THE MAHARASHTRA HOUSING (REGULATION AND DEVELOPMENT) ACT, 2012

[*Text as on 22nd August 2024*]

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MAHARASHTRA ACT No. II OF 2014[1]

[THE MAHARASHTRA HOUSING (REGULATION AND DEVELOPMENT) ACT, 2012.]

[This Act received the assent of the Hon‟ble President on the 17th February 2014; assent was first published in the *Maharashtra Government Gazette*, Part IV, on the 24th February 2014.]

An Act to regulate and promote the construction, sale, management and transfer of flats on the ownership basis in the State of Maharashtra and to establish the Housing Regulatory Authority and Housing Appellate Tribunal and to provide for matters connected therewith or incidental thereto.

WHEREAS the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (Mah. XLV of 1963), though enacted to provide for relief to flat purchasers against sundry abuses, malpractices and difficulties related to the construction, sale, management and transfer of flats, it is noticed by the State Government that, the said Act did not provide for an effective implementing arm for its various statutory provisions, as the flat purchasers could only approach consumer forum or civil court for acts of omission or commission regarding provisions of the said Act;

AND WHEREAS the Government considers it expedient to remove information asymmetry by ensuring full disclosure by promoters or developers and also to ensure compliance of agreed terms and conditions while registering, monitoring and regulating housing projects by the Housing Regulatory Authority and to usher in transparency and discipline in the transactions of flats and put a check on abuses and malpractices;

AND WHEREAS it is also considered expedient to establish the Housing Regulatory Authority and the Housing Appellate Tribunal for ensuring effective implementation of the law and to promote planned and healthy development and construction, sale, transfer and management of flats, residential buildings, and other similar properties, with a view to protecting, on the one hand, public interest in relation to the conduct and integrity of promoters and other persons engaged in the development of such flats, residential buildings and other similar properties, and, on the other, facilitating the smooth and speedy construction and maintenance of such flats, buildings and properties;

AND WHEREAS it is expedient to make a comprehensive law to regulate and provide for promotion of the construction, sale, management and transfer of flats on the ownership basis in the State of Maharashtra, and to establish the Housing Regulatory Authority and the Housing Appellate Tribunal for effective implementation thereof and also to provide for matters connected therewith or incidental thereto; it is hereby enacted in the Sixty-third Year of the Republic of India as follows :—

1. Short title, extent and commencement.— (*1*) This Act may be called the Maharashtra Housing (Regulation and Development) Act, 2012.

(*2*) It extends to the whole of the State of Maharashtra.

(*3*) It shall come into force on such date as the State Government may, by notification in the *Official Gazette,* appoint and different dates may be appointed for different provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(*a*) “advertisement” means visible representation made to the general public either through announcement or display or in any other manner whatsoever, offering for sale a flat or plot or inviting persons to take such flat or plot on ownership basis and to make advances or deposits for such purposes;

(*b*) "apartment" and "apartment owner" shall have the same meanings as respectively assigned to them in the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971);

1 For Statement of Objects and Reasons of the L. A. Bill No. XV of 2012, *See Maharashtra Government Gazette*, 2012, Extraordinary,Part V-A, dated 11th April 2012, pages 34-35.

(*c*) "Apex Body" or "Federation" means an independent body formed by and consisting of all the co-operative societies or companies or Condominiums or any other legal entity, constituted of the flat purchasers in various buildings with or without wings located within a layout, where each such co-operative society or company or condominium or any other legal entity, as the case may be, shall co-operate in the maintenance and administration of common areas and amenities and facilities provided in the layout but shall independently retain control of its own internal affairs and administration in respect of each of the buildings for which they are formed;

(*d*) "carpet area" shall have the same meaning as assigned to it in the relevant Development Control Regulations;

(*e*) "common areas and amenities and facilities of a layout" means the areas, amenities and facilities intended for common use of apartment owners in a layout and includes park, recreational ground, play ground, open space, path, pathway, alleyway or garden located outside the area of any building or buildings, street lights, securities, water and electric supply, sewerage, drainage, public works, fire fighting systems and works, water tanks, other utilities and services, and the like, provided or to be provided by the promoter within the layout but shall not include parking spaces or garages;

(*f*) "Competent Authority" means the Competent Authority appointed under section 21;

(*g*) "compulsory open space" means the minimum open space permitted and approved to be kept as such while constructing a building or buildings by the local Planning Authority under the Development Control Regulations or under any law for the time being in force;

(*h*) "conveyance" means the legal instrument of transferring property, property rights, and title from one person or legal entity to another person or legal entity through registered deed and shall include lease, sub-lease or assignment;

(*i*) "development", with its grammatical variations and cognate expressions, means to carry out development of building or the making of any material change in any building and includes redevelopment;

(*j*) "development charges" means the cost of external development work to be carried out by the local authority;

(*k*) "development works" means the internal development works and external development works;

(*l*) "external development works" means infrastructure work such as roads and road systems, landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station or any other work which may have to be executed by the local authority;

(*m*) “flat” means a separate and self-contained set of premises used or intended to be used for residence, office, show-room, shop, godown or for carrying on any industry or business and the premises

forming part of the building and includes an apartment.

Explanation.— If provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained ;

(*n*) "Housing Appellate Tribunal" means the Housing Appellate Tribunal established under section 36;

(*o*) "Housing Regulatory Authority" means the Housing Regulatory Authority established under section 22;

(*p*) "internal development works" includes roads, footpaths, water supply, sewers, drains, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water or any other work in the boundary of a layout necessary for its proper development;

(*q*) "layout" means the schematic planning and,—

(*i*) development of more than one building, except for building accessory to the main building, proposed on any land; or

(*ii*) development or redevelopment of any tract of land admeasuring two thousand square meters or more in a residential or commercial or in an industrial zone, including its division or sub-division into plots;

(*r*) "limited common areas and facilities of a building" means entrance hall, staircases, lift, common passages on every floor, fire fighting systems within building including fire chute, refuge areas, garbage disposal area includings garbage chute, service floors or terraces above the upper most floor of the building and includes all areas in the building except parking spaces and utility areas;

(*s*) "local authority" means the local authority as defined under clause (*15*) of section 2 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966);

(*t*) "marketing" means advertising for sale and promotion for sale of any flat or land in any project by the promoter;

(*u*) "Member", in relation to the Housing Regulatory Authority, means the member of the Housing Regulatory Authority and includes the Chairperson thereof; and, in relation to the Housing Appellate Tribunal, means the member of the Housing Appellate Tribunal and includes the Chairperson thereof;

(*v*) "open space" means an area forming an integral part of a site left open to the sky;

(*w*) "parking space" means an enclosed or unenclosed, covered or open area which is sufficient in size to park vehicles;

(*x*) "prescribed" means prescribed by rules made under this Act;

(*y*) "project" means a housing project under this Act;

(*z*) "promoter" means a person, a developer or builder and includes a partnership firm or limited liability firm or any body or association of persons whether registered or not and who constructs or causes to be constructed a block or building of flats for the purpose of disposing of by sale or otherwise some or all of them to other person, or to a company, co-operative society or other association of persons, and includes his assignees, and where the person who builds and the person who disposes of are different persons, the term includes both;

(*za*) "Registrar" means the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) or as the case may be, in the Companies Act, 1956 (1 of 1956);

(*zb*) "regulations" means the ion 52;

(*zc*) "Schedule" means the Schedule appended to this Act;

(*zd*) "to construct a block or building of flats" includes converting a building or part thereof into flats;

(*ze*) "Township" means an area,—

(*i*) where more than one layout is proposed or approved on any land; and

(*ii*) where the land under development admeasures forty hectares or more at one place, continuous, unbroken and uninterrupted;

(*zf*) "utility area" means dry balconies, flower beds, cupboard niches, elevation boxes, decks, pocket terraces, open spaces, and the like, within or attached to a flat.

