

COMMITTEE ON SUBORDINATE LEGISLATION
(2016-2017)

(SIXTEENTH LOK SABHA)

TWENTY - FIRST REPORT

**RULES/ REGULATIONS FRAMED UNDER THE REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016**



LOK SABHA SECRETARIAT
NEW DELHI
August, 2017/Sravana, 1939 (Saka)

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(PRESENTED TO LOK SABHA ON 10.8.2017)



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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(16th LOK SABHA)

(2016-2017)

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- | | | | |
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| 2. | Shri Ajay Kumar Garg | - | Director |
| 3. | Shri Nabin Kumar Jha | - | Additional Director |
| 4. | Smt. Vidya Mohan | - | Committee Officer |

INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, do present this Twenty- First Report on Rules/Regulations framed under the Real Estate (Regulation and Development) Act, 2016.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 26.4.2017 during which oral evidence of the representatives of Ministry of Housing and Urban Poverty Alleviation was taken.

3. The Committee considered and adopted this Report at their sitting held on 4.8.2017.

4. Minutes of the Twelfth Sitting of the Committee (2016-17) held on 26.4.2017 and Extracts from Minutes of Nineteenth Sitting of the Committee (2016-17) held on 4.8.2017 relevant to this Report are appended to it.

New Delhi;

August, 2017

Sravana, 1939 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI

Chairperson

Committee on Subordinate Legislation

REPORT

A. BACKGROUND

The real estate sector plays a catalytic role in fulfilling the demand for housing and infrastructure in the country. While the sector has grown significantly in recent years, it has largely been unregulated alongwith lack of professionalism, standardization and lack of adequate consumer protection. Currently, the real estate and housing sector is largely opaque, with consumers often unable to procure complete information, or enforce accountability against builders and developers in the absence of effective regulation. The biggest fallout affecting the sector is delay in project completion; diversion of funds collected from buyers; one-sided contracts in the absence of adequate supply; renegeing on contractual commitments by both the developers and the buyers; and constraints in financing and investment options available to the sector, thereby affecting its long-term growth. **Recently, the Prime Minister has set the year 2022 as a target for its 'Housing for All' project** and therefore, a pan India regulation of Real Estate Sector has been felt earnestly.

1.2 Consequently, the Real Estate (Regulation and Development) Act, 2016 (RERA) piloted by the Ministry of Housing and Urban Poverty Alleviation received Presidential assent on 25 March, 2016 and was published in the Official Gazette on 26 March, 2016 for general information. 59 Sections i.e. Section 2, Sections 20-39, Sections 41-58, Sections 71-78 and Sections 81-92 of the RERA, 2016 were notified for commencement w.e.f 1.5.2016 and the remaining 32 Sections i.e. Sections 3 to 19, Section 40, Sections 59 to 70, Sections 79 to 80 of the Act were notified for commencement w.e.f 1.5.2017. The Act also envisages dual responsibility of the Central Government and the State Governments with independent roles as regards its implementation.

B. OBJECTIVES

1.3 The main objectives of the Real Estate (Regulation and Development) Act, 2016 is:

- (i) to induct professionalism and standardization in the sector paving the way for accelerated growth and investments in the long run;
- (ii) to ensure consumer protection; transparency; and fair and ethical business practices in matters relating to the sale and purchase of properties in the real estate sector; and also

- (iii) to ensure the balance of interests of all the stakeholders concerned without adding another stage in the procedure for sanctions.

