committee would also thank all the stakeholders for their valuable suggestions on the Bill.

5. For the facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;  
12<sup>th</sup> February, 2014  
23 Magha, 1935 (Saka)

SHARAD YADAV  
Chairman  
Standing Committee on Urban Development

## **CHAPTER – I**

### **DRAFT REPORT ON THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013**

#### **Background**

Over the past few decades, the demand for housing has increased manifold. In spite of Government's efforts through various schemes, it has not been able to cope up with the increasing demands. Taking advantage of the situation, the private players have taken over the real estate sector with no concern for the consumers. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Estate Sector and providing adjudication machinery for speedy dispute redressal.

1. 2. 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. There is, thus, absence of professionalism and standardization 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 inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization 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.

1.3. 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 plots, apartments or buildings, 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. This Bill will ensure greater accountability towards consumers, and significantly reduce frauds, arrest delays and 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.

1.4. 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 exceeds one thousand square meters or number of apartments proposed to be developed exceeds 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 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 advice 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

1.5. The Committee had sought public opinion through a press release and analysed the memoranda/suggestions received from various stakeholders/experts such as CII, FICCI and Associations working in the field of real estate on various provisions of the Bill (List of organizations is given at Annexure I). The Committee heard the views of some of the NGOs working in the field of Real Estate. The Committee also took oral evidence of the representatives of the Ministry of Housing and Urban Poverty Alleviation, Ministry of Finance (Department of Financial Services, Department of Revenue)/Reserve Bank of India, State Bank of India, Bank of India, Punjab National Bank, National Housing Bank, Ministry of Consumer Affairs, Ministry of Law and Justice(Department of Legal Affairs and Legislative Department) and sought clarifications on various issues that were brought to their notice by various stakeholders.

1.6. The Committee deliberated on the various provisions of the Bill and commend the Bill for enactment with the modifications made by them in the succeeding chapters.

## **CHAPTER-II**

### **PRELIMINARY**

Chapter 1 of The Real Estate (Regulation and Development) Bill, 2013 contains Clauses 1&2 which deal with short title, extent and commencement of the proposed Bill, 2013 and Clause 2 gives definitions and meanings of certain words and expressions used in various provisions contained in the Bill. The Committee will now deal with some of the provisions contained in these clauses:

#### **Clause 2(d)**

2.2 Clause 2(d) reads as under:

“‘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.”

2.3 In its written Memorandum, an NGO has forwarded the following suggestion:

"Section 2(d) definition of apartment limits coverage of this law only to residential building. The coverage of all kinds of units including non- residential units has been removed from the circulated draft. It should be changed to include non-residential unit also."

2.4 On being enquired about the incorporation of the above suggestion in the present Bill, the Ministry of Housing and Urban Poverty Alleviation, in their written replies submitted as under:

"The initial draft of the Bill mooted by the Ministry was a comprehensive regulatory Bill for the real estate sector, which included both residential and commercial properties. However, it was suggested during deliberations that the initial focus of the Bill should be on ‘residential real estate’ as most of the concerns of consumers are relating to this segment of real estate."

2.5 A suggestion was received stating that the parking space should be properly defined and earmarked to the allottee but open parking area should be free of charge for the allottees.

2.6 The Ministry of Housing and Poverty alleviation was asked to clarify this aspect. They, in their written reply, stated as under:

"The Bill in clause 2(d) provides for definition of 'apartment', which includes 'any covered garage, whether or not adjacent to the building'. Thus the Bill prohibits the charging of open garages, as part of apartment cost."

#### **Clause 2(i)**

2.7 Clause 2(i) reads as under:

"'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."

2.8 In a written memorandum Sarthak Advocates and Solicitors have observed the the definition of the "building" must be changed to include both residential and commercial projects and suggested the following change:

" (i) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or other related purposes."

2.9 During the Course of oral evidence, Secretary, Department of Financial Services, Ministry of Finance deposed as under:

" (i) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or other related purposes. in real estate commercial transactions are also there alongwith residential ones. Commercial structure are formed, industrial estates are formed. In our opinion since banks are financing all types of projects, there was no reason to exclude these projects. Probably it will be appropriate that it should have an all encompassing definition including residential, commercial and industrial projects. Many a times in commercial complexes the people

seek funding from bank. But the Builder leave it incomplete and use the funds elsewhere. If these people can also be covered under the Bill it would be fine " (proceeding Page -7)

**2.10 Sub- Clause 2(d) of the Bill defines the term "apartment" that has been used in the Bill. In the context of this sub-clause of Bill a suggestion was received that the definition of "apartment" should cover all kinds of units including non-residential units. From the submission of the Ministry, the Committee find that the initial draft of the Bill mooted by the Ministry was a comprehensive regulatory Bill for the real estate sector, which included residential, industrial and commercial properties. Despite the fact that most of the concerns of consumers are relating to residential aspect of the real estate, the Committee fail to understand why the comprehensive Bill was at all revised to its present form. The Committee, tend to agree with the submission made by Secretary, Department of Financial Services, that banks finance residential as well as commercial and industrial units also and they should not be left out of the purview of the Bill. They, therefore, strongly recommend that the Ministry should bring back the initially proposed comprehensive Bill. The Committee thus recommend that the definition of 'building' under Clause 2(i) should have an all encompassing definition including residential, commercial and industrial projects.**

### **Clause 2(j)**

2.11 Clause 2(j) reads as under:

“‘carpet area’ means the net usable floor area of an apartment, excluding the area covered by the walls.”

2.12 In connection with the provision of clause 2(j), National Real Estate Development Council (NAREDCO), in their written memorandum, suggested as under:

"There is a need for clarity in the definition of the "carpet area". It should be explicitly clarified that the net usable floor area includes the area of balconies, terraces and verandas as they are part of usable floor area.

Besides, there is also the need to define "Gross saleable Area /super area" as at the time of handing over of the residential complex to the Association of Apartment Owners, the common areas are also required to be handed over along with the Flats for the joint use of the flat owners, proportionate charges for which have been levied on them.

It also violates Apartment Ownership Act, which gives provision of pro-rata loading of common Areas.

Mentioning only Carpet Area will be disastrous as common facilities for community living will get compromised.

Therefore, Carpet area as well as Gross Saleable area / pro-rata total Common Area provided needs to be mentioned in the agreement while defining the price of the apartment.

To remove any possible ambiguity, the two terms should be clearly defined in the bill."

2.13 Andhra Pradesh Builders Federation, in their written memorandum had suggested that along with carpet area, plinth area and common areas should also be mentioned clearly in the agreement to the purchaser for having clarity and transparency. Also, carpet area, plinth area and common areas need to be mentioned in the Sale Agreements and Sale Deeds.

2.14 When asked about the advantages and disadvantages of incorporation of the above suggestions, the Ministry has submitted as under:

"The definition of carpet area, as used in this Bill, means the usable and habitable room at any floor level (excluding the area of the wall). It includes carpet area of the living room(s), bedroom(s), kitchen area, lavatory(s), bathroom(s), and balcony / verandah, if provided, and any area for domestic

help within the apartment, which is an independent housing unit with separate facilities for living, cooking and sanitary requirements.

Also, the National Building Code, 2005 defines:

Balcony as - a horizontal projection, with a handrail or balustrade or a parapet, to serve as passage or sitting out place.

Verandah as – a covered area with at least one side open to the outside with the exception of 1 m high parapet on the upper floors to be provided on the open side.

Accordingly, we may insert a definition for 'net usable floor area' in clause 2 of the Bill, as follows:

Net usable floor area means the area sold to the allottee for his individual use, which includes living room, bedroom, kitchen area, lavatory(s), bathroom(s), balcony/verandah if covered, any area for the residence of domestic help within the apartment, and covered parking or any other type of independent use ancillary to the purpose specified."

2.15 **Sub-clause 2(j) of the Bill has defined "carpet area" as the net usable floor area of an apartment, excluding the area covered by the walls. On this sub-clause the suggestion was received that there is a need for clarity in the definition of the "carpet area". It should be explicitly clarified that the net usable floor area includes the area of balconies, terraces and verandas as they are part of usable floor area.**

**The Committee have been apprised by the Ministry of Housing and Urban Poverty Alleviation that they are not averse to inclusion of a definition for 'net usable floor area' in clause 2 of the Bill. Hence, the Committee recommend that the definition of 'net usable floor area' should be included under clause 2(d) which may contrue**

that net usable floor area means to include the area sold to the allottee for his individual use, which includes living room, bedroom, kitchen area, lavatory(s), bathroom(s), balcony/verandah if covered, any area for the residence of domestic help within the apartment, and covered parking or any other type of independent use ancillary to the purpose specified.

#### **Clause 2(k)**

2.16 Clause 2(k) reads as under:

“Chairperson’ means the Chairperson of the Real Estate Regulatory Authority appointed under section 19.”

2.17 On the above sub clause 2(k), a suggestion has been received. This read as under:-

"The definition 2(k) "chairperson" should also include Chairperson of the Appellate Tribunal established under section 37 of the Bill."

2.18 The Ministry in its written reply submitted as under:

"Chairperson and Members, when defined are, generally referred to as the Chairperson or the Member of the Regulatory Authority and not the Appellate Tribunal. These being matters of drafting, and not required to be inserted."

2.19 **The Committee while disagreeing with the opinion put forth by the Ministry strongly recommend that the definition of "chairperson" under Clause 2(k) should also include Chairperson of the Appellate Tribunal appointed under Clause 39 alongwith Chairperson of the Real Estate Regulatory Authority appointed under Clause 19 of the Bill. The Committee are of the view that use of same nomenclature ‘Chairperson’ in both the clauses would create confusion and in order to prevent the**

**ambiguity and confusion in future, there is imperative need for defining the Chairperson of the Appellate Tribunal distinctly.**

#### **Clause 2(m)**

2.20 Clause 2(m) reads as under:

- (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;
- (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;

2.21 Sub-Clause 2(m) of the Bill defines "common areas". The stakeholders have suggested that common areas need to be mentioned in the Sale Agreement and Sale Deeds.

2.22 On being enquired about the possibility of incorporation of the above suggestion in the Act, the Ministry of Housing and Urban Poverty Alleviation submitted as under:

"Clause 13(2) makes a reference to a Model Agreement to be prepared under Rules, by the appropriate Government. As the Bill does not, at this stage provide for any agreement, it would be difficult to reflect on this suggestion at this stage, however, States may consider it at the time of making the rules."

**2.23 The Committee observe that no provision of this Bill has prescribed making mention of common area in the Sale Agreement and Sale Deeds. The Ministry of Housing and Urban Poverty Alleviation has stated that Clause 13(2) makes a reference to a Model Agreement to be prepared under rules by appropriate Government. As the**

**Bill does not, at this stage, provide for any agreement it could be difficult to reflect on the suggestion that 'common area' needs to be incorporated in the Bill. The Committee do not agree with the Ministry to leave such an important issue to be governed by rules. The Committee are of the view that mention of common area in Sale Agreement and Sale Deed will remove the scope of any ambiguity. Hence the Committee recommend that in order to ensure its inclusion the Ministry should provide a Model Agreement which will suitably contain the mention of common area, instead of leaving it to the State Governments/ Appropriate Government. Alternatively, the term 'common area' may find place in the definition clause of the Bill.**

#### **Clause 2(zh)**

2.24 Clause 2(zh) reads as under:

“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.

2.25 In connection with the clause 2(zh), a suggestion has been received to modify the definition, by omitting the phrase "in a real estate project" in order to make the protection of proposed statute inclusive. (page3, Amit kumar Maihan)

2.26 The Ministry of Housing and Urban Poverty Alleviation, in a written reply submitted as under:

"In regard to the usage of the term 'real estate project' in the definition of 'real estate agent', the Ministry is willing to consider its deletion, towards which a reference is being sent to the Ministry of Law (Legislative department) to get their views, as consequent changes would become necessary in section 9 and 10, which provide for the registration of real estate agents and their functions, and section 54 which provides for penalty, for contravention of clauses 9 & 10. By broadening the scope of real estate agents, covered under the Bill, we shall be able to regulate the role of real estate agents in sale of secondary market properties but it will clog the Regulatory Authority. Hence, appropriate decision may be taken subject to Law Ministry comments."

**2.27 The Committee note that Ministry is willing to consider to amend the definition of real estate agents by deleting the words "in a real estate project" therefrom to regulate the role of real estate agents in sale of secondary market properties. The Committee feel that such a deletion is desirable as it would enable to regulate the role of estate agents in sale of secondary market properties also. This will also facilitate stopping the prevalent fraudulent activities done by the real estate agents. Therefore, the Committee desire the Ministry to amend the definition accordingly.**

#### **Clause 2(zk)**

2.28 It has been suggested for the addition of sub-clause under Clause 2 of the Real Estate Bill 2013, which *may* be read as under:

"Clause 2 (zk) "Construction Execution Certificate" means a written, stamped and signed certificate issued by the Project Manager after completion of all construction activities. The certificate shall state that all construction has been executed fully compliant to the good for construction drawings issued by various design consultants and the construction practices followed are as given in the relevant Indian Standards issued by the Bureau of Indian Standards. If project management has been undertaken by a project management consultancy company or in-house project managers of the promoter then the Project Manager shall issue the construction

execution certificate on the letter head of the project management Consultancy Company/ promoter."

2.29 While responding on the above issue the Ministry of Housing and Urban Poverty Alleviation, in a written reply, submitted as under:

"The Bill is not intended to regulate 'development' of real estate projects. Its mandate is limited to disclosure and transparency in real estate transactions/sale. Additionally, 'construction execution certificate' has not been used in the Bill. The Bill is not intended to regulate 'development' of real estate projects. Its mandate is limited to disclosure and transparency in real estate transactions/ sale."