3. Disclosures to be made by promoter.— (*1*) Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or is constructing or constructs a block or building of flats, which is not for his personal use, shall, in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents mentioned hereinafter in this section and also as may be prescribed.

(*2*) A promoter, who constructs or is constructing or intends to construct such block or building of flats, shall,—

(*a*) make full and true disclosure of the nature of his title to the land on which the flats are constructed or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, and having been duly entered in the property card or extract of Village Forms VI or VII and XII or any other relevant revenue record :

Provided that, if such land is owned by another person, a duly registered copy of the agreement or Power of Attorney, as the case may be, by which the owner, including his legal heirs, executors and administrators, of such land has granted to the promoter or assigns the development rights of the real estate project, shall also be disclosed;

(*b*) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(*c*) make full and true disclosure of his enterprise details such as name, registered address, type of enterprise, registration details under which it is registered;

(*d*) disclose the name and address of the architect, structural engineer and contractor including turn-key contractor, if any, retained for construction of the building or flats;

(*e*) disclose the information relating to the number and size of plots, layout plan, carpet areas, and utility areas of the flat, Floor Space Index or the Transfer of Development Rights or additional Floor Space Index consumed in the building of which flats are under sale and limited common areas and facilities of the building and common areas and amenities and facilities of the layout proposed to be provided therefor;

(*f*) give inspection, on seven days" notice or demand, of the plans, structural design and specifications of the building in which flats are being offered for sale or are being marketed, built or to be built on the land, duly certified by an Architect till such time as they are approved by the local authority, and when such plans and specifications, having been approved by the local authority, which he is required to do under any law for the time being in force, then such approved plans and specifications;

(*g*) disclose the building-wise time schedule of completion of each phase of the project which shall always be subject to *force majeure* event;

(*h*) disclose the time schedule for connecting the project with the municipal services such as sewerage, water supply, electricity, drainage, and the like, as applicable, which shall always be subject to *force majeure* event;

(*i*) disclose the nature of fixtures and fittings with regard to the flooring and sanitary fittings and the provision for one or more lifts provided or to be provided, with particulars in respect of the brand of the items of fixtures, fittings and lift if they are branded or otherwise the price range of the items, if not branded;

(*j*) disclose on reasonable notice or demand, if the promoter is himself the builder, the prescribed particulars in respect of the design, the type of concrete, the materials to be used in the construction of the building and the technology, prefabricated, precast, earthquake resistant, and the like, and if the promoter is not himself the builder, disclose, on such notice or demand, all agreements, and where there is no written agreements, the details of all agreements, entered into by him with the architect, structural engineer and contractors including turn-key contractors, regarding the prescribed particulars in respect of design, materials and construction of the building;

(*k*) specify in writing the date by which possession of the flat with all the amenities is to be handed over;

(*l*) prepare and maintain a list of flats with their numbers built or to be built;

(*m*) prepare and maintain list of parking spaces provided or to be provided, and identified by separate numbers;

(*n*) state in writing, the nature of the organization of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organization of persons, who have taken or are to take the flats;

(*o*) display or keep all the documents, plans or specifications or copies thereof referred to in clauses (*a*), (*b*), (*c*), (*d*), (*e*) and (*f*) at the site and at the promoter"s registered office and permit inspection thereof to persons intending to take or taking one or more flats;

(*p*) disclose the names, addresses and contact numbers of the agents, property dealers, brokers or middlemen, if any, by whatever name called, duly authorized by the promoter;

(*q*) give such other information and documents as may be prescribed.

(*3*) In case of a layout, in addition to the provisions of sub-section (*2*), the promoter shall also disclose,—

(*a*) the phase-wise layout plan of the housing project;

(*b*) the plan of phase of the development works in which flats for sale is marketed in the project;

(*c*) the details of the parts of the colony or apartments and the appurtenant areas that are intended to be kept as common areas, amenities and facilities of layout in respect of the phase being offered for sale or marketed;

(*d*) aggregate area in square meters of the parks, recreational grounds, gardens and play-grounds in a layout.

4. Registering the project and displaying it on the website of Housing Regulatory Authority.— (*1*) Every promoter of the project shall make an application, in the prescribed form, to the Housing Regulatory Authority for registration of the project and for displaying the project on the website of the Housing Regulatory Authority, alongwith such fees, not exceeding fifty thousand rupees, as may be prescribed:

Provided that, no such registration and displaying of the project or phase of such project shall be required,—

(*i*) when the area of the land proposed to be developed into a project or phase of such project does not exceed two hundred fifty square meters;

(*ii*) when the total number of flats proposed to be developed into a project inclusive of all phases is less than five;

(*iii*) where the promoter has received occupation certificate from the concerned local authority in respect of development of such flats or the building in such project or phase of the project prior to coming into force of this section;

(*iv*) where the project is a renovation, repair, reconstruction or redevelopment project which does not involve fresh or new allotment of flats or marketing for sale of flats.

Explanation.— For the purposes of this Act,—

(*i*) where any project is proposed to be marketed and sold in phases, then every such phase shall be considered as an independent project;

(*ii*) if a single purchaser of all the flats in a project duly registered by the Housing Regulatory Authority intends to dispose of such flats, by sale or otherwise, then, such single purchaser shall also be required to register and display the project under the provisions of this Act.

(*2*) The promoter shall enclose following documents alongwith the application under sub-section (*1*), namely :—

(*a*) chartered engineer"s or chartered architect"s authenticated copy of the proposed development of each phase of the project;

(*b*) proof of submission of plan for approval of local authority. Approval and sanction from the local authority, as and when available, obtained in accordance with the building regulations and other laws as are applicable, for the project being offered for sale or marketed and such approval and sanction shall be submitted or uploaded on website within seventy-two hours of obtaining the same from the local authority.

(*3*) The Housing Regulatory Authority shall, within seven days of obtaining the application for the registration of the project from the promoter, register and allot a password to the promoter for access of the website of the Housing Regulatory Authority.

5. No transaction, including sale or marketing for sale, of flats in new project without registration of the project and displaying it on website of Housing Regulatory Authority.— (*1*) No promoter shall start any transaction including sale or marketing for sale of flats in a new project or phase of such project without displaying such flats on the website of the Housing Regulatory Authority :

Provided that, for projects that are ongoing on the date of commencement of this section and where the occupation certificate is still to be obtained, the promoter shall make application to the Housing Regulatory Authority for registration of its project within such period as may be prescribed.

(*2*) No promoter shall start sale of a prescribed percentage of flats the area of which shall not exceed ten per cent. of the total area of each of the building in every new project (hereinafter referred to as "Retained Flats"), till occupation certificate from the local authority in respect of that building is obtained by the promoter. The details of such flats shall be displayed on the website of the Housing Regulatory Authority, before the start of any transaction including marketing. The promoter shall be entitled to sell "Retained Flats", in each of the building only after receipt of occupation certificate or building completion certificate from the local authority for that building.

6. Responsibility of the promoter to enter record or details on the website of Housing Regulatory Authority.— The promoter shall, on receiving the password from the Housing Regulatory Authority, through a system of self-entry, access the website and enter the required details of the housing project, within such period as may be pr

7. Cancellation of registration.— (*1*) The Housing Regulatory Authority may cancel the registration of the project, if it is declared by the court of law that the contract, agreement, or power of attorney or instrument or writing from which the promoter derives the right to the land or development of the land, is invalid :

Provided that, no order of cancellation of registration of the project under this sub-section shall be issued by the Housing Regulatory Authority unless a reasonable opportunity of being heard is given to the promoter.