C. SALIENT FEATURES OF THE RERA, 2016

1.4 Some of the Salient features of the RERA, 2016 are given as under:

- Act extends to residential and commercial real estate.
- Registration of Real Estate Projects with Regulatory Authority - above 500 square meters or more than 8 apartments.
- Registration of Real Estate Agents who intend to sell any plot, apartment or building - registered with the Regulatory Authority.
- Promoter to make disclosure of all relevant project information for public view such as - layout plan, land status, statutory approvals, number of parking, time period for project completion etc., proforma of agreements, names and addresses of agents, contractors, architect, engineer etc.
- Promoter to comply with the following - adhere to approved plans, obligations regarding authenticity of advertisement/prospectus, rectify structural defects, refund money in cases of default, deposit of 70% of amount realized from allottees in a separate account.
- Act provides for establishment of Regulatory Authority in each State/UT or one Authority for two or more States/UTs, by Appropriate Government.
- Regulatory Authority to - act as the nodal agency towards implementation of the Act, coordinate efforts regarding development of Sector; and render necessary advice to the appropriate Government.
- Act provides for establishment of Appellate Tribunal to hear appeals from the orders of the Authority & adjudicating officer.
- Act provides for appointment of one or more adjudicating officers by Regulatory Authority, based upon need- to settle disputes and impose compensation and interest.
- Act provides for establishment of Central Advisory Council to advise Central Government on - implementation of Act, major questions of policy, protection of consumer interest, growth and development of sector.

1.5 Section 84 of the Act provides for notifying Rules by the Appropriate Government (States and Union of India) for their respective jurisdictions by 31.10.2016 (within 6 months

of commencement). In the absence of a Regulator, the home buyer was literally at the mercy of the builder. Although RERA has come into effect nationwide from 1.5.2017, all States are not completely ready for it and several States have failed to adhere to it. Some of the States even diluted the Act through their Rules in favour of builders hurting consumers and their interest by giving new definition to 'ongoing project' against the provisions of the Act by putting arbitrary and whimsical conditions so as to ensure that maximum possible ongoing projects remain out of the ambit of Real Estate Regulatory Authority. Amongst other things, the Committee also in their sitting held on 26.04.2017 raised the issues during the discussions held on the subject with the Ministry of Housing and Urban Poverty Alleviation regarding the status of implementation of the Act, establishment of Real Estate Regulating Authority, Real Estate Appellate Tribunal by appropriate Governments, appointment of Interim Regulator, establishment of Central Advisory Council, impact of provisions of RERA in case of delay on the part of the Builder to hand over the possession of flats/plots to the buyers, delivery of incomplete flats, awareness programmes etc.,. These issues along with other aspects of the Act have further been deliberated by the Committee in the succeeding Paragraphs:-

CHAPTER-II

STATUS OF IMPLEMENTATION OF ACT - DELAY IN FRAMING OF RULES BY VARIOUS STATES

As per instructions, Rules under an Act should ordinarily be framed as soon as possible after the commencement of the Act and in no case this period should exceed six months. The Real Estate (Regulation and Development) Act, 2016 envisages dual responsibility of the Central Government and the State Governments with independent roles as regards the implementation of the Act. **Section 84(1)** of the Real Estate (Regulation and Development) Act, 2016 states: "**The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act**". Section 84 was notified for commencement w.e.f 1 May, 2016, consequently the time period for making Rules came to an end on 31 October, 2016.

2.2 As regards the status of framing of Rules on Real Estate (Regulation and Development) Act, 2016, the Ministry of Housing and Urban Poverty Alleviation deposited before the Committee on 26.04.2017 as under:-

i. Rules Notified - 12 States / UTs

Uttar Pradesh; Gujarat; Odisha; Andhra Pradesh; Maharashtra; Madhya Pradesh; NCT of Delhi (by Mo/UD); Andaman & Nicobar Islands; Chandigarh, Dadra & Nagar Haveli; Daman & Diu; Lakshadweep

ii. Draft Rules Prepared - 16 States / UTs

Assam; Tripura; Karnataka; Kerala; Tamil Nadu; Punjab; Haryana; Himachal Pradesh; Mizoram; Bihar; Jharkhand; Telangana; Chhattisgarh; Rajasthan; Uttarkhand; Puducherry

iii. States which have Constitutional Issues - 4 States

Sikkim; Arunachal Pradesh; Meghalaya; Nagaland

iv. States from which no information received - 3 States

Manipur; West Bengal; Goa

2.3 As regards the four States namely Sikkim, Arunachal Pradesh, Meghalaya and Nagaland, which have not framed rules relating to Real Estate (Regulation and Development) Act, 2016 due to constitutional issues, the Ministry of HUPA replied as under:-

"The States of Sikkim; Arunachal Pradesh; Meghalaya; Nagaland have informed the Ministry during the regional consultations held on 27th March, 2017 that 'land ownership in these States is either with the Autonomous Councils or is owned by the community'. These States have stated that they are in the process of seeking opinion from the Legal Department and would soon settle the issues".