**2.30 The Committee are in full agreement with the suggestion for inclusion of "construction execution certificate" in the Bill. The Committee fail to understand the view of the Ministry in this regard. The Committee are of the opinion that as Clause 14 of the Bill explicitly mentions 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 competent authorities, the issue of 'Construction Executive Certificate' will be deemed as a certificate for completion of necessary formalities relating to construction. They see no reason as to why this important provision does not find place in the Bill. Thus, the Committee feel that the inclusion of "construction execution certificate" would further ensure better development of the project and fix responsibility of the promoters/builders in clear terms. Thus, the Committee strongly recommend that the "construction execution certificate" should be included in the Bill under all circumstances.**

## CHAPTER-III

### Registration of Real Estate Project and Registration of Real Estate Agents

Chapter II of the Bill deals with registration of real estate project and registration of real estate agents and contains clauses 3 to 10. The Committee will now give their comments and observations on provisions contained in some of clauses of Chapter-II of the Bill.

#### **Clause 3**

3.2 Clause 3 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.

3.3 Clause 3 reads as under:

No promoter shall book, sell or offer for sale, or invite persons to purchase in any Prior 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,—

(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;

- (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.

*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.

3.4 It has been observed that under Clause-3 of the Real Estate (Regulation and Development) Bill 2013, small projects have been exempted from the purview of the Bill where the area of the land is less than 1000 sq meter or where a building does not have more than 12 flats. An apprehension has been raised that large number of small housing projects will escape the purview of this law and the middle class allottee will suffer immensely.

3.5 On being inquired about the apprehension that has been raised and its possible redressal Ministry of Urban Housing and Poverty Alleviation submitted as under:

"The initial draft of the Bill had earlier provided for registration of properties above 4000 sqm only. However, on suggestions and consultation with stakeholders, the provision was modified to provide for 1000 sqm or 12 apartments. The reason behind not proposing to register properties below the specified threshold is that the construction company or developer generally develops such properties, with buyer engaged on a day-to-day basis. Interface between the buyer and the promoter is not missing in small development, however, as in the case of large developers, access to persons or information is generally very difficult. It means, information asymmetry is more in large projects.

The Bill provides that the threshold can be further reduced by the Central Government, on a recommendation to that effect by the State/UT, which can be different for different States/UTs."

The Ministry further stated:

"The need for transparency and disclosure is needed for projects where there is no monitoring possible in person by the buyers. In case of small sized projects, the buyers are engaged in monitoring on a day-to-day basis, by making on the spot visits, regular engagement and involvement with the construction etc."

3.6 In context of clause 3(a), a suggestion has been received that State level regulatory authority should decide the exclusion criteria for the registration of real estate project.

3.7 The Ministry of Housing and Urban Poverty Alleviation were inquired about the possibility of incorporation of this suggestion in the proposed Bill. The Ministry submitted as under:

"The Bill has in section 3 provided for the exclusion criteria from registration as development below 1000 sqm or 12 apartments. No project of area of 1000 sqm and above, or 12 apartments and more can be excluded. The power of recommendation by the State Government is restricted to reduce the threshold further, and not to increase the threshold upward for exclusion. It being a policy decision, the power to recommend has been given to the appropriate Government, and cannot be delegated to the Authority."

3.8 With regard to the Clause 3 of the Bill, the National Housing Bank (NHB), has suggested as under:

"Yes, the NHB is in agreement with various provisions of the Bill. It is however, further suggested that clause 3 may be amended thereby ensuring applicability of the Bill on area of land proposed for residential construction upto 100 square meters and/or number of apartments to be developed (not exceeding 3 numbers) instead of 1000 sq. mtrs. (Apartments not exceeding 12 in numbers) as proposed in the original Bill. Similarly, amendments in clause 3 may be considered so that SPVs/Projects undertaken in smaller areas of land through bifurcation of the whole land by the builders, should be considered as One Single Project under the provisions of clause 3 of the Bill. This will ensure strict applicability of this clause."

3.9 During the Course of oral evidence, Secretary, Department of Financial Services, Ministry of Finance deposed as under:

"Hon'ble Chairman has mentioned minimum limit of 100 Sqm, it is a good idea. It may be a bit burden some for regulatory authorities but definitely it will be in the benefit of consumer. If an individual even constructs 3 flats commercially, there is no harm in regulating. In my opinion it should not be twelve. This is our suggestion."

3.10 **The Committee observe that small projects have been exempted from the purview of the Bill where the area of the land is less than 1000 sq meter or where a building does not have more than 12 flats. The Committee feel that large number of small housing projects will escape the purview of this law and, therefore, the middle class allottees will suffer.**

**The reason put forth by the Ministry behind not proposing to register properties below the specified threshold is that the construction company or developer generally develops such properties, with buyer engaged on a day-to-day basis. Interface between the buyer and the promoter is not missing in small development, however, as in the case of large developers, access to persons or information is generally very difficult. It means, information asymmetry is more in large projects. However, the Ministry added that the Bill provides that the threshold can be further reduced by the Central Government, on a recommendation to that effect by the State/UT, which can be different for different States/UTs.**

**The Committee cannot but deplore this callous attitude of the Ministry to leave such an important issue in the hands of State Governments. Thus, the Committee strongly recommend that clause 3 should be suitably amended thereby ensuring applicability of the Bill on area of land proposed for residential construction upto 100 square meters and/or number of apartments to be developed (not exceeding 3**

**numbers) instead of 1000 sq. mtrs. And apartments not exceeding 12 in numbers as proposed in the Bill. Similarly, amendments in clause 3 should be carried out so that Special Purpose Vehicles(SPVs)/Projects undertaken in smaller areas of land through bifurcation of the whole land by the builders, are considered as One Single Project under the provisions of clause 3 of the Bill. This will ensure strict applicability of this clause.**

3.11 On clause 3, a suggestion has been received that "the Registration should be online and there should be no need for physical submission of applications and documents."

3.12 When asked about their views on the above suggestion, the Ministry of Housing and Urban Poverty Alleviation submitted in writing as under:

"The thrust of the Bill is to provide for registration ultimately in real time through uploading of information by the promoter on the website of the regulatory authority. Clause 4 provides that the process of submission of application etc. shall be 'in such form and manner' as decided by regulations to be framed by the regulatory authority. This flexibility has been given, as certain parts of the country may not be in a situation to implement online application/registration from the beginning. Thus, for some time both online and physical submission may coexist, which with time would become completely online."

**3.13 With regard to online registration of the Real Estate projects, the Committee are in agreement with the Ministry that in the beginning it would not be possible to implement online application/registration. Thus for some time both online and physical submission may coexist which with passage of time would become completely online. Since online registrations would ensure transparency and save time, the Ministry should ask the State Governments to set a time limit by which they would go for online registration.**

## **Clause 4**

3.14 Clause 4 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 4(2) (e)**

3.15 Clause 4(2) (e) reads as under:

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

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

3.16 It has been suggested that clause 4(2)(e) needs to be suitably worded to bring about the uniformity of agreements on the lines of Model Agreement to be devised by Real Estate Regulatory Authority (RERA) and scrutiny by RERA of the proforma agreements be mandatory before according registration under clause 5.

Further it has been suggested that the limitation of 15 days as brought on RERA in clause 5 would commence from the date of RERA being satisfied that all documentation as required under clause 4 including the proforma agreement referred to in clause 4(2)(e) are in order.

Lastly, it has been added in the suggestions that the Model Agreement may also include provisions regarding the quality of materials and the technology that would be used at different stages of construction.

3.17 The Committee asked the Ministry about their opinion on the inclusion of the above suggestions in clause 4(2)(e). The Ministry in their written reply submitted as under:

"The Model Agreement is to be provided for by Rules."

**3.18 The Committee observe that under Clause 4(2) the promoter shall enclose certain documents as enumerated in the Bill along with the application and one such document as mentioned in Clause 4(2) (e) is the proforma of the agreement proposed to be signed with the allottees.**

**A suggestion has been received that there is a need for a mention of draft of the 'Model Agreement' to bring about uniformity of agreement throughout the country and the 'Model Agreement' should also include provisions regarding the quality of materials and technology that would be used at different stages of construction. The Ministry of Housing and Urban Poverty Alleviation has apprised the Committee that 'The Model Agreement' is to be provided for by Rules. The Committee, therefore, desire that the Model Agreement should include the provision regarding the quality of Materials and technology that would be used at different stages of construction. Also, it should be obligatory for the Real Estate Regulatory Authority to ensure strict compliance of the Rules and regular monitoring of the same.**

#### **Clause 4(2) (h)**

3.19 Clause 4(2) (h) reads as under:

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

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

3.20 The proposed bill has sought to only regulate the promoter with no focus on other entities of the chain like statutory authorities, contractors; architects who all contribute to a real estate project. Without monitoring mechanism for these entities, merely regulating the promoter in isolation will meet no purpose. In this regard, it has been suggested to redefine the Clause 4(2) (h), which may be read as under:

“Incorporate the names and addresses of the contractors, project manager/s, site engineer/s, architect, structural, mechanical, electrical, plumbing, façade, and geo-technical engineers, and other persons concerned with the design and development of the proposed project. If some/part of services has been undertaken by a design/project management consultancy company or in-house teams of the promoter then the same shall be clearly mentioned.”

3.21 On the above suggestion, the Ministry of HUPA submitted as under:

"The proposed Bill is limited in applicability, i.e. transaction entered into between the buyer and the promoter, under Entries 6 and 7 of the Concurrent List of the 7<sup>th</sup> Schedule of the Constitution. Local Authorities are within the State List of the 7<sup>th</sup> Schedule, for which the Central Government does not have the powers to make laws. In regard to contractors and architects the promoter is required to disclose their names and addresses under clause 4(2)(h). Also the promoter shall be responsible for any loss sustained by the allottees due to actions of the contractor's actions as they are the promoter's agents."

3.22 The Ministry of Housing and Urban Poverty Alleviation in their written reply submitted as under:

"Clause 4(2)(h) uses the term ‘..... and other persons concerned with the project’, which would cover all the categories of professionals suggested, thus there is no need to carry out any revision in the clause."

3.23 In a written memorandum from one of the experts following suggestions have been advanced in the context of Clause 4(2)(h) of the Bill :

(i) The clause obligates the promoters to provide the details of the professionals being involved with the project at the time of registration. It should also mandate that any change / additions of such professionals need to be notified to RERA.

(ii) The Bill in its body does not spell out the responsibilities of these professionals in relation to the project and consequences if such professionals are not performing as expected of them.

(iii) Many a time, investors are encouraged to make investments in the project because of association of “renowned professionals”. Interestingly clause 10 of the Bill spells out the duties of real estate agents. It is for consideration if similar clause/clauses need to be incorporated in relation the professionals mentioned in clause 4(2)(h).

3.24 When asked about the incorporation of these changes in the proposed Bill and consequent impact of such inclusion on the implementation of the Act, the Ministry of Housing and Urban Poverty Alleviation, in their reply furnished as under:

"The Bill provides this clause for the purpose of disclosure, which would bring transparency, however, further specifying responsibilities of the specified professionals is not necessary as they are regulated under specific laws and professional bodies such as the Architects by the Architects Act, 1972, engineers by AICTE, chartered accountants by ICAI, lawyers by Bar Council of India etc."

**3.25 Sub-Clause 4(2)(h) of the Bill puts the promoter under obligation to enclose the names and addresses of the contractors, architect, structural engineer, if any, and other persons concerned with the development of the proposed project, while applying for the registration of the project with the regulatory authority. It has been pointed out that the Bill does not require that the responsibilities of these professionals in relation to the project are spelt out.**

**The Committee fail to understand as to why the duties and responsibilities of the professional involved in the project do not find mention in the Bill on the lines of the responsibilities of Real Estate Agents that have been explicitly mentioned in Clause 10 of the Bill.**

The Committee are in agreement with the Ministry that the professionals are regulated under specific laws and professional bodies such as the architects by the Architects Act, 1972, engineers by AICTE, chartered accountants by ICAI, lawyers by Bar Council of India etc. Also the Committee concur with the Ministry that it will be the responsibility of Promoter towards any loss of the allottee/ customer due to the actions of professionals and contractors associated with the project. However, the Committee feel that the responsibilities of all the professionals should be clearly mentioned at the time of applying for registration of any project by the promoter. Though, they will continue to be ruled by the specific laws and professional bodies.

Further, the Committee also recommend that any change in the "professionals" associated with the projects needs to be disclosed at the earliest.

#### **Clause 4(2) (i) (D)**

3.26 Clause 4(2) (i) (D) reads as under:

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

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

(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 realization to cover the cost of construction and shall be used only for that purpose.

3.27 In connection with, **clause 4(2) (i) (D)** of the Real Estate (Regulation and Development) Bill 2013, it has been submitted that the Builder/Developer initially invests huge amounts for procuring the land either by purchase or development (Security to be paid to land owners or goodwill amount). Further huge amounts are being paid towards payment

of fees to the authorities for sanctions and other statutory clearances. This involves huge amounts of money to be paid by the builder/developers. Hence instead of restricting 30% of amounts to be used, the same clause should be amended to 50% or more. Furthermore, restriction on advance receipts could be relaxed and left to the discretion of the builder and purchaser.