(*2*) Upon issuing the order of cancellation, the Housing Regulatory Authority shall debar the promoter from accessing its website in respect of the project so cancelled.

8. Issuing of advertisement or prospectus inviting advance or deposit.— No promoter shall issue or publish an advertisement or prospectus, offering for sale or otherwise, any flat or inviting persons who intend to take such flats to make advance payments or deposits, without displaying the project or phase on the website of the Housing Regulatory Authority.

9. Promoter before accepting advance payment of deposit, beyond twenty per cent., to enter into agreement and agreementto be registered.— (*1*) Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a block or building of flats all or some of which are taken or to be taken on ownership basis or otherwise, shall, before, he accepts any sum of money as advance payment or deposit exceeding twenty per cent. of the sale price, enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 (XVI of 1908) (hereinafter, in this section, referred to as "the Registration Act") and such agreement shall be in the prescribed form.

(*2*) The agreement to be entered into under sub-section (*1*) shall contain, *inter alia*, the particulars as specified in clause (*a*) of this sub-section and to such agreement there shall be attached the copies of the documents specified in clause (*b*) thereof,—

(*a*) particulars,—

(*i*) the plans and specifications approved by the local authority and all other approvals required under any law, as applicable;

(*ii*) the date by which the possession of the flat is to be handed over to the purchaser;

(*iii*) the extent of the carpet area of the flat;

(*iv*) the extent of the utility area;

(*v*) the total price of the flat including the proportionate price of the limited common areas and facilities and parking spaces which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;

(*vi*) allotment of fixed parking space to the flat purchaser:

Provided that, no parking spaces shall be allotted in minimum open space;

(*vii*) the nature of the organization to be constituted of the persons who have taken or are to take the flats ;

(*viii*) the nature, extent and description of limited common areas and facilities of a building;

(*ix*) the aggregate area of park, garden, recreation ground and playground proposed to be provided for in a lay-out;

(*x*) the nature, extent and description of common areas and amenities and facilities of a lay-out, if any;

(*xi*) statement of the use for which the flat is intended and restriction on its use, if any;

(*xii*) percentage of undivided interests in the limited common areas and facilities of the building, pertaining to the flat agreed to be sold;

(*b*) copies of documents,—

(*i*) the certificate by an Attorney-at-law or an Advocate under clause (*a*) of sub-section (*2*) of section 3;

(*ii*) Property Card or extract of Village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;

(*iii*) the plans and specifications of the flats approved by the local authority.

(*3*) Any agreement for sale entered into under sub-section (*1*) shall be presented, by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration within the time allowed under sections 23 to 26 (both inclusive) of the Registration Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assignee or agent, duly authorized, as laid down in sections 34 and 35 of the Registration Act also within the time aforesaid:

Provided that, on presenting a document for registration, as aforesaid, if the person executing such document or his representative, assignee or agent does not appear before the registering officer and admit the execution of the document, then the registering officer shall cause a summons to be issued under section 36 of the Registration Act, requiring the executants to appear at the registration office, either in person or by duly authorized power of attorney holder, at a time fixed in the summons. If the executants fail to appear in compliance with the summons, the execution of the document shall be deemed to be admitted by them and the registering officer may proceed to register the document

accordingly. If the executants appear before the registering officer as required by the summons but deny execution of the document, then the registering officer shall, after giving them a reasonable opportunity of being heard, if satisfied that the document has been executed by them, proceed to register the document accordingly.

10. Effect of non-registration of agreement.— Where an agreement for sale entered into under sub-section (*1*) of section 9, remains unregistered for any reason, then, notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963 (47 of 1963), or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (IV of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.

11. Responsibilities of promoter.— (*1*) When 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 wilful untrue statement included therein, then he shall be compensated by the promoter for any loss that he may have sustained consequent to such information:

Provided that, if the person affected on account of such wilful untrue statement, withdraws from the project, the entire amount paid by such person shall be returned to him alongwith interest at the prescribed rate but not exceeding fifteen per cent., per annum.

(*2*) Promoter shall take all those measures provided in Schedule I for protection and safety of a building.

(*3*) (*a*) It shall be the responsibility of the promoter to obtain the occupation certificate or building completion certificate in respect of the building from the concerned local authority as per the building regulations in force and make a copy the rchasers or unit holders individually or

to an organization which is the authorized collective body of flat purchasers or unit holders, as the case may be.

(*b*) The promoter shall not allow persons to take possession until occupation or completion certificate, as the case may be, where such certificate is required to be given under any law, is duly given by the local authority and no person shall take possession of a flat until such occupation or completion certificate has been duly given by the local authority.

(*4*) After the possession of the building or flat is handed over to the flat purchasers or unit holders, the flat purchasers or unit holders shall not be permitted to carry out any additions or alterations in the flat or building and the promoter shall not be responsible, if additions and alterations are done in the flat, or building by the flat purchasers or unit holders or occupier, in violation of the building regulations.

(*5*) (*i*) It shall be the responsibility of the promoter to provide essential services such as water supply, electricity, light in passages and staircases, lifts and sanitary services as per agreement to the flat purchasers or unit holders of the building or flat or to any person in authorised occupation thereof till such time and in such manner as specified in the agreement of sale and such services shall not, except with just and sufficient notice, be cut-off, withheld, or curtailed. The aforesaid responsibility is subject to the service provider providing the same. If the service provider is unable to provide the aforesaid services, then the promoter shall not be responsible to provide the same.

(*ii*) The details of the essential supplies and services referred to in clause (*i*) above shall be kept by the promoter in the form of a statement and shall be made available on demand to the flat purchasers or unit holders or organization of flat purchasers or unit holders.

(*iii*) If the allottee or flat or unit purchaser or organization fails to pay the outgoings to the promoter, which are payable by the allottee or flat or unit purchaser or organization under this Act, for a period of more than three months, then the promoter may approach the Competent Authority, who may, after giving notice of not less than seven days to such allottee or flat or unit purchaser or organization, as the case may be, cut-off, withold or in any manner curtail or reduce any essential supply or service enjoyed by such allottee or flat or unit purchaser or organization in the project.

(*6*) In case the promoter is undertaking a redevelopment project, the provisions of this Act shall apply only in relation to the flats or buildings which are for marketing or sale in open market. The flats or buildings which are entirely constructed for providing permanent alternate accommodation to existing occupants of redevelopment project shall not be governed by the provisions of this Act, but shall be governed by the statute under which such schemes are being framed.

12. Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given.— The promoter shall maintain building-wise separate account in any bank of sums taken, by him, from persons intending to take or who have taken flats, deposits including any sums so taken towards the share capital for the formation of co-operative society or a company or towards the outgoings, including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any; and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes and shall, on demand in writing by an officer appointed, by general or special order, by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

The promoter shall also follow the instructions specified in Schedule II. The promoter shall get the accounts maintained for heads mentioned in Schedule II, as provided under this section, audited from a Chartered Accountant registered with the Institute of Chartered Accountants of India.

13.Responsibility for payment of outgoings till property is transferred.— A promoter, while he is in possession and where he collects from persons, who have taken over flats or are to take over flats, sums for the payment of outgoings, shall pay all outgoings, including ground rent, municipal or other local taxes, taxes on income, water charges, el ssessment, interest on any mortgage or

other encumbrances, if any, until he transfers the property to the persons taking over the flats, or to the organization of any such persons. Where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organization of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and shall be responsible for any legal proceedings which may be initiated by such authority or person.