2.4 Further, as regards, non-furnishing of the requisite information by the three states namely Manipur, West Bengal and Goa, the Ministry of HUPA furnished their reply as under:-

"The Ministry of HUPA has written two letters to these states, subsequently to the notification for commencement of the remaining sections of the Act which was notified in the Gazette of 19th April, 2017. In particular, a letter has been written by HM, HUPA on 1.5.2017 to all the States that have not yet drafted the Rules".

2.5 On being further asked to clarify the word 'shall' used in **sub-section 1 of Section 84** of the Real Estate (Regulation and Development) Act, 2016, which mandate the respective Government to frame rules within the prescribed time frame, the Ministry of Housing and Urban Poverty Alleviation submitted in their post evidence reply dated 18 May, 2017 as under:-

"As per **Section 84** of the Act, the 'appropriate Government' was required to notify the Rules with six months of its commencement. Section 84 was notified for commencement with effect from 1st May, 2016, consequently the time period for making Rules came to an end on 31st October, 2016. The Ministry for Housing & Urban Poverty Alleviation, is the 'appropriate Government' for the Union Territories without Legislature, namely – Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep. The Ministry notified the Real Estate (Regulation and Development) (General) Rules, 2016 and the Real Estate (Regulation and Development) (Agreement for Sale) Rules, 2016, for the UTs without Legislature, on 31st October, 2016. As per information available with the

Ministry, the States of Uttar Pradesh; Gujarat; Odisha; Andhra Pradesh; Maharashtra; Madhya Pradesh; Bihar; Chhattisgarh; Rajasthan; Uttarakhand; Assam have notified the Rules under the Act. In addition, Rules have also been notified for the Union Territories of Delhi, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep. Since the passage of the Act, the Ministry has written letters to the States at various levels. HM, HUPA has written twice to the Chief Ministers to seek their personal attention in the matter. The Secretary of the Ministry has written to the Chief Secretaries on various occasions. A national level consultation was held on 17th January, 2017 which was inaugurated by HM, HUPA in order to, inter-alia, request the States to notify the Rules and to establish the Authorities / Tribunals within the time provided under the Act. This was followed up by a meeting in the North-East with the North-East and Eastern States on 27th March, 2017, which was chaired by the Secretary of the Ministry. Furthermore, various consultations have been held during the Ministry's review meetings with States, urging the States to implement the Act in time. Specifically meetings were held with States of Haryana, Karnataka, Jharkhand and Tamil Nadu to expedite notification of Rules and implementation of the provisions of the Act."

2.6 When enquired about the consequences as to how the provisions contained in the Act would be applicable to the States which have not yet framed the rules to meet their regular business under the Act, the Secretary of HUPA deposed before the Committee as under:-

"States which have not set up regulators and States which have not finalized their Rules will not be able to register any new real estate project"

2.7 When asked further about the course of action the Government is planning to take especially in case of States which have not framed their Rules for their respective jurisdiction, the representative of the Ministry of HUPA submitted as under:-

"The Ministry is undertaking review of implementation of various Schemes / Missions by the States/UTs by travelling to the States. One of the important agenda during these meetings is to take stock of the implementation of the Real Estate Act, 2016. In addition, the Ministry would again be writing to the States which have not framed the Rules yet, to take immediate action."

CHAPTER III

ESTABLISHMENT OF REAL ESTATE REGULATORY AUTHORITY (RERA) AND REAL ESTATE APPELLATE TRIBUNAL (REAT) BY APPROPRIATE GOVERNMENT

3.1 **Section 20(1)** of the Real Estate (Regulation and Development) Act, 2016 states:

"The appropriate Government shall, within a period of One year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority." Further, two or more, States or UTs may set up a common RERA. A State or UT may also establish more than one RERA.

