



# Advani & Co.

## THE REAL ESTATE BILL, 2011

### Key Highlights

- The Bill which was being drafted since 2007 aims to provide a comprehensive regulatory and adjudicatory mechanism for the real estate sector which is often complained to be disorganized and unethical.
- Seeks to establish a regulatory oversight mechanism to enforce disclosure, fair practice and accountability norms in the real estate sector, and to provide adjudication machinery for speedy dispute redressal.
- Every promoter is required to mandatorily register with the Real Estate Regulatory Authority (RERA) before commencing construction and real estate activities.
- No promoter shall develop any immovable property or make any construction thereon or alteration thereof or convert any existing undeveloped immovable property or part of it without registering the real estate project and obtaining a certificate of registration from the Real Estate Regulatory Authority established under this Act.
- Establishment of a 'Real Estate Appellate Tribunal' by the Central Government to hear appeals from the orders of the Authority and to adjudicate on disputes.



### Overview of the registration process

- The bill contemplates two forms of applications and registrations. The first is with regard to registration of developers, and the second is with regard to the registration of projects.
- With regard to the registration of promoters, the Bill defines a promoter quite broadly and it will include most category of persons under any real estate development. All such promoters are required to mandatorily register themselves with RERA.
- Secondly all projects will require to be registered as well before any money or advances can be accepted from the public or any advertisements can be made by the promoters. This registration is for each real estate development individually.
- On the success of the application for the project, the promoter will be issued a login id and password for the creation of webpage with all the details of the project. This webpage will be hosted on the regulators website.

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## Real Estate Regulatory Authority (RERA)

- In our federal polity, “land” is a State subject, falling within the legislative competence of State legislatures. Hence, the Bill leaves it up to the State Governments to notify the creation of their respective Real Estate Regulatory Authorities.
- The Authority shall consist of a Chairperson and not less than two whole time Members.
- The Authority shall have powers to set up a dispute resolution mechanism for an amicable settlement of disputes between the promoter and the allottees or the allottees themselves through regulations.

## Duties of Promoters : Advertisements

- The Bill casts a wide net when it seeks to define, an “advertisement”. It states that, an advertisement includes any document, transmitted through any mode offering for sale of a plot, apartment or building or inviting persons to purchase in any manner such plot, apartment or building to make advances or deposits for such purposes.
- No promoter shall publish an advertisement, or invite any member of the public to buy or book in such projects to be developed or take advances or deposits without obtaining a copy of certificate of registration with the Authority.
- No promoter shall issue advertisement or prospectus without first filing a copy of such advertisement or prospectus in the office of the Authority.
- The advertisement published after complying shall mention prominently the website address of the Authority wherein all details of the registered project have been entered.
- Where any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as may be determined by the Authority.

## Duties of Promoters : Deposits and Advances

- The most stringent regulations which has been devised under the Bill and which are anticipated to have the most direct and significant impact are the ones which pertain to deposits and advances which are collected by Real Estate Developers.
- The first one pertains with the ability of the promoter to take pre-launch deposits from the applicants. The Bill mandates that the promoter shall not accept any sum of money as an advance payment or deposit, from a person without first entering into a written agreement for sale with such person.
- It may be highlighted that the above proposal is at variance with the present model by which several Developers first charge an upfront earnest money for making an application for allotment. Further they enter into a booking form and only enter into an agreement to sell at the last stage of the project when most of the funds have been received from the applicants and a sale deed has to be entered into imminently.
- For the receipt of the money the Developer is required to keep seventy percent of the amounts realized for the real estate project from the allottees deposited in separate escrow account to be maintained in a scheduled bank, within fifteen days of its realization for meeting the costs of the real estate
- On receiving advances and entering the agreement to sell, the Developer is also tied to several documentary and reporting requirements to the allottee such as, the site plans, the phase wise completion schedule and time schedule for connecting the proposed project with the various Municipal services as applicable.
- If the Developer, cancels the allotment or if there are delays in the completion of the project, then the Developer shall be liable to pay interest on the money which has been collected by it from the allottees.