14. No alterations or additions without consent after plans are disclosed.— (*1*) In case the development consists of single building then after the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not,—

(*a*) make any alteration in the structure described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person;

(*b*) construct any additional floors or wings in the structure of the building or wing, not disclosed in the agreement, without the previous consent of all the persons who have agreed to take the flats in such building or wing:

Provided that, any alteration or addition required by any government authorities or due to change in law or which are disclosed in the agreement, shall not require previous consent of any or all persons who have agreed to take flats in such building.

(*2*) (*a*) In case the development is being carried out on a layout or Township, then after the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not,—

(*i*) make any alteration in that structure described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person;

(*ii*) construct any additional floors or wings in the structure of the building or wing, not disclosed in the agreement, without the previous consent of all the persons who have agreed to take the flats in such building or wing;

(*iii*) make any modification in the location of the recreation ground or garden or park or playground without the consent of those persons who have agreed to take flats on the basis of disclosure of the location of such recreation ground or garden or park or playground and such fact is mentioned in writing in the agreement for sale of such flat by the promoter.

(*b*) Subject to provisions of clause (*a*) above, the layout including recreation ground, park, garden and playground disclosed alongwith the building plans, can be amended, modified and varied by the promoter, from time to time, in accordance with the Development Control Regulations including for the utilization of the full development potential available, from time to time.

(*c*) In case of development under a layout or Township, the promoter shall be entitled to further construction of any new building in the layout or Township at any time after obtaining approval of the local authority in accordance with the building rules or building bye-laws or Development Control Regulations made under any law for the time being in force:

Provided that, the promoter shall not reduce the approved compulsory open spaces of the building or shall not reduce the aggregate area of park, recreational ground, playground and garden in the approved layout in which persons agree to take one or more flats, without the previous consent of all such persons, except that such alteration or amendment is required by the authorities or due to change in applicable laws.

15. Defects noticed within five years to be rectified.— If any defect in the building or material used, or if any unauthorized change in the construction is brought to the notice of the promoter, within a period of five years from the date of han s, it shall, be rectified by the promoter

without further charge to the persons who have agreed to take the flats and in other cases, where the defect or change can not be rectified, such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute regarding any defect in the building or material used or any unauthorized change in the construction, the matter shall, within a period of five years from the date of handing over possession, on payment of such fee as may be determined by the Housing Regulatory Authority, be referred for decision to such officer not below the rank of an Executive Engineer as the State Government may, by general or special order, specify in this behalf.

16. Effect of non-completion of project.— (*a*) If the promoter fails to complete construction and obtain occupation certificate of any building or buildings in the project in accordance with the terms of the agreement by the date specified or any further date agreed to by the parties or as may be decided by the Housing Regulatory Authority, the Housing Regulatory Authority may, after giving reasonable opportunity of being heard to the applicant and the promoter, and on being satisfied that the promoter is not able to complete the construction and obtain occupation certificate, pass an appropriate order to enable completion of the construction of that building and obtain occupation certificate thereof. Such order of the Housing Regulatory Authority may, *inter-alia*, provide for,—

(*i*) formation and registration of a legal entity of sixty per cent. of the flat purchasers in the manner as may be prescribed who have come before the Housing Regulatory Authority ;

(*ii*) appointment of the legal entity as an escrow agent for taking over possession of the building and area appurtenant thereto, in the manner as may be prescribed ;

(*iii*) directing the Competent Authority to transfer the Retained Flats in the name of the escrow agent within such period and in the manner as may be prescribed ;

(*iv*) authorizing escrow agent to appoint contractors, consultants and other agencies required to complete the construction and obtain occupation certificate on such terms and conditions as may be decided by the escrow agent in the manner as may be prescribed :

Provided that, notwithstanding anything contained in any other law for the time being in force, stamp duty or any other taxes, duties and levies shall not be payable on „Retained Flats‟ being transferred to escrow agent under the orders of the Housing Regulatory Authority.

(*b*) If the promoter, for reasons beyond his control, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of

three months if those reasons still exist, then, the promoter shall be liable on demand, without prejudice to any other actions to which he may be liable, to refund the amount already received by him in respect of the flat with interest at a rate as may be prescribed including penalty as may be determined by the Housing Regulatory Authority.

17. No mortgage, etc., to be created without consent of parties after execution of agreement for sale.— No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat without the previous consent of the person who takes or agrees to take the flat, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 9 is registered, it shall not affect the rights and interests of such persons.

18. Promoter to take steps for formation of co-operative society, company, Apex Body or Federation.— (*1*) Where a co-operative society or a company or a legal entity of persons is to be constituted of flat purchasers in a single building not being part of a layout, the promoter shall submit an application to the competent authority for registration of the co-operative society or the company or any other legal entity, as the case may be, within four months from the date on which the occupation certificate in respect of such building is issued or, minimum sixty per cent. of the flat purchasers in such building have taken possession or the promoter has received full consideration and other amounts for the same, whichever is earlier.

(*2*) (*a*) Where a co-operative society or a company or any other legal entity of persons taking the flats in a layout consisting of more than one building or wings, is to be constituted, the promoter shall form separate and independent co-operative society or company or any other legal entity in respect of each of the buildings or wings. The promoter shall submit application for formation of co-operative society or company or any other legal entity in respect of each of the building or wing, as prescribed, within four months from the date on which the occupation certificate in respect of such building or wing is issued or, minimum sixty per cent. of the total flat purchasers in such building or wing have taken possession or the promoter has received full consideration and other amounts for the same, whichever is earlier.

(*b*) Where under clause (*a*) above, the promoter has formed separate and independent co-operative societies or companies or any other legal entities of the persons taking flats in different structures consisting of more than one building or wing within a layout, then the promoter shall form and register an Apex Body or Federation consisting of all such entities in the layout, within such period as may be prescribed.

(*3*) The Apex Body or Federation shall administer and maintain common areas and amenities and facilities provided in the layout but its members shall independently retain control of the internal affairs and administration in respect of its own building.

(*4*) If any property consisting of building or buildings is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971) by executing and registering a declaration as provided by that Act, then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), accordingly and in such cases, it shall not be lawful to form any co-operative society or company.

(*5*) (*a*) If the promoter fails within the prescribed period to submit an application to the Registrar,—

(*i*) for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961);

(*ii*) for registration of Apex Body or Federation, in the manner as prescribed,

the Competent Authority may, upon receiving application from the persons who have taken flats from the said promoter, a co-operative society or company or any other legal entity in respect of any of the buildings in the layout, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society, the Apex Body or Federation.

(*b*) No such direction to register any society or Apex Body or Federation, under clause (*i*) or (*ii*) above, shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying the authenticity of the applicant‟s request and giving the concerned promoter a reasonable opportunity of being heard.

19. Promoter to convey title, etc., and execute documents according to agreement.— (*1*) In respect of the property wherein only one building is to be constructed and if no period for conveying the title of the promoter to the organization of the flat purchasers is agreed upon, the promoter shall, subject to his right to dispose of the remaining flats, if any, execute the conveyance within four months from the date on which the co-operative society or the company is registered or, as the case may be, the association of the flat purchasers or unit holders is duly constituted. When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971) by executing and registering a declaration as required by section 2 of that Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment taker within four months from the date, the apartment taker has entered into possession of his apartment.