3.2 Further **Section 43(1)** of the Real Estate (Regulation and Development) Act, 2016 states:

"The appropriate Government shall, within a period of One year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the - (name of the state/Union Territory) Real Estate Appellate Tribunal (REAT)".

As these two Sections were notified for commencement from 1 May, 2016, the Authority/Tribunal was required to be established maximum by 30.4.2017.

3.3 On being asked as to how many States/UTs have established Real Estate Regulatory Authority (RERA) and Real Estate Authority Tribunal (REAT) so far, the Ministry submitted as under:-

"The permanent Regulatory Authority has been set up in Madhya Pradesh. However, interim Regulatory Authorities have been set up in Kerala, Maharashtra, Punjab, Rajasthan, Mizoram, Haryana, NCT of Delhi, Andaman & Nicobar Islands, UT of Chandigarh. The UT of Chandigarh has desired that the permanent Authority and Appellate Tribunal may be tied up with the UT of Delhi. Similarly, The UT of Dadra & Nagar Haveli and Daman & Diu have desired that the permanent Authority and Appellate Tribunal may be tied up with the State of Maharashtra. Also, the UT of Andaman & Nicobar Islands has desired that the permanent Authority and Appellate Tribunal may be tied up with the State of Tamil Nadu."

3.4 Further the Ministry in their post evidence reply submitted as under:-

"The State of Madhya Pradesh has established the permanent Authority. In addition, the States/UTs of - Kerala; Maharashtra; Punjab; Rajasthan; Mizoram; Haryana; NCT of Delhi; Andaman & Nicobar Islands; Chandigarh; Bihar; Uttar Pradesh have set up interim Authority. Interim Tribunal has been set up in the States/UTs of - Puducherry; Chandigarh; Haryana; Bihar. The States/UTs of - Odisha; Jharkhand; Assam; Tamil Nadu; Andhra Pradesh; Telangana; Tripura; Dadra & Nagar Haveli (Tie up with Maharashtra); Daman & Diu (Tie up with Maharashtra); Andaman & Nicobar Islands (Tie up with Tamil Nadu); Chandigarh (Tie up with Delhi) are in advanced stage of setting up the Authority and Tribunal. "

3.5 When asked to state the reasons as to why the other States/UTs were not able to establish their Regulatory Authority in time, the Ministry of Housing and Urban Poverty Alleviation submitted as under:-

"The Ministry is undertaking review of implementation of various Schemes / Missions by the States/UTs by travelling to the States. One of the important agenda during these meetings is to take stock of the implementation of the Real Estate Act, 2016. In addition, the Ministry has been writing to the States which have not set up the Authority / Tribunal, to take immediate action."

APPOINTMENT OF INTERIM REGULATOR

3.6 **Section 20** of the Act also empowers appropriate Government to appoint the interim Regulator until the establishment of Full Time Regulatory Authority under the provisions of the Act. The Ministry of Housing and Urban Poverty Alleviation vide their reply submitted as under:-

"The interim Regulatory Authorities have been set up in Kerala, Maharashtra, Punjab, Rajasthan, Mizoram, Haryana, NCT of Delhi, Andaman & Nicobar Islands, and UT of Chandigarh"

3.7 The Ministry further clarified as under:-

"The Ministry had convened a National Consultation with all the State/UT Governments on 17th January, 2017 and a regional consultation with North-East and Eastern States requesting for timely implementation of the Act including on the appointment of Appellate Tribunals."

3.8 In the absence of the appointment of the interim Regulator or Full Time Regulatory Authority or Appellate Tribunal, the implementation of the Act would be affected. When asked to furnish their opinion and steps taken, the Ministry vide their reply submitted as under:-

"The Ministry has been conscious of the difficulties that would be faced on the ground if the Authorities and the Appellate Tribunals are not constituted on time. Consequently, during the National Consultation with all the State/UT Governments on 17th January, 2017 and a regional consultation with North-East and Eastern States, the Ministry has informed the States/UTs that upon the full Act coming into force with effect from 1st May, 2017, in the absence of Authorities and Appellate Tribunal, there would be a vacuum in the State/UT. This has also been reiterated through the communications sent by the Ministry to the States/UTs at various levels."