## Real Estate Appellate Authority (REAA)

- Though titled as the Real Estate Appellate Authority (REAA), this quasi-judicial tribunal is contemplated to exercise both original jurisdiction in entertaining and hearing fresh disputes as well as a certain class of appeals. This is similar to the set-up of the Telecom Dispute Settlement Appellate Tribunal.
- With regard to the original jurisdiction of the REAA, the Bill contemplates its jurisdiction to adjudicate any dispute, (i) between a promoter and a allottee; (ii) between a promoter and Authority; (iii) between Appropriate Government and the Authority.
- In terms of the Appellate jurisdiction of the REAA, it will hear appeals from hear and dispose of appeal against any direction, decision or order of RERA.
- The Bill further provides that the REAA shall be staffed both with technical as well as judicial members.
- For faster adjudication the REAA is not bound by the provisions of the Code of Civil Procedure as well as the Indian Evidence Act.
- However the REAA has certain powers of a Civil Court in relation to summoning persons as well as discovery and taking evidence on record.
- The Bill also creates a statutory right of appeal to the Supreme Court of India, however decisions which are passed through the consent of the parties are made non-appealable.

## Issues for the Real Estate Sector

- The issue which is foremost on the minds of the real estate sector pertains the viability of the legislation itself. It is feared that the legislation may end up adding to the complex set of rules and regulations which have to be complied with for a real estate project.
- Another reason why this complexity may arise is due to the Bill requiring state governments to pass it as “land” is a state subject within the purview of legislation of the State Governments. Hence, there may be local variations to the Bill which may cause several different versions of the law existing in India. This may also lead to an absence of coherence and the compliance of local regulations in every state.
- The stated objective of the Bill has also come into criticism, as their exist enactments to protect consumer interest. This includes on an individual level, the Consumer Protection Act which entitles purchasers to file complaints on any deficiencies which includes, a variance in quality or delays in the project.
- There may also be duplication of function between RERA and the Competition Commission of India. The Competition Commission of India has recently imposed a Rs. 600 Crore penalty on DLF for various stated infractions which it has termed as anti-competitive. Though the Order is presently in appeal it has been reported that the Competition Commission has commenced similar inquires against several other real estate companies.
- There is also a feeling that requiring developers to register may bring a license raj regime to the Real Estate Sector. Not only may this slow the pace of projects but it has also has the dangers of promoting corruption.
- The Bill also due to its model of approval first and advertise later may impact the funding model of this sector where often, applications are invited while such regulatory approvals are in process.
- It has also been felt that the prohibition on developers to cross fund projects and deposit the advances from one project in a separate escrow account may slow down the pace of projects. Developers on a large extent rely on creating land banks through cross funding their projects. This allows them to offer better prices to consumers as well.
- The existence of penalties and offences in the Bill have also been criticized for being harsh. For eg. a failure by a Promoter to register under the Bill may entail a punishment of imprisonment for the promoter upto 3 years. The civil penalties are also steep with contraventions of orders of the RERA inviting a penalty of upto five percent of the estimated cost of the real estate project.

## About Us



Advani & Co. has evolved since the distinguished practice of the late Hotchand G. Advani, a leading member of the Bombay Bar since 1940.

Ever since our inception in 1986, the Firm has prospered under the leadership of Hiroo Advani. There have been a number of additions to the team, paving the way for the expansion of the Firm's practice areas.

As a result, Advani & Co. is one of the new generation law firms in India, poised to handle international legal work in terms of transactional work and dispute resolution. Advani & Co. has been listed as the best law firm in Mumbai for commercial dispute resolution in the "Asia Pacific Legal 500" and is also highly rated for its practices in Projects and energy and Corporate/M&A.

We continue to represent several leading real estate and construction companies for advisory as well as adversarial work. This includes, drawing up agreements, negotiating deals as well arbitrations and court litigations. Some of our clients include:

- Acergy.
- Alpic Finance Ltd.
- Ashok Leyland Finance Ltd.
- Baker Hughes Singapore Pvt. Ltd.
- Bank of Baroda.
- Bennett Coleman India Ltd.
- British Petroleum.
- Bright Brothers.
- Brown & Root /Haliburton.
- Canara Bank.
- Colgate- Palmolive India Ltd.
- Crompton Greaves.
- Danaher Corporation.
- Deutz AG.
- Development Credit Bank.
- FedEx.
- Food Corporation of India.
- Godrej Industries Limited.
- Jawaharlal Nehru Port Trust.
- Jones Lang LaSalle.
- JSW Steel Ltd.
- Prime Securities Ltd.
- PRA Realities.
- Tulip Star Hotel.

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