(*2*) In the case of a layout, the said conveyance shall, till such time as the entire development of the layout is completed, be only in respect of the structures of the buildings in which a minimum number of sixty per cent. of total flats are sold, al consumed in such building, subject to

the right of the promoter to dispose of the remaining flats, if any, and receipt of the entire consideration amount and outstanding dues from all the flat purchasers. The conveyance shall further, be subject to the right to use, in common, the internal access roads and recreation areas developed or to be developed in the layout and with the right to use of the open spaces allocated to such building or buildings in terms of the agreement for sale executed by the promoter and the respective flat purchasers:

Provided that, notwithstanding anything contained in this Act or in any agreement or in any judgment, decree or order of any court or in any other law for the time being in force, the promoter shall be entitled to develop and continue to develop the remaining layout land, with the right to use the internal access roads and all the facilities, amenities and services in the layout and to construct any additional structures thereon by consuming the balance Floor Space Index and balance Transfer of Development Right, Floor Space Index and balance additional Floor Space Index relating to the said layout land and any future increase in Floor Space Index and the Transfer of Development Rights, Floor Space Index and additional Floor Space Index therein due to change in the law or the policies of the Government or local authority:

Provided further that, if the Floor Space Index of the plot in a layout is increased due to change in the law or the policies of the Government or local authorities, subsequent to conveyance of any one or more structures to organization of flat purchasers, then increase in Floor Space Index which is proportionate to the Floor Space Index utilized or consumed by the conveyed structure or structures to total Floor Space Index of the layout, shall belong to the organization of flat purchasers of the conveyed structure or structures and it shall not be necessary for the promoter to obtain any consent or permission from the organization of flat purchasers in the said layout land or phase for the purpose of utilizing the balance Floor Space Index or the Transfer of Development Right, Floor Space Index or additional Floor Space Index.

(*3*) Where the title of the promoter to be conveyed is in respect of the entire undivided or inseparable land underneath all such buildings in a layout, and if no period for executing such conveyance of the entire undivided or inseparable land underneath all such buildings jointly or otherwise in favour of Apex Body or Federation is agreed upon, then such conveyance shall be executed by the promoter in favour of Apex Body or Federation within such time as may be prescribed, after formation of such Apex Body or Federation.

(*4*) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him. If the promoter fails to execute the conveyance as provided by sub-section (*1*), (*2*) or (*3*), within the prescribed period, the members of such co-operative society, the company or the association of apartment owners or Apex Body or Federation, as the case

may be, may make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or company or the association or Apex Body or Federation and all other relevant documents, including the occupation certificate, if any, for issuing a certificate that such society, company or association or Apex Body or Federation, as the case may be, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(*5*) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue the certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908 (XVI of 1908), certifying that it is a fit case of enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the building or layout plot in favour of the applicant, as deemed conveyance:

Provided that, an appeal under section 40 against the order of the Competent Authority can be preferred by any party aggrieved b ng Appellate Tribunal.

(*6*) On submission of application by such society, the company, the association of apartment owners or Apex Body or Federation, as the case may be, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 (XVI of 1908), the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration officer shall, notwithstanding anything contained in the Registration Act, 1908 (XVI of 1908), register that instrument as deemed conveyance.

(*7*) Upon execution of the conveyance or unilateral deemed conveyance, of a building or buildings in a layout, the organization in whose favour such conveyance is executed shall be entitled in any reconstruction or redevelopment of such building or buildings to the Floor Space Index or the Transfer of Development Right, Floor Space Index or additional Floor Space Index consumed in construction of such building as well as its proportionate share in increase in Floor Space Index as per provision of sub-section (*1*) and in the event of any reconstruction or redevelopment of the building or buildings being undertaken by the said organization, then, notwithstanding anything contained in any other law for the time being in force, such organization shall be entitled to do so on the portion of land allocated to such building or buildings in terms of the agreement for sale executed by the promoter and the respective flat purchaser without prior permission of the promoter.

(*8*) The promoter or land owner shall convey the layout plot or land to the Apex Body or Federation, subject to the right of the promoter to dispose of the remaining flats, if any, and receipt of the entire consideration amount and outstanding dues from all flat purchasers of all the buildings or structures constructed on the layout plot. If there is any increase in Floor Space Index or the Transfer of Development Right or additional Floor Space Index or any benefits, available on such layout plot, due to changes in the Government or regulatory policies, after the conveyance or unilateral deemed conveyance of the land under the layout to the Apex Body or Federation, then such increased Floor Space Index, the Transfer of Development Right or additional Floor Space Index and other benefits shall be apportioned to the respective legal entities in proportion to the Transfer of Development Right, Floor Space Index or additional Floor Space Index used for the purpose of construction of the buildings managed by them.

(*9*) The Apex Body or Federation formed by the legal entities on a layout plot shall manage and administer the common areas and the facilities without having any legal rights, title and interest in the building or buildings in such a layout plot and all legal rights, title and interest in the building or buildings shall belong to the respective entities in whose favour the conveyance of such building or buildings is executed.

20. General liabilities of flat purchaser.— (*1*) Every person who has executed an agreement to take a flat shall pay, at the proper time and place, the price, his proportionate share of the municipal taxes, water and electricity charges, ground-rent, if any, and other public charges in accordance with his agreement with the promoter.

(*2*) Any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (*1*) shall be punishable with fine which may extend to the amount defaulted.

21. Appointment of Competent Authority.— The State Government may, by notification in the *Official Gazette,* appoint an officer, not below the rank of the District Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas for the purposes of exercising the powers and performing the duties under this Act.

22. Establishment of Housing Regulatory Authority.— (*1*) With effect from such date and in such areas as the State Government may, by notification in the *Official Gazette,* appoint, there shall be established, for the purposes of this Act, one or more Authorities to be called "the Housing Regulatory Authority".

(*2*) The Housing Regulatory Authority, constituted under sub-section (*1*), shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable and to contract, and shall, by the said name, sue or be sued.

23. Composition of Housing Regulatory Authority.— The Housing Regulatory Authority shall consist of a Chairperson and two or more Members to be appointed by the State Government from amongst persons who have special knowledge of, and professional experience in, the field of public administration, urban development, housing, finance, law or management :

Provided that, a person, who is, or has been, in the service of Government shall not be appointed as a Chairperson unless such person is holding or has held the post of the Principal Secretary to the State Government or any equivalent post under the Government of India.

24. Term of office of Chairperson and other Members of Housing Regulatory Authority.— (*1*) The Chairperson and other Members shall hold office for a term not exceeding five years, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(*2*) The salary and allowances payable to, and the other terms and conditions of services of, the Chairperson and other Members shall be such as may be prescribed.

(*3*) The salary, allowances and other conditions of services of the Chairperson and other Members shall not be varied to their disadvantage after their appointment.

(*4*) An employee of the Government on his selection as Chairperson or Member, shall have to retire from service before joining.

(*5*) The Chairperson or any Member may relinquish his office by giving in writing to the State Government a notice of not less than three months or be removed from his office in accordance with the provisions of section 26.

(*6*) The Chairperson or any Member, ceasing to hold office as such, shall not accept any commercial employment in the Housing Sector for a period of one year from the date he ceases to hold such office.

25. Administrative powers of the Chairperson.— The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of the Housing Regulatory Authority and he shall, in addition to presiding over the meetings of the Housing Regulatory Authority, exercise and discharge such administrative powers and functions of the Housing Regulatory Authority as may be prescribed.

26. Removal of Chairperson and Member of Housing Regulatory Authority from office in certain circumstances.— (*1*) The State Government may, by order, remove from office the Chairperson or any Member of the Housing Regulatory Authority, if the Chairperson or such Member, as the case may be, has,—

(*a*) been adjudged as insolvent; or

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

(*c*) become physically or mentally incapable of acting as a Chairperson or Member; or

(*d*) acquired such financial or other interest as is likely to affect prejudicially his function as a Chairperson or Member; or

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

(*2*) No 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.

27. Officers of Housing Regulatory Authority.— (*1*) The Housing Regulatory Authority may appoint such officers and employees, as may be necessary for the efficient discharge of its functions under this Act.

(*2*) The officers and employees of the Housing Regulatory Authority shall discharge their functions under the general superintendence of its Chairperson. Their salary, allowances and other conditions of service shall be such as may be determined by regulations.