CHAPTER IV

ESTABLISHMENT OF CENTRAL ADVISORY COUNCIL

4.1 **Section 41(1)** of RERA, 2016 states: **"The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council."**

4.2 Defining the function of Central Advisory Council, **Section 42(1)** of RERA, 2016 states:

The function of the Central Advisory Council shall be to advice and recommend the Central Government -

- (a) on all matters concerning the implementation of this Act;**
- (b) on major questions of policy;**
- (c) towards protection of Consumer Interest;**
- (d) to foster the growth and development of the Real Estate Sector;**
- (e) on any other matter as may be assigned to it by the Central Government.**

4.3 When asked to state whether the Council has been constituted, the Ministry of Housing and Urban Poverty Alleviation in their written reply submitted as under:-

"The Central Advisory Council has not been constituted."

4.4 Citing the reasons for not constituting the council, the Ministry in their post evidence reply submitted as under:-

"The Ministry is in the process of notifying the constitution of the Central Advisory Council, which would be notified soon"

CHAPTER V
DILUTION OF RULES BY VARIOUS STATES/UTS

5.1 The Real Estate (Regulation and Development) Act, 2016 envisages dual responsibility of the Central Government and the State Government with independent roles as regards implementation of the Act. Article 254 of the Constitution specifically provides:

"(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

5.2 The proviso to this Article gives plenary powers to Centre to amend, vary or repeal the State Law so made by the Legislature of the State. Accordingly, RERA, 2016 has an over-riding effect on conflicting laws being made by some States by virtue of entries 6 and 7 in List III of Concurrent list of the Seventh Schedule of the Constitution of India. When the Ministry of Housing and Urban Poverty Alleviation asked to furnish their opinion in the matter, it was submitted as under:-

"As per the proviso to Article 254(2) of the Constitution of India, the Central Government has the power to amend / vary / repeal any State law which has previously received Presidential assent. In exercise of the powers conferred by the

proviso to Article 254(2) of the Constitution of India, the Real Estate Act, 2016, vide Section 92 repealed 'The Maharashtra Housing (Regulation and Development) Act, 2012', which had received Presidential assent"

5.3 When asked to state whether the Ministry of Housing and Urban Poverty Alleviation are aware of the fact that Rules notified by some of the States are contrary to the provisions of the Act, the Ministry in their written submission stated as under:-

"The Ministry has received representations from consumer associations about some States having prepared Rules, wherein certain provisions are beyond the scope of the Act.

The Ministry has communicated to the States, during the National Consultation held with all the States/UTs on 17th January, 2017 and during the Regional Consultation (East and North East) on 27th March, 2017 to adhere to the letter and spirit of the Act. The Ministry had prepared a Frequently Asked Questions (FAQs) on the Act, which was circulated to the participants during the said two meetings. In addition, letters have been written by the Ministry, at various levels, to the States/UTs requesting them to adhere to the letter and spirit of the Act."

CHAPTER VI

Registration of ongoing Projects and Completion Certificate:

Accordingly to the frequently appearing reports in the media, few States like the States of Uttar Pradesh, Haryana and Gujarat, the requirement of compulsory registration of all ongoing projects with the RERA Authority within three months of the commencement of the Act is not being adhered to and the developers/builders are taking partial completion certificate and handing over the flats to the applicants without fulfilling the obligatory requirement of handing over the flats in complete shape. According to such media reports, the completion norms are being flouted by the builders in UP, Haryana and Gujarat, which is resulting in enormous mental agony and financial hardship to the buyers who had invested their hard earned money for a living. There is a tendency among builders/developers, and have a common practice that a specific society or project is developed in phases by the developers. This results in buyers getting entrapped in the deal though RERA Act is very clear and says that where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately. Particularly, the States of Uttar Pradesh, Haryana and Gujarat had excluded ongoing projects and home buyers are suffering at the hands of the developers/builders. According to media reports, Haryana and Uttar Pradesh's RERA rules have saved a majority of the ongoing real estate projects in NCR outside the ambit of real estate law, as the number is very high in Gurugram. Similarly, the figures from Noida city is worst hit by delays in delivery of flats as both the States Haryana and Uttar Pradesh have used the same yardstick for ongoing projects, which have not been included in Real Estate (Regulation and Development) Act. From the media reports it is given to understand that in Noida and Greater Noida together a large number of ongoing builder projects, will be outside the purview of RERA Act as the States of Uttar Pradesh and Haryana have excluded ongoing projects from registration, similarly, in