3.28 Ministry of Urban Housing and Poverty alleviation on being inquired about their opinion on this suggestion and its impact on the implementation of the Act, submitted as under:

"The said sub-clause does not bind the promoters to withdraw towards land cost or to payment of authorities. The limit of 70% is only indicative to cover "the cost of construction" and the percentage can be further reduced by the State/UT Government through a notification to that effect if the same is sought to cover the "cost of construction". This will protect the buyer and ensure timely completion of the project by preventing from diversion of project funds."

3.29 In connection with clause 4(2) (i) (D) , when inquired by the Committee as to why State Governments have been permitted to notify a percentage lesser than 70% to be deposited in a separate account in a scheduled bank, the Ministry of Urban Housing and Poverty Alleviation has furnished in writing as under:-

"An upper limit of 70% is provided as it is felt that approximately 30% of project cost includes land and approval cost in a typical town/ city. The developer/promoter is allowed to withdraw the said 30% upfront as it may already have been incurred by him towards land cost, relevant approvals etc. Power to notify a lesser percent has been provided, as in many metropolitan cities such as Delhi and Mumbai, the land costs as percentage of the project cost could be much higher in comparison to smaller cities. Hence, flexibility has been given to the States to determine the percentage of project cost to be deposited in a separate account, by notifications, so that funds are not diverted and projects are completed on time, and simultaneously promoters are not put in difficulty in regard to withdrawal for land and approval costs. However, the underlying principle is that the percentage so retained must cover the complete cost of construction."

3.30 In connection with Clause 4 (2) (i) (D), it has been feared by Builders' lobby that blocking of up to 70% sale proceeds will choke this sector and Indian economy as well.

3.31 On being enquired by the Committee the Ministry of Housing and Urban Poverty Alleviation, opined as under in this regard:

"The clause does not provide for 'blocking' the said amount of sale proceeds, it only provides for withdrawal for project specific construction. The said clause is necessary to ensure timely completion of projects by preventing fund diversion."

3.32 In its written submission the Ministry of Housing and Urban Poverty Alleviation has mentioned that the Bill does not envisage maintenance of an escrow account by the promoter. It just requires the promoter to maintain a separate account for each project, with minimum specified amounts to be deposited in the said account, and to be used only for that particular project. The Bill does not envisage the custody of such an account as per the accounting guidelines issued in this regard by the competent authority (Institute of Chartered Accountants of India). If the promoter does not deposit the specified amounts of funds collected towards a project, within the specified time, he may be penalized under clause 52 of the Bill.

3.33 The Department of Legal Affairs, of Ministry of Law and Justice, in a written reply, submitted as under:

"Clause 4(i)(D) of the Bill provides for maintenance of a separate account and on submission of declaration (through affidavit), authority shall grant registration in terms of Clause 3.32. The penalty provisions are available in Clause 52 of the Bill. The penalty provisions in respect of default under the said provision can be made more stringent and the Administrative Ministry may consider the desirability of adding provisions for maintenance of separate escrow account or custody of account with any third party to avoid mischief on the part of promoters."

3.34 In this regard, Legislative Department of Ministry of Law and Justice has submitted that the decision to incorporate the suggestion is to be taken by the administrative Ministry in consultation with the Ministry of Consumer Affairs and the Department of Legal Affairs.

3.35 In connection with the suggestion on sub-clause 4(2) (i) (D), the National Housing Bank opined as under:

"We feel that the above provision will bring about development in the system and will also mitigate risk for all the stakeholders, particularly the buyers and the lenders. The money realized from the buyers will be used for the specific projects and will not get diverted as it normally happens. Maintenance of a specific dedicated account to the extent of upto 70 per cent of the cost will also help the builder in monitoring their cash-flows vis-a-vis stages of construction. This will also help in timely completion of the project and will develop confidence amongst the buyers/borrowers, lenders and regulators as well as the approving authorities. Besides, this will also make the projects more viable on a stand-alone basis and therefore more creditworthy.

Though this may impact the cost for the builders, if the money continues to remain un-utilized for a long time in the specific escrow account. On the flip side, this will act as an incentive for the builders and the lenders to call for the amounts commensurate with the stage of construction.

However, there may be exceptional situations where the amount may not be required to be routed through this specific account (such as payments of stamp duty/registration charges/fees etc.) which may be provided in the Bill."

3.36 With regard to clause 4(2)(i)(D), representative of the RBI during oral evidence on 06.12.2013, submitted as under:

"Clause 4(2)(i)(d), the provision in the Bill requiring the depositing in a Scheduled Bank a sizeable portion of the amounts realized for the real estate project from the allottees is a welcome measure. In fact, before I go into the individual clause, let me say that we very much welcome this Bill because it was time that we put this regulatory mechanism so as to put the real estate sector on a sound footing."

That there is a provision that the sizeable portion of the amount realised from the real estate project from the allottees should be put into banks. This instills confidence in the allottees who need the comfort that the amount collected from them are put to proper use for the completion of the project. Our suggestion is that it may be considered whether such amount should be required to be deposited in scheduled commercial banks. That would instill more confidence."

3.37 With regard to more realistic approach by the RBI/ Ministry of Finance/ Ministry of Housing and Urban Poverty Alleviation towards this sector a few developers feel that finance restrictions by RBI on the 80:20 upfront housing scheme a lenient view should be taken as the sector may grow further.

3.38 During the Course of oral evidence, Secretary, Department of Financial Services, Ministry of Finance deposed as under:

"70% will go to escrow account, it is a good suggestion. It is very important this will lead to prevention of diversion of funds and black money both of which are prevalent in real estate sector. On the whole it is a welcome step."

3.39 **Section 4(2)(i)(D) of the Bill provides that “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.”**

**In this regard the apprehensions were raised by the stakeholders that blocking of up to 70% sale proceeds will choke this sector and Indian economy as well. Hence instead of restricting 30% of amounts to be used, the same may be enhanced to 50% or more. Furthermore, restriction on advance receipts could be relaxed and left to the discretion of the builder and purchaser. On this clause of the Bill, the Committee concur with the Ministry that the Bill does not envisage maintenance of an escrow account by the promoter. It just requires the promoter to maintain a separate account**

for each project, with minimum specified amounts to be deposited in the said account, and to be used only for that particular project.

Also, the Committee feel that this provision of the Bill will bring about development in the system and will also mitigate risk for all the stakeholders, particularly the buyers and the lenders. The money realized from the buyers will be used for the specific projects and will not get diverted as it normally happens. Maintenance of a specific dedicated account to the extent of upto 70 per cent of the cost will also help the builder in monitoring their cash-flows vis-a-vis stages of construction. This will also help in timely completion of the project and will develop confidence amongst the buyers/borrowers, lenders and regulators as well as the approving authorities. Besides, this will also make the projects more viable on a stand-alone basis and therefore more creditworthy.

Furthermore, the promoter should be asked to submit the progress of the project alongwith the utilisation certificates thereof to the Real Estate Regulatory Authority. It should be the duty of Real Estate Regulatory Authority to monitor the physical progress of the project.

According to the Committee this will further ensure the timely completion of the project as well as proper utilisation of money on the project without its diversion for some other projects. Therefore, the Committee are not inclined to tinker with this provision of the Bill.

## **Clause 5**

3.40 Clause 5 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 5 (1) (a)**

3.41 Clause 5(1) (a) reads as under:

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

(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;

3.42 A suggestion has been received that under **Clause 5(1) (a)**, the e-registration process should be decided by the central regulatory authority for (a) preliminary e-registration of promoters with digital signature allocated by the authority and (b) uploading of required documents for the projects.

3.43 On being inquired about the opinion on the above suggestion, the Ministry of Urban Housing and Poverty Alleviation submitted as under:

"The registration mechanism proposed under the Bill was widely deliberated with different stakeholders at the time of drafting, wherein it was felt that registering promoters company would create immense difficulty, as projects of many promoters would spread over to many States. As the Bill provides for State Level Authorities, and not a Central Authority, registration of projects and not promoter has been envisaged.

Implementation process/mechanism has been delegated to the regulatory authority, to be decided by regulations. The Bill does not propose to set up any Central Regulatory Authority, other than for Union territories, as part of the definition 'appropriate Government'."

**3.44 The Committee are in agreement on the view that registering the promoters companies would create difficulties. Thus the suggestion of registering the projects is well conceived. But the Committee want that the antecedents of the promoters should be checked before registering the projects being promoted by them. If the activities of the promoters are not found fit, then the project should not be registered. Further, the promoter should also be blacklisted for doing any further business across the country after two such defaults.**

#### **Clause 5(2)**

3.45 Clause 5(2) reads as under:

"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."

3.46 Clause 5(2) has provision for expeditious disposal of the applications for registration of real estate projects. The stakeholders have expressed their view that the time limit of 15

days granted in this provision is not sufficient. The authority may not be able to make a reasonable assessment of the project and take a decision on its eligibility for registration within the stipulated time frame. Therefore, it has been suggested that this time period may be enhanced to one month and it may be provided that if nothing is heard from the authority within a period of one month the registration may be deemed to be granted.

3.47 The representatives of RBI, during their oral evidence before the Committee deposed as under:

"However, we feel that the time limit of 15 days granted in the Bill, does not appear to be sufficient. The Authority may not be able to make a reasonable assessment of the project and take a decision on its eligibility for registration within the time stipulated. It is, therefore, for consideration whether it may be provided that if not if nothing is heard from the Authority within a period of one month or so, the registration is deemed to have been granted. This will facilitate the registration Authority to call for relevant information before granting registration if it is required.

The Period required for completing the information may be excluded for the computing for the period specified for the issue of registration but all this period should also be specified so that the whole thing is time bound."  
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3.48 In their written reply, the RBI, on the above suggestion opined as under:

"The proposed Bill provides for registration of real estate projects, after receiving all approvals from all authorities including the Municipal/ Urban Development etc. and prior to commencement of development of a real estate project. The Bill proposes to register projects on a real time basis, without the need for scrutiny. The applicant/ promoter is required to provide a self-declaration supported by affidavit on the contents of the application. The Authority is required to ensure that all the documents are in place, without checking its veracity, for which the proposed time of 15 days has been felt to be sufficient."

**3.49 The Committee are in full consonance with the views of both the Ministry of Housing and Urban Poverty Alleviation and the RBI, regarding 15 days being sufficient time for registering the project. The Committee are also in agreement with the**

**suggestion of RBI, to provide for the automatic registration of the project if nothing is heard from the authority within 30 days of applying for the registration. They want the Ministry to include this provision in the Bill.**

## **Clause 6**

3.50 Clause 6 of the Bill 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.

3.51 Clause 6 reads as under:

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

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."

3.52 In connection with clause 6, dealing with extension of registration, the suggestion has been received that

"Bill should deal with delays occurring on account of Government action and provision for automatic extension in such cases."

3.53 On being asked about the feasibility of incorporation of this suggestion in the proposed Bill, the Ministry of Housing and Urban Poverty Alleviation, submitted as under:

"The criterion and reasons for extension of registration under the said clause has been provided to be determined by rules, as it may differ from State to State, and the powers towards the same has been given to the State/UT governments."

3.54 In connection with the Clause 6; It has been further suggested that extension of registration does not cater for delays on account of action or default of Government authorities/agencies responsible for the delay, as it happened in the case of land acquisition by Noida Authority and High Court stay on the same or orders of Haryana Government/Under Ground Water Board/Punjab and Haryana High Court stopping use of underground water for construction purposes in Haryana. For such delays, authority concerned should be held accountable and not the developer. Bill should deal with delays occurring on account of Government action and provision for automatic extension in such cases.

3.55 When the Committee asked about the views of the Ministry on this suggestion, they in their written replies submitted as under:

"The criterion and reasons for extension of registration under the said clause has been provided to be determined by rules, as it may differ from State to State, and the powers towards the same has been given to the State/UT governments."

**3.56 The Committee are in agreement with the reasons put forth by the Ministry that criterion and reasons for extension of registration may differ from State to State and that this power be delegated to the concerned State/ UT government. However, the Committee fail to understand as to why the delays occurring on account of Government action should not be dealt with by the Bill. Thus, the Committee strongly recommend that the delays on account of Government/local authorities action should be explicitly included in the provisions of the Bill.**

## **Clause 7**

3.57 This clause relates to revocation of registration.

Clause 7(4)

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.

3.57 Clause 7(4) reads as under:

(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;

(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

3.58 It has been suggested that clause 7(4)(a) needs further refinement on debarring the promoter and specifying the name in the list of defaulters to make it relevant in a situation where it is common practice among developers to have a different entity for every project.

3.59 Ministry of Urban Housing and Poverty Alleviation, on this aspect stated in their written reply as under:

"The said clause only bars the promoter from accessing the website for that specific project only, in case of default. Also, the definition of promoter is inclusive and covers all such entities that developers form for real estate projects, and thus cannot escape responsibility."

3.60 **Clause 7(4)(a) debars the promoter from accessing its website in relation to the specific project of which the registration has been revoked. It also provides for the Authority to 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. The Committee fully agree with the suggestion forwarded in this regard and strongly recommend that as recommended in connection with clause 5(1)(a) the promoter of the project after two such instances should be blacklisted from conducting any further business across the country.**

### **Clause 8**

3.61 Clause 8 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.

3.62 Clause 8 reads as under:

" 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:  
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."

3.63 Clause 8 provides that the Regulatory Authority has to consult the State government for action that is to be taken on lapse of registration or it's revocation. Also, the proviso to the

section allow for a very long 90 day period for Appeal before an Order U/S 8 can take effect. During the Course of evidence before the Committee the stakeholders raised their query regarding the justification of such a long period.

Further they suggested that the exemptions from registrations should be removed in public interest. Accordingly, Section 8 needs to be appropriately modified.