28. Meetings of Housing Regulatory Authority.— (*1*) The Housing Regulatory Authority shall meet at such places and times, and shall observe such procedure in regard to the transaction of business at its meetings as may be determined by regulations.

(*2*) The Chairperson, if for any reason, is unable to attend a meeting of the Housing Regulatory Authority, the senior-most Member amongst the Members present at the meeting shall preside :

Provided that, any decision relating to cancellation of registration under section 7 shall not be executed unless the same is decided in a meeting attended by all the Members.

(*3*) All questions which come up before any meeting of the Housing Regulatory Authority shall be decided by a majority of the members present and voting and, in the event of an equality of votes, the Chairperson or the Member presiding shall have the right to exercise a second or casting vote.

29. Functions of Housing Regulatory Authority.— (*1*) The Housing Regulatory Authority shall perform the following functions, namely :—

(*i*) to ensure compliance of the obligations cast upon the promoters and the allottees under this Act and the rules made thereunder;

(*ii*) to cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under this Act;

(*iii*) to levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(*iv*) to report matter to the appropriate authority, for taking action against the promoter or an allottee for commission of any offence under any law for the time being in force;

(*v*) to host and maintain a website of records of all projects within its jurisdiction as database, with all the details as set out herein for displaying under this Act;

(*vi*) to take measures under section 33;

(*vii*) to perform such other functions related to Housing Sector as may be entrusted to the Housing Regulatory Authority by the State Government, as may be necessary;

(*viii*) to make recommendations, notwithstanding anything contained in the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), either *suo moto* or on a request from the State Government in matters in the existing Development Control Regulations relating to changes in Floor Space Index and any other related matters, as may be prescribed :

Provided that, the Housing Regulatory Authority shall forward its recommendations within a period of sixty days from the date on which the Government has sought the recommendations :

Provided further that, the Housing Regulatory Authority may request the State Government to furnish such information or documents as may be necessary for the purpose of making recommendations under this sub-section and the Government shall supply such information within a period of seven days from receipt of such request :

Provided also that, if the State Government having considered the recommendation of the Housing Regulatory Authority comes to a *prima facie* conclusion that such recommendation

cannot be accepted or needs modifications, it shall refer the recommendation back to the Housing Regulatory Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the State Government its recommendation after considering the reference made by the Government. After receipt of further recommendation, if any, the State Government shall take a final decision.

(*2*) Upon receiving a complaint application in this behalf, the Housing Regulatory Authority shall, after hearing the matter from the parties or through their representatives, as the case may be, and after making such enquiry as it deems fit, pass a reasoned order, in writing, within a period of three months from the date of such application or commencement of the *suo moto* proceedings, as the case may be, or within such further time as may be found appropriate by the Housing Regulatory Authority.

(*3*) On any dispute between promoters, organization of flat purchasers and allottees or flat or unit takers regarding failure on either part to meet the obligations cast upon them under this Act and the rules made thereunder, adjudication may be done by any single member bench of the Housing Regulatory Authority, as the Housing Regulatory Authority may, by regulations determine :

Provided that, nothing in this section shall apply in respect of matters which are subject to the jurisdiction of the Competition Commission established under the Competition Act, 2002 (12 of 2003).

(*4*) (*a*) The Housing Regulatory Authority shall prepare and submit, to the State Government, once in every year, the report in such form and at such time as may be prescribed, containing,—

(*i*) a description of all the activities of the Housing Regulatory Authority for the previous year ; and

(*ii*) the annual accounts for the previous years.

(*b*) A copy of the report received under clause (*a*) above shall be laid as soon as may be after it is received before each House of the State Legislature.

30. Powers of Housing Regulatory Authority to call for information, conduct investigations, etc.— Where the Housing Regulatory Authority considers it expedient so to do, it may, by order in writing,—

(*a*) call upon any promoter, at any time, to furnish in writing, by himself or through his authorized representative, such information or explanation with regard to compliance of the promoter‟s obligations relating to ownership agreement as the Housing Regulatory Authority may require ;

(*b*) direct the promoter to produce by himself or through his authorized representative, all such books of accounts or other documents relating to the project or flat under complaint in his custody having a bearing on the subject matter of such complaint and also any other information relating thereto.

31. Powers of Housing Regulatory Authority to issue directions.— The Housing Regulatory Authority may, for the discharge of its functions issue such directions, from time to time, to promoters and flat or unit purchasers or organization, as it may consider necessary and such directions shall be binding on all concerned.

32. Power of Housing Regulatory Authority consequent upon cancellation of registration.— Upon cancellation of the registration under sub-section (*1*) of section 7, the Housing Regulatory Authority shall prohibit the promoter from marketing and selling the flats and buildings constructed for the project of which the registration is cancelled.

33. Measures to be taken by Housing Regulatory Authority for planned development and promotion of housing sector.— The Housing Regulatory Authority shall take all possible measures for

the growth and promotion of a healthy, transparent, efficient and competitive real estate market, and in particular, take the following measures, namely :—

(*a*) evolve a consensus among the Central Government or the State Government, the Bureau of Indian Standards, urban local bodies, promoters, associations of engineers and architects and other stake holders to follow, on mandatory basis, the structural safety norms as may be prescribed for the area concerned by the National Building Code or Bureau of Indian Standards or statutory provisions of the local building bye-laws as may be modified by the State Government, from time to time;

(*b*) suggest to the State Government to establish a framework of standard procedures and norms for speedy processing and grant of planning permissions;

(*c*) promote the rating of real estate projects and the rating of promoters, by the association of promoters, with a view to improve the confidence level of both investors and consumers through a system of self-regulation, which may be based on the rating parameters developed by Association or Federation of promoters as prescribed;

(*d*) on behalf of the real estate sector, take up, with the Government, financial institutions, local bodies, regulatory authorities and other concerned stake-holders, advocacy of issues like prompt and easy access to credit or home loans, credible and reliable land title certification system, speedy and transparent registration of properties, effective institutional arrangement for proper upkeep and maintenance of built-up properties, statutory framework for equitable and balanced relationship between promoter and flat or unit purchasers;

(*e*) promote construction of environment friendly or green buildings and measures for conservation of water and its re-cycling;

(*f*) with a view to encouraging construction of structurally safe and affordable housing, promote standardization and use of appropriate construction materials, fixtures, fittings and construction techniques.

34. Power of Housing Regulatory Authority to regulate its own procedure.— (*1*) The Housing Regulatory Authority shall be guided by the principles of natural justice and, subject to other provisions of this Act and of any rules made thereunder, the Housing Regulatory Authority shall have powers to regulate its own procedure by regulations.

(*2*) The Housing Regulatory Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), while trying a suit in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of the promoter, authorized representative of the promoter or any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872) any public record or document or copy of such record or document from any office;

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

(*f*) reviewing its decisions;

(*g*) dismissing an application for default or deciding it *ex-parte;* and

(*h*) any other matter which may be prescribed.

35. Vacancies, etc., not to invalidate proceedings of Housing Regulatory Authority.— No act or proceedings of the Housing Regulatory Authority shall be invalid merely by reason of,—

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

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

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

36. Establishment of Housing Appellate Tribunal.— (*1*) The State Government shall, by notification in the *Official Gazette,* establish a Tribunal to be known as the "Housing Appellate Tribunal" to adjudicate any dispute, hear and dispose of appeal against any direction, decision or order of the Housing Regulatory Authority.

(*2*) The Housing Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed by the State Government and the selection of the Chairperson of the Housing Appellate Tribunal shall be made by the Government, in consultation with the Chief Justice of the High Court.

(*3*) A person shall not be qualified for appointment as the Chairperson or a Member of the Housing Appellate Tribunal unless he,—

(*a*) in the case of Chairperson, has been serving or is a retired Judge of a High Court;

(*b*) in the case of a Member has held the post of the Principal Secretary to the State Government or any equivalent post under the Government of India, or a person who is well versed in the field of urban development, housing, finance, law or management.

37. Term of office of Chairperson and Members and service conditions.— (*1*) The Chairperson and Members of the Housing Appellate Tribunal shall hold office for a term not exceeding three years, from the date on which they enter upon their offices or until they attain the age of sixty-eight years, whichever is earlier.

(*2*) The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and Members of the Housing Appellate Tribunal shall be such as may be prescribed and shall not be varied to their disadvantage after their appointment.

(*3*) The Chairperson or Member of the Housing Appellate Tribunal may relinquish his office by giving in writing to the State Government notice of not less than three months or be removed from his office in accordance with the provisions of section 38.

(*4*) Any serving person, on his selection as a Chairperson or Member of the Housing Appellate Tribunal shall have to retire from service before joining.

(*5*) The Chairperson or any Member of the Housing Appellate Tribunal, ceasing to hold office as such, shall not accept any commercial employment in the Housing Sector for a period of one year from the date he ceases to hold such office.

38. Removal of Chairperson and Member of Housing Appellate Tribunal from office in certain circumstances.— (*1*) The State Government may remove from office, the Chairperson or any Member of the Housing Appellate Tribunal, who has,—

(*a*) been adjudged an insolvent; or

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

(*c*) become physically or mentally incapable of acting as the Chairperson or a Member; or

(*d*) acquired such financial or other interest as is likely to affect prejudicially his function as the Chairperson or a Member; or

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

(*2*) Notwithstanding anything contained in sub-section (*1*), the Chairperson or Member of the Housing Appellate Tribunal shall not be removed from his office on the ground specified in clause (*d*) or clause (*e*) of that sub-section unless, the being made to it in this behalf by the

State Government, has on an enquiry held by it, recommended that the Chairperson or Member ought to be removed on such ground.

(*3*) The State Government may suspend from office, the Chairperson or a Member of the Housing Appellate Tribunal, as the case may be, in respect of whom a reference has been made to the High Court under sub-section (*2*), until the State Government has passed an order on receipt of the report of the High Court on such reference.

39. Officers of Housing Appellate Tribunal.— (*1*) The State Government shall provide the Housing Appellate Tribunal with such officers and employees as it may deem fit.

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

40. Appeals to Housing Appellate Tribunal.— (*1*) Any person aggrieved by any direction or order or decision of the Competent Authority or the Housing Regulatory Authority may prefer an appeal to the Housing Appellate Tribunal.

(*2*) Every appeal under sub-section (*1*) shall be preferred within a period of sixty days from the date on which a copy of the direction, order or decision made by the Competent Authority or by the Housing Regulatory Authority is received by the aggrieved person and it shall be in such form, and accompanied by such fee as may be prescribed :

Provided that, the Housing Appellate Tribunal may entertain any appeal after the expiry of sixty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(*3*) On receipt of an appeal under sub-section (*1*), the Housing Appellate Tribunal may, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(*4*) The Housing Appellate Tribunal shall send a copy of every order made by it to the parties and to the Housing Regulatory Authority.

(*5*) The appeal preferred under sub-section (*1*) shall be dealt with by the Housing Appellate Tribunal as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within ninety days from the date of receipt of appeal :

Provided that, where any such appeal could not be disposed of within the said period of ninety days, the Housing Appellate Tribunal shall record its reasons, in writing, for not disposing of the appeal within the said period.

41. Powers and functions of Housing Appellate Tribunal.— (*1*) The Housing Appellate Tribunal shall be bound by the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908).

(*2*) The Housing Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), while trying a suit in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of the promoter, authorized representative of the promoter or any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), any public record or document or copy of such record or document from any office;

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

(*f*) reviewing its decisions;

(*g*) dismissing an application *parte;* and

(*h*) any other matter which may be prescribed.

42. Appeal to High Court.— Any person aggrieved by any decision or order of the Housing Appellate Tribunal may file an appeal to the High Court within thirty days from the date of receipt of the decision or order of the Housing Appellate Tribunal.

43. Order passed by Housing Appellate Tribunal to be executable as a decree.— Every order passed by the Housing Appellate Tribunal under this Act shall be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of a civil court.

44. Penalty for contravention of section 4.— Whoever fails to comply with or contravenes the provisions of section 4, shall, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty which may extend to rupees one thousand per day of default.

45. Penalty for contravention of sections 6, 16 or 17.— Whoever, without reasonable cause, fails to comply with, or contravenes, the provisions of sections 6, 16 or 17 shall, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty of rupees ten thousand for each day during which such non-compliance continues, or rupees fifty lakhs, whichever is lower.

46. Penalty for non-payment by the allottee or flat or unit purchaser or organization.— Any allottee, flat or unit purchaser or organization, who fails to comply with, or contravenes, the provisions of the agreement for sale executed by him with the promoter for purchase of flat, including non-payment of any amounts or charges in respect thereof, shall, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty which may extend to rupees ten thousand or one per cent. of the sale price of the property specified in such agreement, whichever is higher.

47. Penalty for non-compliance of orders or directions of Housing Regulatory Authority or Housing Appellate Tribunal.— Any person, who willfully fails to comply with the orders or directions of the Housing Regulatory Authority or the Housing Appellate Tribunal, as the case may be, shall, upon the order by the Housing Regulatory Authority, or the Housing Appellate Tribunal, as the case may be, in that regard, be liable to the imprisonment for a term which may extend to three years or penalty which may extend to rupees ten lakhs or with both.

48. Penalty for contravention of other provisions of this Act or rules made thereunder.—Any person, other than the promoter, who, without reasonable cause, fails to comply with, or contravenes, any other provisions of this Act or of any rules made thereunder, or does not pay the penalty imposed on him by the Housing Regulatory Authority shall, if no other penalty is expressly provided therefor, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty which may extend to rupees fifty thousand.

49. Penalty for non-compliance by promoters.— (*1*) Any promoter who, without reasonable excuse fails to comply with, or contravenes the provisions of section 9, section 12, section 14, section 18 or section 19, shall, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty which may extend to rupees one crore.

(*2*) Any promoter who, without reasonable excuse, fails to comply with or, contravenes, any other provisions of this Act or of any rule made thereunder shall, if no other penalty is expressly provided for such contravention, upon the order by the Housing Regulatory Authority in that regard, be liable to pay the penalty which may extend to rupees ten lakhs.

50. Miscellaneous provisions with respect to Competent Authority, Housing Regulatory Authority or Housing Appellate Tribunal.— (*1*) The Chairpersons, Members, Officers and other employees of the Competent Authority, the Housing Regulatory Authority or, the Housing Appellate Tribunal, as the case may be, shall be deemed, when acting or purporting to act in pursuance of the provisions of this Act, to be the public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(*2*) Every proceeding before the Competent Authority, the Housing Regulatory Authority and the Housing Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections

193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Competent Authority, the Housing Regulatory Authority and the Housing Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(*3*) No suit, prosecution or any other legal proceedings shall lie against the Competent Authority, the Housing Regulatory Authority and the Housing Appellate Tribunal or any of its officers or employees in respect of anything which is done or purported to be done, under this Act, in good faith.

(*4*) No civil court shall have jurisdiction in respect of any matter which the Competent Authority, the Housing Regulatory Authority or the Housing Appellate Tribunal is empowered by or under this Act to determine.