3.64 When the Committee inquired from the Ministry of Housing and Urban Poverty Alleviation about its opinion on this aspect of the Real Estate (Regulation and Development) Bill 2013, the Ministry stated as under:-

"The clause provides that the Authority may consult the appropriate Government on the possibilities of completion of the project pursuant to cancellation, it does not provide for seeking permission for cancellation. Also, as pursuant to cancellation of registration, it would require execution towards project completion. The Authority is not competent to take up project execution work, hence, it is to be done by the appropriate Government or such other agencies as decided.

Also, the proviso providing for action pursuant to cancellation is to take effect only after appeal period is over, as it is a natural law of justice to provide the grievance redressal mechanism before action can be taken."

3.65 In connection with clause 8 of the bill it has been suggested that,

"Office of the authority should have competence to recommend to the authority for its approval for alternate promoters/modalities following a transparent process. The task of the authority in this direction would considerably be facilitated if it has got an investigating agency".

3.66 On the above suggestion the Ministry of Housing and Urban Poverty Alleviation, in their written reply opined as under:-

"The clause provides for a wide range of all possible options to the Authority to take appropriate remedial measures, wherein the intent is to ensure project completion. Thus, the clause takes care of the concerns raised. Also, the need for an investigating agency may not be necessary. Clause 31 provides for inquiry and investigation by the Authority, and the Authority is expected to develop its own methods of investigation."

**3.67 The Committee find that the provision of 90 days for appeal settlement in case of revocation of registration of the project is a long period. This will prove to be**

**burden on the customers of the projects, as in present scenario most of the customers purchase the flats through bank loans. Thus, the Committee recommend that the provision of 90 days for appeal settlement should be reduced to 45 days. In the alternative, the provision of suitably compensating the customers of projects that get affected due to revocation of registration of the project and subsequent delays in the construction due to appeal period, should be explicitly provided in the Bill.**

### **Clause 9 & Clause 10**

3.68 Clause 9 relates to the registration of real estate agents, while clause 10 deals with functions of real estate agents.

#### **Clause 9(1)**

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.

3.69 Clause 9(1) reads as under:

**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.**

3.70 Sub-clause 9(1) 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.

3.71 Apprehensions have been raised that under Clause 9 (1) of the Real Estate Bill 2013, registration of real estate agent focuses only on new property sale; it does not provide clarity on the criteria for eligibility of an individual to go for this registration. This clause indicates that real estate agents need registration only for new project/flats sale and left out other areas of business like resale of property, out of the purview.

3.72 On being inquired by the Committee, the Ministry of Urban Housing and Poverty Alleviation; submitted as under:

"The proposed Bill is prospective in application, for registration of both real estate projects and real estate agents. Resale of properties, if it relates to a real estate project, registered under the Act, whether it is a first sale or resale, the real estate agents will have to register with the Authority and shall be quoted by the real estate agent in every sale facilitated by him. However, the Bill does not provide for registration of agents who are not selling properties not registered under the Bill.

However, the Ministry is willing to examine the suggestions of resale in secondary market for other unregistered projects by the Real Estate Agents for which a reference is being sent to the Ministry of Law (Legislative department) to get their views, as consequent changes would become necessary in clause 10, which provides for functions of real estate agents, and section 54 which provides for penalty, for contravention of clauses 9 & 10."

3.73 In connection with registration of real estate agents under Clause 9 suggestion has been received regarding training of the Real Estate Agents. The suggestion is as under :-

"All real estate agents must be trained and also be provided with a 'model code' to follow. Often, an agent over claims and doesn't clarify the salient features (negatives) of the project. There should be a 'tick box' form (a provisional project information letter) which every customer must be made aware to ask for. The agent must receive signature of the customer on this letter. The letter lays out all the information, which the customer must have been provided about the project by the agent. It may contain details such as (material used, the distance from the amenities, source of water, 'the final certificate' of the township, etc.). The agent must be trained to follow a model code in selling."

3.74 The Ministry of Housing and Urban Poverty Alleviation on being asked about their view on incorporating the above suggestion in the proposed Bill, replied as under:

"These are matter of implementation details, which can be provided under delegated legislation."

3.75 In connection with clause 9 dealing with registration of real estate agents, it was pointed out by the experts that there are no well defined Guidelines and minimum eligibility criteria.

3.76 The Committee taking a note of the same inquired the Ministry of Housing and Urban Poverty Alleviation that why the guidelines and minimum eligibility criteria, for the registration of the Real Estate Agents have not been defined. The Ministry in their written reply submitted as under:

"The Bill provides for implementation aspects to be specified by delegated legislation (rules and regulations), wherein these aspects can be considered."

**Clause 9(3)**

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.

3.77 Clause 9(3) reads as under:

(3) 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 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.

3.78 It has been suggested by the stakeholders that there is no clarity on the eligibility criteria for the registration of Real Estate agents. This needs to be incorporated to ensure transparency in property dealing. The objective should be to create a pool of licensed Real Estate agents who are adequately trained and certified, like other self-employed professional e.g. insurance agents, lawyers etc.

3.79 The Ministry in its written replies, submitted the following views on the above suggestion:

"This aspect has been covered under clause 9(3) '*The Authority shall, within such period, in such manner and satisfying itself of the fulfillment of such conditions, as may be prescribed, grant registration*'. So it has been left to the regulator to define the criteria for registration as it deems appropriate."

3.80 In regard to clause 9 and 10, dealing with Registration of Real Estates Agents and functions of Real Estates Agents it has been suggested that since there is no professional body available in the country to certify a person seeking to be real estate agent, initially the Bill should make provisions for provisional registration only as one time opportunity to the existing agents for a limited period of, say, three years.

3.81 On being inquired about their views on the above suggestion, the Ministry of Housing and Urban Poverty Alleviation, opined as under:-

"The main thrust of the Bill is regarding disclosure and transparency in relation to real estate projects, registered under the Bill. As real estate agents are an important link in the 'transaction' chain, it has been decided to register them and make them accountable. The Bill in clause 9(6) provides for period of validity of registration in such a manner to be provided for by rules, and extendable as specified by the said rules. Thus these aspects have been covered under the Bill."

3.82 Clause 10 reads as under:

Every real estate agent registered under section 9 shall—

(a) not facilitate the sale or purchase of any plot, apartment or building, as the agents. 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.

3.83 Under clause 10(a), of the Bill, it has been mentioned that “Every real estate agent registered under section 9 shall 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”.

3.84 The Committee asked the Ministry of Housing and Urban Poverty Alleviation to clarify that whether the properties which are exempted under Clause 3(a) would be allowed to be sold or purchased through real estate agents or not. The Ministry in their written reply submitted as under:-

"The proposed Bill is prospective in application, for registration of both real estate projects and real estate agents. Resale of properties, if it relates to a real estate project, registered under the Act, whether it is a first sale or resale, the real estate agents will have to register with the Authority and shall be quoted by the real estate agent in every sale facilitated by him. However, the Bill does not provide for registration of agents who are not selling properties not registered under the Bill.

However, the Ministry is willing to consider its revision, towards which a reference is being sent to the Ministry of Law (Legislative department) to get their views, as consequent changes would become necessary in 10, which provides for functions of real estate agents, and section 54 which provides for penalty, for contravention of clauses 9 & 10. The views of the Ministry pursuant to the suggestions received from the Ministry of Law would be communicated to the Standing Committee."

3.85 The Committee find that in Clauses 9 and 10 relating to "registration of real estate agents" and "functions of real estate agents" certain things are conspicuous by their absence. There are no provisions for registration of agents who are selling properties not registered under the Bill, lack of any training for real estate agents, no well defined guidelines and minimum eligibility criteria for registration of real estate agents. The Committee are dissatisfied over the reply of the Ministry in this regard, that these are implementation aspects and are to be specified by delegated legislation.

The Committee are of the view that real estate agents are the main players in this Bill. Hence, the repository of real estate agents will prove to be the most important deciding factor towards the successful implementation of all other provisions of this Bill. Thus, the Committee being in full agreement with the suggestions received in connection with Clauses 9 and 10 strongly recommend that all the real estate agents across the country should be registered irrespective of the type of property they are selling. This includes properties from agriculture, industry, residential and commercial sectors. Also, the minimum eligibility criteria and other guidelines alongwith the "model code for training of real estate agents" should be clearly mentioned in the Bill. This model code can be followed by all the regulatory authorities across the country with suitable changes according to the local needs.

## CHAPTER-IV

### Functions and Duties of Promoter

Chapter III of the Bill deals with Functions and Duties of Promoter and contains clauses 11 to 16. The Committee will now give their comments and observations on provisions contained in some of the clauses.

#### **Clause 11**

4.2 Clause 11 relates to the functions and duties of promoter.

#### **Clause 11(4)**

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.

4.3 Clause 11(4) reads as under:

(4) 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.

4.4 Under Clause 11(4) (a) the responsibility of the promoter has been fixed but responsibilities of the State Govt. / municipal authority to issue completion certificate within stipulated time or force majeure factors which causes delay in obtaining completion

certificate have not been mentioned. The suggestion has been received to include the same in the Bill.

4.5 On being inquired about the incorporation of the suggestion in the Bill, the Ministry of Housing and Urban Poverty Alleviation submitted in their written reply stated as under:

"The proposed Bill is limited in applicability, to transaction entered into between the buyer and the promoter, under the Concurrent List of the 7<sup>th</sup> Schedule of the Constitution. Local Authorities are covered within the State List of the 7<sup>th</sup> Schedule, towards which the Central Government does not have the powers to make laws. Force majeure, along with other factors because of which projects can get delayed can be covered under clause 6, which provides for making rules, for extension of registration, based on local situations by the State/UT government."

**4.6 Under Clause 11(4)(a) it has been made the responsibility of the promoter 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. However, the responsibilities of the State Govt. / municipal authority to issue completion certificate within stipulated time or force majeure factors which cause delay in obtaining completion certificate have not been mentioned.**

**The Committee are of the view that no doubt it should be the responsibility of the promoter to obtain completion certificate from the relevant competent authority and make it available to the allottees or to the associations of allottees, but if no time frame is fixed for the competent authorities to issue such completion certificate, it can be used by the promoter as a plea for unnecessarily delaying the furnishing of documents to the allottees. Therefore, the Committee strongly recommend that a suitable time limit should be specified for competent authority to provide completion**

**certificate to the promoter under Clause 11(4) of the Bill, instead of leaving it to State Governments to decide.**

4.7 In any of the real estate project development, debris accumulated across the roadsides, streets and grounds prove to be a menace for the local people. The Committee inquired from the Ministry of Housing and Urban Poverty Alleviation, whether they have any policy/guidelines under which the builder is forced to clear the debris simultaneously from the roadside and streets to prevent inconvenience to the local people. The Ministry of Housing and Urban Poverty Alleviation submitted as under :-

"The thrust of the Bill is disclosure and transparency with regard to the transactions entered into between the promoter and the allottee. Clearing of debris etc. are part of Municipal functions and beyond the ambit of the Bill."

**4.8 The Committee are of the view that the construction of real estate projects in all the residential areas where the people are already dwelling, the debris across the roadside, streets and in parks and grounds prove to be menace for the local people. Thus, though the clearing of debris etc. is part of Municipal functions, it should be made the responsibility of the promoter to ensure the timely clearance of all the debris generated during construction of the projects.**

**Thus, the Committee recommend that a new sub-clause should be incorporated in the Bill making it the responsibility of the promoter to clear the debris generated during construction of the project, till the completion of projects.**

#### **Clause 14**

4.9 This clause relates to the adherence to approved plans and project specifications by the promoter.

## **Clause 14(2)**

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.

4.10 Sub- Clause 14(2) reads as under:

" 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."

4.11 In connection with clause 14(2), following suggestion was received:

"It is felt that a period of 2 years is too short a time to ensure structural stability. It would be desirable to increase this period to 5 years since new projects are likely to develop new sewage defects etc. Further it would be worthwhile considering retention of final payment in the form of performance guarantee so that the promoter is under pressure to ensure structural stability for a longer period."

4.12 With regard to clause 14(2), representative of the RBI during oral evidence submitted as under:-

"While these provisions take care of the situation like delay in completion of the project or any structural defects, there are not specific provisions to compensate the allottees if the construction is of substandard quality. It is desirable to compensate the allottees for substandard quality of work also. As detection of structural defects may not be possible within a short period. We suggest that allottees should have a longer time to claim compensation for structural defects."

4.13 On being asked about the views of the Ministry of Housing and Urban Poverty Alleviation, on the above suggestion, they submitted in writing as follows:

"The provision for rectification of structural defects has been provided for two years after extensive discussions with State Government, structural engineers and town planning experts. It has been suggested that two years is sufficiently long period to reflect any structural defects. Also, the Bill should not impose any 'exit barriers' for the promoters, which would hinder competition and affect the interest of prospective players in the sector. The costs associated with the longer association of developer in the project are likely to be built-in by the developer which would ultimately be borne by the consumers."

As regards structural safety the promoter is bound under local laws, and any defect is liable to be punished under such laws. The remit of this Bill is just to make good the loss to the buyer in the specified period, through compensation, if the promoter does not correct such defects. Also, as stated above clause 34 of the Bill clearly provides for 'Recovery of interest or penalty or compensation' imposed under the Bill."

4.14 On the above suggestion the Department of Legal Affairs of Ministry of Law and Justice opined as under:

"The proposal to increase the period from two years to five years is a welcome suggestion."