51. Power to make rules.— (*1*) The State Government may, subject to the condition of previous publication, by notification in the *Official Gazette,* make rules for carrying into effect the provisions of this Act.

(*2*) Every rule made under this section shall be laid as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette,* the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

52. Power to make regulations.— The Housing Regulatory Authority may, subject to the previous approval of the State Government, by notification in the *Official Gazette,* make regulations consistent with this Act and the rules made thereunder, for all or any of the matters for which provision is, in the opinion of the Housing Regulatory Authority, necessary for the exercise of its powers and the discharge of its functions under this Act.

53. Act to be in addition to Transfer of Property Act, 1882 and to override contract to the contrary.— The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882 (IV of 1882), and shall take effect notwithstanding anything to the contrary contained in any contract.

54. Act not to apply to certain Authority and Boards.— Nothing in this Act shall apply to the Maharashtra Housing and Area Development Authority and the Boards established under the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVII of 1977).

55. Removal of difficulty.— (*1*) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by order published in the *Official Gazette,* do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty :

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(*2*) Every order made under sub-section (*1*) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

56. Repeal and savings.— (*1*) On and from the appointed day, the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (Mah. XLV of 1963), shall stand repealed :

Provided that, the repeal shall not affect,—

(*a*) the previous operation of the law so repealed or anything duly done or suffered thereunder, or

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under the law so repealed, or

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against the law so repealed, or

(*d*) any investigation, proceedings, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, proceedings, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act has not been passed :

Provided further that, subject to the preceding proviso and any saving provisions made elsewhere in this Act, anything done or any action taken under the provisions of the law so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act; and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

(*2*) Any reference in any law or in any instrument or other document to the provisions of the law so repealed shall, unless a different intention appears, be construed as a reference to the corresponding provisions of this Act.

SCHEDULE I

[*See* section 11(*2*)]

I. Measures for protection and safety of property building to be taken by the promoter.—

1. The promoter, the architect and the engineer engaged by the promoter, shall comply with the measures for safe construction and protection of properties against natural calamities as per the building bye-laws and local code, provisions of the National Building Code and other standards and such other measures as the State Government may, by notification in the *Official Gazette,* specify in this behalf.

2. For the purposes of compliance with the measures referred to in paragraph 1, the promoter shall enter into separate agreements and engage the services of an architect and an engineer and inform the Housing Regulatory Authority about such engagement of an architect or an engineer, as the case may be.

3. The promoter, the architect and the engineer engaged by the promoter shall jointly file a certificate, duly signed by each of them with the local authority at such intervals as the local authority may specify, certifying that the building or flats are being constructed in accordance with the plans approved by the concerned authority and that all the measures referred to in this Schedule are being complied with in respect of the buildings or flats under construction to ensure their safe construction and protection against the natural calamities.

4. If for any reason, there is a change of architect or engineer during the construction of the building or flats, the promoter shall,—

(*a*) engage immediately, another architect or engineer, as the case may be, and the incoming architect or engineer shall satisfy himself about the compliance of the measures as mentioned in the previous certificates submitted to the local authority or other authorities, before taking up the responsibility of certificates in future regarding compliance of the said measures;

(*b*) inform the Housing Regulatory Authority about the engagement of another architect or engineer, as the case may be.

II. Measures for insurance against loss or death,—

1. The promoter shall obtain an insurance policy for the building or flats, during the period of their construction, against loss or damage by natural calamities, for the cost or replacement of such building and loss of life and bodily injuries suffered by persons, workers and labourers constructing such building or flats, who may be inside or within the vicinity of such building or flats.

2. The promoter shall insure with any general insurance company licensed to operate in India and obtain an insurance policy or policies covering the liability of any loss of life and bodily injuries suffered by persons, workers and labourers as above, and shall keep the Housing Regulatory Authority informed of payment of premium, from time to time, against such insurance policy or policies.

SCHEDULE II

(*See* section 12)

I. Promoter's responsibility regarding the account of sums taken from or on behalf of unit purchasers or flat purchasers.—

1. The promoter shall maintain building wise separate account in any Bank, of the sums taken by him, from or on behalf of, persons intending to take or who have taken flat in the phase developed by the promoter, as advance towards maintenance and outgoings including any sum so taken towards the share capital for the formation of a co-operative society or a company or association and including ground rent, if any, municipal or other local taxes, charges for water or electricity, security, maintenance of gardens, club house, swimming pool, insurance, equipments, revenue assessment, if any, stamp duty and registration fee for the agreement of sale and conveyance deed.

As regard to the outgoings payable by the apartment or flat or unit purchasers or organization, to the promoter for the maintenance of lay out land or project wise such as club house, swimming pool, internal access roads, gardens, electricity, water, equipments, insurance, municipal and other local taxes, and the like, the same shall be collectively maintained in a separate account.

2. The promoter shall hold the sums collected as per paragraph 1 for the purposes for which they were given and shall disburse the same for said purposes including the development of real estate project and shall on demand, in writing, by the Housing Regulatory Authority or the flat or unit purchaser, individually or collectively, make full and true disclosure of all transactions in respect of that account on payment of charges and shall not utilize these sums for any purpose other than the purpose for which they were so collected.

II. Responsibility of promoter for outgoings till transfer of management to the collective body of the allottees, flat or unit purchasers.—

1. The promoter, who has collected from the allottee or flat or unit purchasers, sums for the payment of outgoings, shall pay all charges, including ground rent, municipal or other local taxes, charges for water or electricity, interest on mortgages or other encumbrances, if any, security, maintenance of gardens, club house, swimming pool, insurance, equipments, till the amounts collected for the same are fully depleted or exhausted for the said purpose. If the handing over management or transfer of the physical possession of the building or property, as the case may be, to the organization of the flat or unit purchasers, whichever is later, takes place before the amounts are fully depleted or exhausted, then the balance amount, if any, with the promoter shall be refunded to the organization being collective body of the flat or unit purchasers or the Apex Body or Federation, as the case may be.

2. After the transfer of management of the building by the promoter to the organization, being collective body of the flat or unit purchasers, such payments and outgoings shall be made by the flat or unit purchasers or such collective body of flat or unit purchasers, as the case may be. The transfer of management of the building or the lay out land, as the case may be, shall be only after the promoter has received all outstanding dues from the flat or unit purchasers‟ organization and after the transfer of management of the building or the lay out land, as the case may be, by the promoter to the organization being collective body of flat or unit purchasers or Apex Body or Federation, it shall be the responsibility of such organization to maintain the said building or the lay out land, as the case may be, and to pay the outgoings thereof.

3. The promoter shall discharge liability in respect of the above till the sums and deposits collected by him shall remain balance in a separate account held by the promoter in the bank. On the amount being depleted, the promoter shall be entitled to raise the bill and collect the amounts for the outgoings from the flat or unit purchasers for the building or lay out land, as the case may be.

III. Refund of amount.—

1. If the promoter fails or is unable to give possession of a flat or an apartment,—

(*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*) on account of cancellation of his registration under this Act,

he shall be liable on demand, without prejudice to other remedies to which he may be liable, to refund the amounts already received by him in respect of that flat, with interest at a rate of fifteen per cent. per annum as provided in this Act, including penalty at such rate as may be determined by the Housing Regulatory Authority.

2. The interest referred to in paragraph 1 above, shall be chargeable from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded and such amount and interest shall be a charge on the allottee, flat or unit purchasers‟ respective flat or building, as the case may be.

IV. Inspection of accounts or records of sums taken for and on behalf of flat purchasers or unit holders.—

The Housing Regulatory Authority may, after giving three days‟ advance notice to the promoter, inspect or cause to be inspected, at any time during business hours, any accounts or records of a promoter relating to outgoings in respect of the allottee‟s complaint.