**4.15 Clause 14(2) of the Bill makes the promoter duty bound to rectify the structural defects that are brought to his notice by the allottee within a time period of two years of allotment. However, the Committee feel that a period of 2 years is too short a time to ensure structural stability. It would be desirable to increase this period to 5 years since new projects are likely to develop unforeseen defects.**

**Furthermore, the Committee are also in agreement with the view expressed by RBI that the allottees may be compensated for delay in projects or for detection of any structural defects. They do not agree with the reply of the Ministry that the Bill should**

**not impose any 'exit barriers' for the promoters, which would hinder competition and affect the interest of prospective players in the sector. The costs associated with the longer association of developer in the project are likely to be built-in by the developer which would ultimately be borne by the consumers.**

**Hence, the Committee recommend that the time period to rectify the structural defects should be increased from 2 to 5 years. Also the provision for compensating the allottees in case the construction is of substandard quality should be invariably incorporated under Clause 14 of the present Bill.**

### **Clause 15**

4.16 Clause 15 relates to the transfer of title.

4.17 Clause 15 reads as under:

" (1) The promoter shall take all necessary steps to execute a registered conveyance of 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.  
(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."

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.

4.18 A suggestion has been received that under clause 15 (1), (Transfer of Title) "Once the FSI / FAR of a given plot has been consumed / exhausted by the Builder, the plot would be automatically deemed to have been conveyed to the existing Flat Owners / Societies on the plot and all benefits from the date of deemed conveyance onwards would accrue to the Flat Owners / Societies."

4.19 On this suggestion, the Ministry of Housing and Urban Poverty Alleviation, opined as under:

"These are matters of development, to be regulated by the State laws like Development/Municipal Acts, Apartment Ownership Act etc. This clause only makes a reference to the local laws, towards timely transfer of title."

4.20 A suggestion has been received that under Clause-3 of the Real Estate (Regulation and Development) Bill 2013 there should be a specific time frame of 2 months for the Registration of conveyance deed from the date of handing over possession to the allottee.

4.21 On being inquired about the feasibility of the above suggestion the Ministry of Housing and Urban Poverty Alleviation submitted as under:

"Clause 15 of the Bill in its current form does not define the time frame within which conveyance deed needs to be registered by the promoter. However, the Ministry is not averse to the idea of defining the time frame for executing the conveyance deed. However, this point will need to be legally examined."

4.22 In context of clause 15 (1), another suggestion has been received, which reads as under:

" The Promoter should execute registered conveyance in favour of the allottee (Purchaser) along with the undivided proportionate title in the common area, However under State law the conveyance of the property is to be granted to the Association of the Flat purchaser which is normally a Society registered under Maharashtra Co-operative Society Act but it could be Company incorporated under Companies Act 1956 also or any other incorporated identity. Therefore society owns the land along with the building and flat purchasers have right to use, occupy transfer the said flat. However if as proposed conveyance is granted to the Purchaser of his undivided share in that case he becomes the owner of undivided property and no decision can be taken unless there is unanimity and single person can stall everything, whereas presently member is

bound by decision taken by the Society. This aspect needs serious consideration."

4.23 On the above suggestion the Ministry of Housing and Urban Poverty Alleviation opined as under:

"Clause 15 provides for handing over of the apartment etc. to the allottees, consequently a reference in the registered conveyance deed is also made to the undivided interest in the common areas, which is together owned by the allottees. The same is managed by the society/association, which are regulated by State laws like Apartment Ownership Acts, thus the provision is rightly provided."

4.24 With regard to clause 15(1), representative of the RBI during oral evidence on 06.12.2013, submitted as under:

"As regards clause 15(1), to protect the interest of allottees, the Bill understandably has effective provisions of execution of conveyance in favour of the allottees. It may, however, be noted that when cooperative housing societies are formed by the allottees, the conveyance of land building is required to be made to such cooperative society. As such, in addition to the existing provisions of requiring conveyance to be made in favour of allottees, an additional provision for conveying to the cooperative society or any other body corporate constituted by the allottees may also be made wherever the circumstances so warrant."

4.25 In Clause 15 of the Real Estate Bill, there is no time limit mentioned during which registration of conveyance deed should be executed. A suggestion was received stating as under:

"Ideally it should be within 2 months from the date of handing over possession to the allottee."

4.26 On being inquired about the incorporation of the suggestion in the proposed Bill the Ministry of HUPA, suggested as under:

"Transfer of title upon development is provided for under local laws, thus not provided for."

4.27 Further the Legislative Department of Ministry of Law and Justice opined as under in their written reply:

" We have no objection. However, while specifying the two months period, a provision relating to extension of the period for the benefit of allottee may be considered."

**4.28 Under Clause 15(1), the promoter should execute a registered conveyance deed in favour of the allottee alongwith the undivided proportionate title in 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. In this regard, it is apprehended that if conveyance is granted to the purchaser of his undivided share, in that case he becomes the owner of undivided property and no decision can be taken unless there is unanimity and a single person can stall the project, whereas presently a member is bound by decision taken by the society. Further the representative of RBI during the course of oral evidence, put forth the suggestion that in addition to the existing provisions of requiring conveyance to be made in favour of allottees, an additional provision for conveying to the cooperative society or any other body corporate constituted by the allottees may also be made wherever the circumstances so warrant.**

The Committee feel that in today's time where cooperative group housing societies have become the need of the hour specially in urban areas the conveyance for the cooperative society or any other corporate constituted by the allottees is indispensable. Thus the Committee strongly recommend that in addition to present provision of conveyance deed in favour of allottee, suitable provisions for providing the conveyance to cooperative society or any other corporate formed by the allottees may also be incorporated under Clause 15 of the Bill. The Committee also desire the Ministry to define the definite time frame of two months from the date of handing over possession to the allottee, within which conveyance deed needs to be registered by the promoter.

## CHAPTER V

### Rights and Duties of the Allottees

The Chapter IV of the Real estate (Regulation and Development) Bill 2013 deals with the rights and duties of the allottees. It has got only clause i.e. Clause -17

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.

5.2 Clause -17 (4) reads as under:

“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 there under.”

5.3 Regarding this sub clause, a suggestion has been received which reads as under:

“If the allottee has to pay interest for delay in payment, the promoter should also pay interest for any delay in rendering the details of accounts to the allottee for his verification.”

5.4 On being asked whether this aspect has been taken care in the Real estate (Regulation and Development) Bill 2013, Ministry of Urban Housing and Poverty alleviation submitted as under:

“Clause 16(2) provides that if the promoter fails to discharge any obligation imposed under the Act or rules and regulations, he shall be liable to pay compensation to the allottees in the manner as provided under this Act.”

**5.5 The Committee agree with the submission of the Ministry that it is explicitly mentioned in Clause 16(2) that in case promoter fails to discharge any obligation imposed under the Act or rules and regulations, he shall be liable to pay compensation to the allottees. In this connection, the Committee desire that such**

**compensation should be calculated in a judicious manner while taking into consideration the principal amount paid by the allottee alongwith the rate of interest payable thereon.**

### **Clause 17(5)**

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.

5.6 Clause 17(5) read as under:

“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.”

5.7 Regarding this sub-clause, suggestions were received to redefine the sub- clause (5) of Clause 17 of the Real Estate Bill 2013 which may be read as under:

“The allottee shall be entitled to have in soft copies, PDF format all good for construction drawings/reports of all disciplines i.e. Architectural, Structural, Mechanical, Electrical, Plumbing, Façade, Geo-technical and any other discipline. Soft copies of structural stability certificate, design execution certificate, construction execution certificate, design basis reports, geotechnical investigation report and vetting certificates. Allottee may take these soft copies from the building society/association or the promoter.”

5.8 On being asked whether Sub-clause (5) under Clause 17 of the Real Estate Bill 2013 can be redefined, Ministry of Housing and Urban Poverty alleviation submitted as under:

“Matters regarding possession of apartment and handing over of documents are covered under clause 15 of the Bill, wherein the promoter is mandated to hand over the ‘necessary documents and plans’ to the allottee or the association as the case may be as per the local laws. Clause 17 is a reiteration of the allottees right as a result of the provision under clause 15.”

**5.9 The Committee are in agreement with the view of the Ministry of Housing and Urban Poverty alleviation that matters regarding possession of apartment and handing over of documents are covered under clause 15 of the Bill, wherein the promoter is mandated to hand over the ‘necessary documents and plans’ to the allottee or the association as the case may be as per the local laws, but the Committee find that ‘necessary documents and plans’ are not specified in the Clause. Therefore the Committee are of the firm view that the allottee shall be entitled to have the soft copies, PDF format of construction drawings/reports of all disciplines. Therefore the Committee strongly recommend to redefine the Clause accordingly.**

#### **Clause 17(9)**

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.

#### **5.10 Clause 17(9) reads as under:**

“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.”

**5.11** It has been suggested for redefining the sub-clause (9) Clause 17 of the Real Estate Bill 2013 which may read as under:

“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. The organization so formed shall get independent third party vetting of the designs submitted by the promoter to verify that their building is compliant with the relevant Indian Standards issued by Bureau of Indian standards. The organization shall also get Non-Destructive Tests and Concrete Core testing as mentioned in the relevant Indian Standards to ascertain that the construction quality is as specified in the design documents”.

5.12 On being asked to clarify this aspect, Ministry of Housing and Urban Poverty alleviation submitted as under:

“Matters regarding association of allottees are governed under State laws like Apartment Ownership laws and is beyond the scope of this Bill. The Bill provides for a limited responsibility on the part of allottee to participate in the formation of an association.” (3<sup>rd</sup> LOP 26)”

5.13 **The Committee observe that Clause 17(9) of the Bill authorize every allottee to participate towards the formation of an association or co-operative society or federation after taking possession of the apartment/plot/ building as the case maybe. When asked to the possibility of getting the third party vetting of the designs submitted by the promoter by the association to verify that their building is compliant with the relevant Indian standards issued by Bureau of Indian standards, the Ministry has apprised the Committee that matters regarding association of allottees are governed under state laws and is beyond the scope of the Bill. Clause 29 of the Bill has entrusted the Real Estate Authority for promotion of Real Estate Sector which includes measures to encourage construction of environmentally sustainable and affordable housing, promote standardization, including grading and use of appropriate construction materials, fixtures, fittings and construction techniques. The Committee deplore the reply of the Ministry in which it does not want to use the provision of the Bill to emphasize upon the basic rights of the association/organization of the allottees so that they can verify whether their building is compliant with the relevant Indian standards issued by Bureau of Indian Standards. Such intention of the Ministry goes against the very purpose of the Bill which tries to protect the interest of the consumers. Therefore, the Committee strongly desire the Ministry that suitable provisions may be made in this clause so that associations/organizations so formed shall get rights of getting independent third**

**party vetting of the designs submitted by the promoter to verify that their building is compliant with the relevant Indian Standards issued by Bureau of Indian standards.**

**The Committee strongly feel that this provision will go a long way to promote standardization and stop the use of low quality of materials by the promoters/builders.**

5.14 Clause 16(1) relates to returns of amount and compensation. It reads as under :-

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 his registration under this Act 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, 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.

5.15 Clause 17(4) is about the rights and duties of allottees. It reads as under :-

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.

It is observed that in both these clauses the promoter is liable to return the amount and compensation to the allottees if he/she fails to complete or is unable to give position of an apartment, plot or building. In this regard it is observed that in many cases the builders/promoters face difficulties in getting clearances from the competent authorities about their projects. They have to run from one authority to other for getting different clearances. Pertaining to this the Real Estate Bill does not mention about the time frame by which the authorities will give necessary clearances to the projects. A suggestion has been received to include a provision for reducing the number of approvals required by real estate developers and specify a time-line thereon. This is the biggest bottleneck faced by the Promoters

which has a direct bearing on the supply of projects. If approvals are granted within the stipulated time by the authorities it will bring down the costs of real estates projects significantly.

**5.16 The Committee observe that under clause 16(1) the promoter is liable to return the amount and compensation to the allottees in case he fails to complete or is unable to give possession of an apartment, plot or building. The Committee are given to understand that the real estate developers need to run after various departments of the appropriate Government for getting clearances for their projects. Moreover, the Bill does not prescribe any time-line for the appropriate Government for giving clearances to the projects of the promoters/builders. These factors are also responsible for making delays in the completion of the projects. The Committee feel that this is the biggest bottleneck faced by the promoters for getting clearances from the Government. Clause 29 prescribe the duties of the Real Estate Regulatory Authority to make recommendations to the appropriate Government or the Competent Authority to ensure protection of interest of the allottees and promoters. In this connection, the Committee desire the Ministry to insert a new sub-clause under Clause 29 so that the Real Estate Regulatory Authority will give necessary directions to the appropriate government to put in place a single window system for getting all necessary clearances of the projects by the builders/promoters. The Committee further desire the Ministry to specify the time-lines in the Bill itself for giving various types of clearances of the real estate projects. The Committee are of the strong view that in this way the projects will be cleared in a hassle-free manner. This will curtail delays in completion of the projects and also bring down the cost of real estate projects significantly.**

## **CHAPTER VI**

### **Real Estate Regulatory Authority**

Chapter V of the bill deals with the Real Estate Regulatory Authority. It contains provisions under clause 18 to 34. The Committee have made their observations in respect of some of the provisions under this Chapter.

#### **Clause -20**

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 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. 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.

6.1 Clause -20 reads as under:

“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: 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: 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.”

6.2 Ministry of Law & Justice (Legislative Dept) was asked to clarify whether professional experience of 20 years should be adequate enough for holding such position and the provisions of holding the post of Additional Secretary or equivalent should be kept out of this Real Estate Bill 2013. Ministry of Law & Justice (Legislative Dept) gave their version which reads as under:

“The requirement of 20 years and 15 years of experience is applicable to the persons other than the Government Servants. The provisos under the said clause are applicable to the Government servants”

6.3 Ministry of Law & Justice (Department of Legal Affairs) on Clause 20 stated as under:

Clause 20 of the Bill provides for qualifications of Chairperson and Members of proposed Real Estate Authority. The qualifications of professional experience of 20 or 15 years respectively are for those applicants/candidates who are experts in various fields /areas such as enumerated in the Clause. However, proviso I and II provide for qualifications in terms of rank, if applicants belong to the category of officials of Central Government /State Governments. The professional experience of 20 or 15 years is for category of officials who are experts in various fields and not for officials who are holding the posts of Additional Secretary/ Secretary or equivalent rank in the Central Government/State Governments and apply for appointment to the post of Chairperson and Member of the Authority.

**6.4 The Committee find that as per the proposed Real Estate (Regulation & Development ) Bill 2013, Chairperson and Members of the Real Estate Regulatory Authority will be selected from amongst persons having adequate knowledge and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of Members. The Committee are of the view that by emphasizing upon such post in the Central Government or State Government, the Ministry intends to restrict the post of Chairperson and Members of the Real Estate Authority for the**

servicing and retired bureaucrats only. In this way the very purpose of the Bill that is to ensure professionalism in the Real Estate sector will be defeated. Therefore, the Committee strongly emphasize upon the fact that chairperson or members of the Real Estate Regulatory Authority should be selected from the persons who are experts in their professions like urban development, housing, real estate development, infrastructure, economics, planning, law, legislative, judiciary, commerce, accountancy, industry, management, social service, public affairs and who have worked in their field for 20 years in case of chairperson and 15 years in case of members. The Committee also recommend that the Selection Committee shall finalise the selection of the Chairperson and Members of the Authority within two months from the date on which the reference is made to it.

#### **Clause 24 (1)**

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.

6.5 Clause 24 (1) reads as under:

“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.”

## **Clause 24(2)**

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 24(2) reads as under:

“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.”

6.6 Ministry of Law & justice (Legislative Dept) was asked to clarify whether the power to remove Chairperson or Member from his office under clause (d) or clause (e) of sub-section (1) of clause 24 be bestowed to a judicial magistrate apart from giving an opportunity of being heard and clause may be reworded to include the word ‘Judicial Magistrate’ after ‘heard’. So Ministry of Law & justice (legislative Dept) stated as under:

“Decision to be taken by the administrative Ministry, in consultation with the Department of Legal Affairs”

6.7 Accordingly, Ministry of Law & justice (Legal Dept.) was asked to clarify whether the power to remove Chairperson or Member from his office under clause (d) or clause (e) of sub-section (1) of clause 24 be bestowed to a judicial magistrate apart from giving an opportunity of being heard and clause may be reworded to include the word ‘Judicial Magistrate’ after ‘heard’. Thereafter, Ministry of Law & justice (Legal Dept.) stated as under:

“Clause 24 of the Bill provides for removal of the Chairperson and Member from office in certain circumstances as enumerated in (a) to (e) of clause 24(1) by the Appropriate Government. Clause (2) provides for giving of reasonable opportunity in respect of (d) and (e) by the appropriate Government only.”

6.8 It has been suggested that clause may be reworded as follows:

“Neither the Chairperson nor any Member shall be removed from his office on the grounds specified in clause (d) or clause (e) of clause 24(1) unless the High Court on a reference being made to it in this behalf by the appropriate government, has, on an enquiry held by it in accordance with such procedure as may be prescribed in this regard by the High Court, reported that the Chairperson/Member, ought on such ground or grounds be removed.”

The above wording corresponds to the wording as provided in the section 11(3) of the Competition Commission Act 2002. For the purpose of this Bill it may be provided that the Chairperson or Member may be suspended on the recommendation of High Court before or during the inquiry by the High Court.

6.9 On being asked to give opinion in this regard, Ministry of Housing and Urban Poverty alleviation submitted as under:

“Sufficient safeguards have been provided in the relevant clause to protect the regulator. Furthermore, Real Estate Regulator is proposed to be a State level regulatory Authority while Competition Commission of India is a central regulator, which has stringent clause for protection of regulator.”

**6.10 The Committee find that the Chairman and the Members of the Authority have received a raw deal in respect of their removal in comparison to their peers in other enactments such a Competition Commission of India. Though, the Department of Legal Affairs has seconded the existing provision of providing reasonable opportunity being given to them by the appropriate Government, the Committee fail to understand as to why the Ministry are not agreeing to the proposal of making the removal subject to judicial scrutiny. They see no reason as to why the procedure followed in case of Competition Commission of India can not be made applicable in this case. Hence, the Committee recommend that matters relating to removal of Chairmen/Members on account of sub-clauses (a) to (e) of clause 24(1) shall be subject to judicial scrutiny.**

## **Clause 29**

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

6.11 Clause 29 reads as under:

“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 standardization, 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.”

6.12 During deposition before the Committee, the Secretary, Ministry of Consumer Affairs stated that the words “disputes settlements forum” will get confused with the forums of Consumer Protection Act. If one of them goes to the consumer forum then other party would take the plea that we are still in the conciliation phase that’s why our conciliation should be completed first. This will create delays. We have created these consumer forums in more than 600 districts. The relief and the motivations the individual gets in his/her districts will get denied. We just want to say that “through disputes settlement forum” will create confusion. Some other terms should be used. We are in the “conciliation” terminology. We have created mediations centre in consumer forums. Whenever any party comes to the consumer forum, the presiding officer sends him to the mediation centre. We also believe in disputes resolution but the terminology of the “through disputes settlement forum” should be changed to some other phrase. These will not create any confusion.

6.13 The Secretary Ministry of Law & Justice (legal affairs) suggested that if we use the word “machinery” instead of “forum” than all the confusion created may be resolved regarding disputes settlement.

**6.14 The Committee are in agreement with the version of Ministry of Consumer Affairs that the words “disputes settlements forum” will get confused with the “forums” of Consumer Protection Act. The Committee are, therefore, in agreement with the suggestion by the Secretary, Ministry of Law & Justice (Legal Affairs) that the word “machinery” should replace the word “forum” in the Dispute settlements. This will erase out all the confusion between disputes settlement forum set up by the consumer or promoter associations and forums of Consumer Protection Act. The Committee desire the Ministry to make necessary modifications in the Bill.**

6.15 On being asked by the Committee to explain, how the Ministry aims to provide affordable housing through this Real Estate Bill 2013, Ministry of Housing and Urban Poverty alleviation submitted as under:

“The Bill is a regulatory Bill to regulate and promote transparency in transactions of buying and selling residential real estate. The Bill is not aimed at providing affordable housing, which is addressed by other schemes such as JNNURM, RAY, and RRY etc. of the Ministry.”

**6.16 The Committee note that under Clause 29(c) of the Real Estate Bill 2013, 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 on measures to encourage construction of environmentally sustainable and affordable housing, promote standardization, including grading and use of appropriate construction materials,**

fixtures, fittings and construction techniques. When the Committee asked the Ministry of Housing and Urban Poverty Alleviation to explain as to how the Ministry aims to provide affordable housing through the Real Estate Bill 2013, it was explained that *the Bill is a regulatory Bill to regulate and promote transparency in transactions of buying and selling residential real estate and is not aimed at providing affordable housing, which is addressed by other schemes such as JNNURM, RAY, and RRY etc. of the Ministry.* The Committee lament the Ministry in giving such a casual reply, when it is explicitly mentioned in the Bill that the Real Estate Authority shall make recommendations to the appropriate Government or the competent authority on measures to encourage construction of environmentally sustainable and affordable housing. The Committee, therefore, strongly desire the Ministry to elaborate on the said provision, by giving due emphasis on affordable housing for economically weaker sections who can render services to the residents of such buildings.

6.17 The Committee observe that under Clause 29, the authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make certain recommendations to the appropriate Government or the competent authority, as the case may be. In this regard, the Committee wish to draw the attention of the Ministry that there are so many litigations in this sector all over India. In most of the cases, there is no clarity on the title of the land owners. In many a case, the same land /house/flat is being sold to many individuals. As a result, the individual or the allottee is subject to manifold problems. To mitigate these problems and to ensure smooth functioning of Real Estate Regulatory Authority, the Committee are of the strong view that the entire land should be digitized. Therefore, the Committee desire the Ministry to add a suitable sub-clause in Clause 29 wherein Real Estate Regulatory Authority can give directions to the appropriate Govt. or the competent authority as the case may be, to digitize all the land records within a time bound manner.

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

6.18 Clause 30 reads as under:

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 penalized 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;
- (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;
- (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.

**6.19 The Committee find that, as per Clause 30(g), a function of the Real Estate Regulatory Authority is to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act and feel that mere mention of such provision will not help unless the Authority itself monitors its regulations and orders with regard to their execution. Hence, they would like to emphasize upon periodic monitoring of its regulations or orders or directions by the Authority itself.**

**Therefore, the Committee would like the Ministry to redefine sub-clause 30(g) accordingly.**

**CHAPTER VII**  
**THE REAL ESTATE APPELLATE TRIBUNAL**

Chapter VII of the Real Estate (Regulation and Development Bill), 2013 deals with the Real Estate Appellate Tribunal and contains Clauses 37 to 50. The Committee will now give their comments and observations on provisions contained in some of the clauses of this Chapter.

**Clause 40**

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

7.2 *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.

7.3 In this regard a suggestion has been received that in order that the appellate tribunal is of sufficient status and inspires confidence among stake holders, the minimum requirements for being a judicial member and a technical administrative member need to be restated in these clauses to include that both the judicial member as well as the technical member should have held the post or be capable of holding the post equivalent to Secretary to Government of India/Chief Secretary to a State Government. Accordingly rewording the two sub-clauses namely Clause 40(1)(b) and Clause 40(1)(c) to accommodate the need for higher qualifications as suggested, the Ministry stated as under :-

“Requirements of offices (judicial and administrative) have been provided keeping in mind that every State is required to set up a Regulatory Authority. It would become difficult to find such senior officers, and also it would take away the opportunity of having serving officers to serve the Authorities. The qualification defined are appropriate and sufficient for regulatory body officers.”

7.4 When asked why there is a long list for selection of only one member as judicial Member and the list should be pruned , the Ministry in their written replies stated as under :-

“Clause 40 defines qualification for two categories of Members, one for judicial member and the other for administrative member. Judicial Members are to be selected either from the Indian Legal Service or from the legal fraternity. However, clause 40 provides for an exhaustive list of professionals who may be selected as an administrative members based on experience to ensure no professional associated with the sector is denied on opportunity to be a part of the Tribunal.”

**7.5 The Committee feel satisfied with the existing provision in respect of appointment of judicial member but are not inclined to agree with the provision with regard to administrative members. The Committee strongly dissuade any move which hinders professional expertise, rather pave way for creation of additional posts for absorption of bureaucrats in the Real Estate Regulatory Authority. Therefore, the Committee strongly recommend that such posts should be held only by professionals of the level of Additional Secretary/Secretary to Government of India or equivalent posts in the State Governments.**

## **CHAPTER VIII**

### **OFFENCES, PENALTIES AND ADJUDICATION**

Chapter VIII of the Real Estate (Regulation and Development Bill), 2013 deals with the Offences, Penalties and Adjudication and contains Clauses 51 to 62. The Committee will now give their comments and observations on provisions contained in some of the clauses of this Chapter.

8.2 Clause 51(1) to 55: These clauses deal with punishment for non-registration and contraventions under Section 9 to 10 and willful failure to comply with order of Authority by promoters:

“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. (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.

**Clause 52 reads as under :-**

“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.”

**Clause 53 reads as under :-**

“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. “

**Clause 54 reads as under :-**

“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.”

**Clause 55 reads as under :-**

“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.”

8.3 In this regard it was suggested that penalty for every day to the Promoter should be deleted and should be mentioned therein that the promoter shall be liable for a penalty for a period during which the default continues and also the percentage rate should be reduced from 10% to 5% as in the case of allottee OR any promoter who, without reasonable excuse, fails to comply with or contravenes the provision of this act, shall be punished with fine up to Rs. One Crore. When asked to give comments, the Ministry of Housing and Urban Poverty Alleviation in their written replies stated as under :-

“The clause for ‘everyday’ penalty has been inserted to ensure compliance, as every day of delay can cause hardship and difficulties to the allottees. Also, the determination of penalty as a specified sum, can lead to asymmetry in quantum of penalty, as smaller projects may be highly penalized and larger projects with bigger defaults may go scot-free with small penalties.”

8.4 It has been suggested by various stake holders including Shri M.M.K. Sardana, former Chairman of MRTP Commission and former Secretary to Government of India that regulator should be facilitator as well and should have balanced approach. The Persons / Agencies / Authorities / customers should also be accountable if the work gets delayed / stopped due to

their fault. If the authorities do not provide the clearance in an appropriate time, they would be penalized. When asked about the opinion in his regard, the Ministry stated as under :-

“The Bill provides under clause 6, the powers to the State/UT government to provide for situations wherein the project can be extended, these aspects are adequately covered under delegated legislation.”

**8.5 Clauses 51(1) to 55 deal with punishment for non-registration and contraventions under Section 9 and 10 and wilful failure to comply with the orders of the Authority by promoters. In this regard, it was suggested that penalty for every day occurring therein on the Promoter should be replaced by a penalty for a period during which the default continues. It was further suggested that the regulator should be a facilitator and should have balanced approach. All the Persons / Agencies / Authorities / customers involved in the project should also be made accountable and penalised if the work gets delayed / stopped due to their fault.**

**The Committee are in agreement with the views of the Ministry that wilful delay of even single day can cause hardship and difficulties to the allottees. Hence, in order to safeguard the interest of the consumers it is necessary to retain this clause.**

**The Committee are also in agreement with the views of the stakeholders that there should be provision for penalizing the concerned authorities responsible for causing delays in giving clearances to the projects. It is therefore necessary that some time-frame should be set for giving necessary approvals and it should be strictly adhered to by the authorities which may be prescribed under the rules. An enabling provision to this effect should be clearly spelt out in the Bill itself.**

**Clause 55 and 56:**

**8.6 Clause 55 and 56 deal with Penalty for wilful failure to comply with orders of Authority by promoter. Penalty for wilful failure to comply with orders of Appellate Tribunal by promoter respectively. These clauses state as under:**

“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.

If any promoter, who wilfully fails to comply with, or contravenes any of the , 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.”

8.7 In this regard it was suggested by Deputy Governor of RBI during the evidence before the Committee as under:

“As regards Chapter VIII, certain wilful conduct on the part of promoters and others is made punishable under the Bill. This Chapter deals with various offences failing to do certain things wilfully only is made as an offence. While it may be appropriate that wilful contravention is made an offence resulting in imprisonment, we suggest that specific provisions may also be made for compensating the allottees from out of the fine money and to pay the financing bank from out of the same even if the contraventions are not wilful but have prejudiced the interest of the allottees and moneylenders.

8.8 When asked about the opinion of the Ministry in this regard, the Ministry of Housing and Urban Poverty Alleviation stated as under:-

“The Bill provides for compensation to the allottees for contraventions under clause 12, 14 and 16 of the Bill, which is to be paid by the promoter to the allottee after adjudication by the adjudicating officer. Penalties recovered by the promoter for contravention of the provisions of the Act are to be deposited in the Consolidated Fund of India, and cannot be used for paying the compensation to the allottees. The Bill is not mandated to protect the interest of moneylenders and is limited to promoting transparency in transactions between the promoter and the allottee.”

8.9 On the provisions of penalty for wilful violation of the act, one of the stakeholders stated as under:-

“ ..... this being a new act and regulations would made for the first time, a time period of 60 to 90 days which may be treated as cure period along with an opportunity for correcting the violation of the provision be provided in the act instead of penalizing the promoter.”

8.10 It was further stated that power to cancel licence has been given to Regulatory Authority for wilful defaulter. This provision could be misused. Therefore, the term ‘wilful defaulter’ may be defined in the bill.

**8.11 The Committee observe that in Chapter VIII certain wilful conduct on the part of promoters and others is made punishable under the Bill. The wilful contravention of the provision may result in imprisonment. It has been suggested that specific provisions may also be made for compensating the allottees out of the money collected as penalty and to pay the financing bank from the same even if the contraventions are not wilful but have prejudiced the interests of the allottees and moneylenders. The Committee are also in agreement with RBI that compensation from the Promoter to the allottee should be given to the allottee and the banks/agencies financing them. The Committee are given to understand that at present, the penalties recovered by the promoter for contravention of the provisions of the Act are to be deposited in the Consolidated Fund of India. The Committee, however recommend that specific provisions should be made in the Act for compensating the allottees from the money collected as penalty.**

8.12 *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.

8.13 It has been suggested that under Clause 61 of the Real Estate (Regulation and Development) Bill - any adjudication by Jt. Secretary to the State Govt. is likely to cause delay in disposal of the cases because the officer may be preoccupied in his work. Therefore, the Consumer Protection Act 1986 provides the best three tier mechanism for such complaints. When asked to give their opinion on this aspect of the Real Estate (Regulation and Development) Bill 2013, the Ministry has stated as under :-

“The Bill does not bar the jurisdiction of consumer forums. However, the thought behind providing for an adjudicating officer was to provide for an executive establishment, without the need for huge administrative structure at Central, State and at districts, for settlement of disputes. The Consumer Protection Act provides for a judicial process for dispute settlement. The Consumer forums are clogged with numerous cases, and their disposition takes a very long time, as it handles all kinds of consumer disputes.

The Bill envisages an adjudicating officer exclusively for adjudication purposes, and the officer concerned would not be engaged with other work. In fact, the appointment of an adjudicating officer would expedite consumer complaints redressal.”

8.14 In this regard the Legislative Department in their written reply had stated that:

“At the time of drafting of this clause, this Department has suggested a retired District Judge as an adjudicating officer. Since, the administrative Ministry expressed the doubt about the non-availability of the retired district judges, a person not below the rank of Joint Secretary has been specified. However, the said provision has been drafted on the lines similar to the Securities and Exchange Board of India Act, 1992.

**8.15 The Committee are of the opinion that Joint Secretary may not have sufficient expertise to deal with such cases. Therefore, the Committee recommend that a retired district judge with adequate experience in the Real Estate field should be appointed as adjudicating officer in place of Joint Secretary and in case they would not find a retired District Judge, the Joint Secretary having relevant experience may be considered next option as an adjudicating officer.**

8.16 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.

**8.17** As regards clause 61 the adjudicating officer needs to have more power to pass interim order in the nature of directing the promoter to deposit at least a portion of the amount of compensation, when asked to elaborate, the Ministry replied as under :-

“The aspect of adjudication in regard to compensation to be paid by the promoter to the allottee can only be determined after the office has been established. There is no requirement of interim orders, as the time within which such grievances to be resolved by adjudicating officer, has been made time bound.”

8.18 In this regard the Deputy Governor, RBI during evidence before the Committee has opined as under:-

“As regards clause 61, the Adjudicating Officer needs to have more powers in our view. The Adjudicating Officer should have the power to pass interim orders in the nature of directing the promoter to deposit at least a portion of the amount of compensation even before the final disposal if the AO is satisfied that there is a *prima facie* in favour of the allottee or to direct the promoter to provide alternative accommodation to the allottee when there is delay. “

**8.19 The Committee observe that under sub clause (2) of Clause 61, 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. The Committee are in agreement with the opinion of RBI that the Adjudicating Officer needs to have more powers to pass interim orders in the nature of directing the promoter to deposit at least a portion of the amount of compensation even before the final disposal if the Adjudicating Officer is satisfied that there is a *prima facie* case in favour of the allottee or to direct the promoter to provide alternative accommodation to the allottee when there is delay. The Committee desire the Ministry to incorporate suitable provision in the Bill.**

**8.20 Chapter VIII of the Real Estate (Regulation and Development Bill), 2013 deals with the Offences, Penalties and Adjudication. There are provisions of penalties and adjudication for violation by promoters under sections 3,4,9 and 10 of the Bill. However, provisions for penalty for violation by promoters/developers under section 11 which deals with functions and duties of promoter with regard to creating his webpage on the website of the authority and enter all details of the proposed projects**

**provided under sub-section (2) of section 4 has been left out in the Bill. The Committee, therefore, recommend that provisions to this effect be included appropriately under Chapter VIII.**

## CHAPTER-IX

### Miscellaneous

Chapter X of the Bill deals with **various miscellaneous provisions** and contains clauses from 69 to 80. The Committee will now give their comments and observations on provisions contained in some of provisions contained in Chapter-X of the Bill.

9.2 Clause 73 of this Bill relates to the power of appropriate Government to make rules.

Clause 73 reads as under :-

73. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.
- (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 subsection(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;
- (ze) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

9.3 From the above provision of this clause, it is observed that there seems to be excessive delegated legislation in the Bill. When asked whether it is not appropriate for having explicit provisions in the Bill instead of delegating the power to the appropriate

Government, the Ministry of Housing and Poverty Alleviation in its written replies submitted as under :-

“The proposed Bill provides for minimum standards to infuse transparency in the transactions between the promoter and allottee, with implementation aspects to be determined by Rules and Regulations. The clauses, which provide for delegated legislation based on Rules and Regulations, have been provided to be deal with at the State level, based on local conditions, which may be different for different parts of the country, to be determined by the State/UT Government of the Regulatory Authority.”

9.4 During deposition before the Committee, the representatives of National Housing Board(NHB) submitted as under :-

“After the constitution of the Regulatory Authority, the rules and regulations which will be framed by the authority should be flexible and it will be better if there is some provision of guidelines related to rules and regulations in the bill. By doing this some flexibility will be maintained and initially there will be something to learn because this is the first time that a Regulatory Authority is being constituted to regulate real estate. We held meetings and discussions with the Ministries and found that flexibility will help the stockholders and policy makers. One should not be tied enough in any manner and there should be some flexibility for policies to be accumulated in the Bill. We welcome the Bill.”

**9.5 The Committee note that provision under Clause 73 provides for delegated legislation based on Rules and Regulations to be dealt with at the State level based on local conditions which may be different for different parts of the country to be determined by the Regulatory Authorities of State/UT Government Sub-clause 2 of Clause 73 states that such rules may provide ‘for all’ or any of the following matters mentioned at Clauses 4(2)J, 6, 9(2), (3) (6), 10(b)(e) 12, 13(2) 16, (1) (b), 17(1) 20,22,23,26(2), 30(d), 31(2), 34,36(2), 38, 40(3), 42(1), 43(4), 46(4)(h), 47,60, 60(1), 67(1) and 68(1) etc. The Committee are informed that this provision has been prescribed to ensure flexibility in the initial stage of the implementation of the Acts. This will further facilitate the stakeholders and policy makers to make rules and regulations freely. The Committee do not approve such kind of excessive delegation in the name of flexibility. The Committee strongly feel that the word ‘for all’ used in sub clause(2) of**

clause 73, will empower the appropriate Government to make rules on all the provisions of this Act by a simple notification. The Committee appreciate the fact that the appropriate Government will make rules depending upon the local conditions. However, they strongly disprove the intention of the Ministry that in the name of the flexibility in operation and implementation, the Ministry leaves a lot with delegated legislation which defeat the very purpose of Central Law. The Committee are of the strong view that if specific provision are not incorporated in the Bill, the appropriate Government may or may not consult the stakeholders. Furthermore, it deprives parliament to scrutinize various rules framed by the appropriate Government. Therefore, the Committee strongly oppose such word "for all" and desire that Ministry to remove it from the clause. The Committee further desire that only minimum provisions should be left for delegation and the matters of substantial nature should be clearly spelt out in the Bill itself.

9.6 The Committee are of the view that this legislation is going to have a great impact as it ensure accountability and transparency in the real estate sector as it will significantly reduce frauds and delays. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run. The Committee find that as per proviso to clause 1(3) of the Bill, different provisions of the Bill may be made effective from different dates. As such, inordinate delay may happen for all provisions of the Bill coming into effect. The Committee do not accept the provisions prescribed in this clause. The committee fail to understand why the Ministry has not laid down any time-frame for State Governments to make rules and implementation of provisions of this Bill after its enactment. The Committee, therefore, recommend that the Ministry should clearly mention a cut off date not later than six months for making the rules and implementation of its provisions by the State Governments.

New Delhi;  
12<sup>th</sup> February, 2014  
23 Magha, 1935 (Saka)

SHARAD YADAV  
Chairman  
Standing Committee on Urban Development

**Annexure I****Organisations/ Individuals who submitted written memorandum/ suggestions to the Committee on " The Real Estate (Regulation and Development) Bill 2013"**

<b>S.No.</b>	<b>Organizations</b>	<b>Received from</b>
1.	Chaitanya Foundation	Shri R.R. Patil
2.	Voluntary Organisation in Interest of Consumer Education (VOICE)*	Shri Ashim Sanyal
3.	Chandrakant N. Dalal* Senior Counsel & Social Activist	Shri Chandrakant N. Dalal
4.	Confederation of Real Estate Developers' Association of India (CREDAI)*	Shri Lalit Kumar Jain (Chairman) and Shri C. Shekar Reddy (President)
5.	Shri Indra P Chourasia*	Shri Indra P Chourasia Shri Pravin Parekh, Chairman
6.	Shri Gautam Basu*	Shri Gautam Basu
7.		Shri A.K. Sarkar
8.	Institute of Real Estate and Finance (IREF)*	Shri Abhay Kumar
9.	Shri RajKumar	Shri RajKumar
10.	Taylor* Design & Engineering Consultants Pvt. Ltd.	Major Sandeep Shah (Retd).
11.	Andhra Pradesh Builders Federation*	Shri C. Prabhakara Rao,
12.	Prakash-India*	Shri S.P. Manchanda,
13.	Confederation of Real Estate Developers' Associations of India A.P. (CREDAI)	Shri Y.V. Ramana Rao
14.	Siddhachal Enterprise*	Shri Pradeep Jain
15.	National Real Estate Development Council (NAREDCO)*	Brig. (Retd.) R.R. Singh
16.	Institute for Studies in Industrial Development (ISID)*	Professor M.R. Murthy
17.	Shri Alok Avasthi	Shri Alok Avasthi
18.	Shri Prahladrai L Avasatthi*	Shri Prahladrai L Avasatthi*
19.	Shri Amit Kumar Maihan	Shri Amit Kumar Maihan
20.	Kalpa Taru	Shri Shantilal Bohra
21.	The Uniworld Garden* Apartment Owners Association /Federation of Apartment Owners Association,	Lt. Col.(retd.) S.S. Oberoi/ Amit Jain

22.	<b>Sarthak Advocates &amp; solicitors</b>	<b>Shri Abhishek Tripathi/ Shri Shivendra Singh</b>
23.	<b>Indian Institute of Public Administration (Delhi Regional Branch)</b>	<b>Shri S.N. Swaroop</b>
24.	<b>Department of Economics, University of Mumbai</b>	<b>Shri Shirish B Patel, Ms Vaidehi Tandel, Shri Sahil Gandhi</b>
25.	<b>Confederation of Indian Industry (CII)</b>	<b>Shri Rajesh Menon, Deputy Director General</b>
26.	<b>Federation of Indian Chambers of Commerce and Industry (FICCI)</b>	

\* The representatives from the organisations/ the individuals appeared before the Committee for the oral evidence.

**STANDING COMMITTEE ON URBAN DEVELOPMENT (2013-2014)**

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY,  
NOVEMBER, 2013

6

The Committee sat from 1130 hrs. to 1400 hrs. in Room No.- '53' Parliament House, New Delhi.

**PRESENT**

Shri Sharad Yadav - *Chairman*

***MEMBERS***

**LOK SABHA**

2. Shri Kailash Joshi
3. Shri Bapi Raju Kanumuru
4. Shri Mohinder Singh Kaypee
5. Shri Ramesh Kumar
6. Dr. Sanjeev Ganesh Naik
7. Dr. Ramshankar
8. Shri Ratan Singh
9. Shri Prasun Banerjee

**RAJYA SABHA**

10. Shri Parvez Hashmi

**SECRETARIAT**

1. Shri R.K. Jain - Joint Secretary
2. Shri D.S. Malha - Director
3. Smt. J. M. Sinha - Deputy Secretary

**LIST OF WITNESSES**

Sl.  
No.

1. Shri Navin M. Raheja, Chairman, NAREDCO
2. Shri Rajeev Talwar, Vice President(North) NAREDCO
3. Shri Chalapathi Rao, Vice President(North) NAREDCO

4. Shri Muppa Venkaiah Chowdary, Member, NAREDCO
5. Brig. (Retd.) R.R Singh, Director General, NAREDCO
6. Shri Ashim Sanyal, Voluntary Organisation in Interest of Consumer Education (VOICE)
7. Shri Chandrakant N. Dalal , Senior Counsel & Social Activist
8. Shri Lalit Kumar Jain,Chairman and Shri C. Shekar Reddy (President) ,Confederation of Real Estate Developers' Association of India (CREDAI)
9. Shri Indra P Chourasia, C-202, Sai Shradha-I, Shiv Vallabh Road, Ashokvan, Borivali East Mumbai, 400 066
10. Shri Gautam Basu, Saktipur, Goswamipara,P.O. Agarpara, Kolkata-700 109
11. Shri Abhay Kumar, Institute of Real Estate and Finance (IREF)
12. Major Sandeep Shah (Retd)., Taylor Design & Engineering Consultants Pvt. Ltd.
13. Shri C. Prabhakara Rao, Andhra Pradesh Builders Federation
14. Shri S.P. Manchanda, Prakash-India
15. Shri Pradeep Jain ,Siddhachal Enterprise1
16. Professor M.R. Murthy, Institute for Studies in Industrial Development (ISID)
17. Shri Prahladrai L Avasatthi, B/10 Himatlal Park, Ahmedabad-380 015
18. Lt. Col.(retd.) S.S. Oberoi, The Uniworld Garden Apartment Owners Association
19. Shri Amit Jain, Director General Federation of Apartment Owners Association, Regus Business Centre, 4th Floor, Augusta Point, Sector -53, Gurgaon.Haryana.

After the tea break, the witnesses were called in and the Chairman welcomed the representatives of various non-Governmental Organisations/stakeholders engaged in Realty Sector and drew their attention towards direction 55(1) of the Directions by the Speaker regarding confidentiality.

2. Thereafter, the Committee invited them to present their views on the provisions of the Real Estate (Regulation and Development) Bill, 2013". The representatives expressed their concern and pointed out deficiencies in certain provisions of the Bill and suggested corrective measures thereof. Members raised queries to the stakeholders and the representatives responded to them. Then the Committee directed the representatives to furnish written Memoranda to the Secretariat at the earliest.

A verbatim record of the proceedings of the sitting has been kept.

**The Committee then adjourned.**

**STANDING COMMITTEE ON URBAN DEVELOPMENT (2013-2014)**

**MINUTES OF THE FIFTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY,  
6<sup>th</sup> DECEMBER, 2013**

The Committee sat from 1500 hrs. to 1700 hrs. in Committee Room 'D' Parliament House Annexe, New Delhi.

**PRESENT**

Shri Sharad Yadav - *Chairman*

***MEMBERS***

**LOK SABHA**

2. Shri Praveen Singh Aron
3. Shri Mohinder Singh Kaypee
4. Shri Ramesh Kumar
5. Shri P.C. Mohan
6. Shri Ratan Singh
7. Shri Prasun Banerjee

**RAJYA SABHA**

8. Shri Anil Desai
9. Md. Nadimul Haque
10. Shri Amar Singh

**SECRETARIAT**

1. Shri R.K. Jain - Joint Secretary
2. Shri D.S. Malha - Director
3. Smt. K. Rangamani N - Under Secretary

### **LIST OF WITNESSES FROM MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)**

1. Shri Sumit Bose - Revenue Secretary
2. Shri M.L. Meena - Joint Secretary, Revenue
3. Pragya S. Saksena - Joint Secretary
4. Shri Sunil Gupta - Joint Secretary
5. Shri P.K. Tiwari - Director, FIU

### **LIST OF WITNESSES FROM MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES)**

1. Shri Rajiv Takru - Secretary
2. Smt. Snehlata Shrivastava - Addl. Secretary
3. Shri Arvind Kumar - Joint Secretary
4. Shri Ateesh Singh - Director

### **RESERVE BANK OF INDIA**

1. Shri Anand Sinha - Dy. Governor
2. Shri G.S. Hege - Principal Legal Advisor
3. M.P. Baliga - G.M.

### **STATE BANK OF INDIA**

1. Smt. Arundhati Bhattacharya-CMD
2. Shri Arijit Basu -CGM
3. Shri Sunil Puri - Chief Manager

### **NATIONAL HOUSING BANK**

1. Shri R.V. Verma - CMD
2. Shri Lalit Kumar - GM

### **BANK OF INDIA**

1. Shri Arun Srivastava - Executive Director
2. Shri Tarlochan Singh - GM
3. Shri J.C. Chugh - AGM

### **Punjab National Bank**

1. Shri K.R. Kamath- CMD
2. Ms. Susi George-AGM

At the outset, the Hon'ble Chairman welcomed all the Members and representatives of the Ministry of Finance (Department of Financial Services, Economic Affairs and Revenue), Reserve Bank of India, State Bank of India, Punjab National Bank, Bank of India and National Housing Bank to

the sitting of the Committee and drew their attention towards maintaining confidentiality in terms of direction 55 (1) of Directions by the Speaker, Lok Sabha.

2. Thereafter, the Committee invited them to present their views on the provisions of the Real Estate (Regulation and Development) Bill, 2013". The representatives expressed their concern and pointed out deficiencies in certain provisions of the Bill and suggested corrective measures thereof.

3. Thereafter, Members raised certain queries which were responded to by the representatives. Then the Committee directed the representatives to furnish written replies to all the queries that have remained unanswered.

4. A verbatim record of the proceedings has been kept.

*The witnesses then withdrew.*

***The Committee then adjourned.***

STANDING COMMITTEE ON URBAN DEVELOPMENT (2013-2014)

MINUTES OF THE SECOND SITTING OF THE COMMITTEE HELD ON TUESDAY, 08 OCTOBER, 2013

The Committee sat from 1100 hrs. to 1345 hrs. in Committee Room 'C' Parliament House Annexe, New Delhi.

PRESENT

Shri Sharad Yadav - *Chairman*

**MEMBERS**

**LOK SABHA**

2. Shri Ramesh Kumar
3. Shri P.C. Mohan
4. Dr. Ramshankar
5. Shri Ratan Singh

**RAJYA SABHA**

6. Shri Anil Desai
7. Dr. M.S. Gill
8. Md. Nadimul Haque
9. Dr. Chandan Mitra
10. Shri Pyarimohan Mohapatra
11. Shri Avinash Pande
12. Shri Ajay Sancheti
13. Shri Amar Singh
14. Shri Khekiho Zhimomi

**SECRETARIAT**

1. Shri R.K. Jain - Joint Secretary
2. Shri D.S. Malha - Director
3. Smt. J. M. Sinha - Deputy Secretary

4. Smt. K. Rangamani N.- Under Secretary

**LIST OF REPRESENTATIVES**

The Chairman then welcomed the representatives of the Ministry of Housing and Urban Poverty Alleviation (HUPA) and drew their attention towards Direction 55(1) of the Directions by the Speaker.

2. Thereafter, the Secretary, Ministry of HUPA briefed the Committee about the important clauses of "The Real Estate (Regulation and Development) Bill, 2013". Due to paucity of time, the Committee decided to have detailed discussion during the next sitting.

3. A verbatim record of the proceedings of the sitting has been kept.

**The Committee then adjourned.**

**STANDING COMMITTEE ON URBAN DEVELOPMENT (2013-2014)**

**MINUTES OF THE SIXTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY, 11 DECEMBER, 2013**

The Committee sat from 1500 hrs. to 1600 hrs. in Main Committee Room Parliament House Annexe, New Delhi.

**PRESENT**

Shri Sharad Yadav - *Chairman*

***MEMBERS***

**LOK SABHA**

2. Shri Praveen Singh Aron
3. Shri Mohinder Singh Kaypee
4. Shri Ramesh Kumar
5. Shri P.C. Mohan
6. Dr. Sanjeev Ganesh Naik
7. Shri Ratan Singh
8. Shri Prasun Banerjee

**RAJYA SABHA**

9. Shri Anil Desai
10. Md. Nadimul Haque
11. Shri Amar Singh

**SECRETARIAT**

1. Shri R.K. Jain - Joint Secretary
2. Shri D.S. Malha - Director
3. Smt. J. M. Sinha - Deputy Secretary
4. Smt. K. Rangamani N. - Under Secretary

### **LIST OF WITNESSES FROM MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION**

1. Shri Arun Kumar Misra - Secretary, HUPA
2. Shri K.B.S. Sidhu - Joint Secretary, Housing, HUPA
3. Shri Premjit Lal - Director, Housing, HUPA

### **LIST OF WITNESSES FROM MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri P.K. Malhotra - Secretary,
2. Dr. G. Narayana Raju - Joint Secretary and Legislative Counsel
3. Smt. Veena Kothavale - Deputy Legislative Counsel
4. Shri R. Sreenivas - Deputy Legislative Counsel

### **LIST OF WITNESSES FROM MINISTRY OF LAW AND JUSTICE (LEGAL AFFAIRS)**

1. Dr. B.A. AGRAWAL - Law Secretary
2. Dr. S.S. Chahar - Additional Secretary
3. Shri T.K. Malik - Assistant Legal Adviser

### **LIST OF WITNESSES FROM MINISTRY OF CONSUMER AFFAIRS**

1. Shri Pankaj Agrawal - Secretary
2. Shri G. Gurucharan - Additional Secretary
3. Shri G.N. Singh - Director
4. Shri A.K. Jain - Director
5. Md. Zakir Hussain - Director

At the outset, the Hon'ble Chairman welcomed all the Members and representatives of the Ministry of Housing and Urban Poverty Alleviation, the Ministry of Law and Justice and the Ministry of Consumer Affairs to the sitting of the Committee, and drew their attention towards maintaining confidentiality in terms of direction 55 (1) of direction by the Speaker, Lok Sabha.

2. Thereafter, the Committee invited them to present their views on the provisions of the Real Estate (Regulation and Development) Bill, 2013". The representatives expressed their concern and pointed out deficiencies in certain provisions of the Bill and suggested corrective measures thereof.

3. Members raised certain queries which were clarified by the representatives. Then the Committee directed the representatives to furnish written replies to the points that have remained unanswered.

4. A verbatim record of the proceedings has been kept. The witnesses then withdrew.

***The Committee then adjourned.***

STANDING COMMITTEE ON URBAN DEVELOPMENT (2013-2014)

MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY, 12 FEBRUARY, 2014

The Committee sat from 1500 hrs. to 1600 hrs. in Committee Room 'C' Parliament House Annexe, New Delhi.

PRESENT

Shri Sharad Yadav - *Chairman*

*MEMBERS*

LOK SABHA

2. Shri Anant Gangaram Geete
3. Shri Kailash Joshi
4. Shri Bapi Raju Kanumuru
5. Shri Mohinder Singh Kaypee
6. Shri Ramesh Kumar
7. Shri Ratan Singh
8. Shri Prasun Banerjee

RAJYA SABHA

9. Shri Anil Desai
10. Md. Nadimul Haque
11. Dr. Chandan Mitra
12. Shri Pyarimohan Mohapatra
13. Shri Khekiho Zhimomi

SECRETARIAT

1. Shri R.K. Jain - Joint Secretary
2. Shri D.S. Malha - Director
3. Smt. J. M. Sinha - Deputy Secretary
4. Smt. K. Rangamani N.- Under Secretary

At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the \*\*\*\*\*draft report on "The Real Estate (Regulation and Development) Bill, 2013." After deliberations, the Committee adopted the report unanimously without any change. The Members then authorised the Chairman to present the report in the Parliament.

\*\*\*\*\* \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* \*\*\*\*\*

*The witnesses then withdrew.*

***The Committee then adjourned.***

\*\*\*\*\* These portions are not related to the Report.