Gurugram a large number of flats are in the various stages of construction or completion, have either received occupancy certificate or have received part-completion (unoccupancy on paper). This is resulting in home buyers getting delayed possession of their flats because of the violation of main Act by these States.

CHAPTER VII

AWARENESS PROGRAMME

7.1 For effective implementation of the Act, it was pointed out during the evidence of the Ministry of HUPA before the Committee on 26.4.2017 to make publicity about the Act and bring awareness among the public. In this connection, the Chairperson, COSL (Committee on Subordinate Legislation, Lok Sabha) suggested that the provisions of RERA and the Rules are needed to be given wide publicity across all the States by means of 'Akashwani' and 'Doordarshan' so as to develop a feeling of trust amongst the masses about the Real Estate Sector. Even the housing association should also be involved in spreading public awareness about the RERA law. Moreover, it should be mandatory for housing advertisement by builders to mention about the details like the Laws of launching the housing project/scheme, what works will be done under the scheme, so that people become aware of the details.

7.2 The Ministry of Housing and Urban Poverty Alleviation in their post evidence reply dated 18.5.2017 submitted the following regarding the awareness programmes:-

"The Ministry is planning to come out with advertisements on the Act to create awareness among the public. In addition, the Ministry is making an endeavour to attend as many public functions as possible on the subject to create awareness."

PART - II

Observations/Recommendations

Delay in framing of Rules under RERA, 2016 by various States

The Committee note that India's real estate sector has been marred by inordinate project delays, poor quality of construction and lacks transparency. To overcome these shortcomings, the Real Estate (Regulation & Amendment) Act, 2016 has been enacted with the objective of promotion of the real estate sector in an efficient and transparent manner and to protect the interest of the consumers as well. In this regard, the Committee note that as per Section 84(1) of the Real Estate (Regulation and Development) Act, 2016, the appropriate Government (both Central and State Governments) are required to notify the Rules for their respective jurisdiction within six months of commencement of the Act i.e. by 31.10.2016 as the Act was notified for commencement w.e.f 01.05.2016. In this context, the Ministry of Housing and Urban Poverty Alleviation had submitted to the Committee that as per the available information with them, only 12 States/UTs had notified their Rules, 16 States/UTs were in the process of notifying Rules, 4 States had constitutional issues and 3 States have not furnished any information on the notification of rules under the Real Estate (Regulation and Development) Act, 2016. As per the information furnished by the Ministry, there are three States namely Manipur, West Bengal and Goa which have not even furnished any information and four States namely Sikkim, Arunachal Pradesh, Meghalaya and Nagaland have some constitutional issues over the land ownership as informed to the Ministry during regional consultations held on 27.03.2017. The Committee express their dismay over the fact that even after a lapse of one year and two months, many of the States have not notified the Rules so far. The Committee see the Real Estate (Regulation & Development) Act, 2016 as a landmark reform for the real estate sector in the country and its successful

enactment largely depends upon the timely framing of the Rules under the Act by all the States. The Committee are of the considered opinion that any delay in framing of Rules thereunder will have the effect of depriving the public the legitimate rights intended to be conferred on them under the provision of the Act. The Committee, therefore, recommend that the progress made by States particularly the above mentioned Seven States be monitored regularly and the Ministry should ensure that all the concerned States frame and implement the Rules within the said time frame as contemplated under the Act.

Recommendation No. 1

Establishment of RERA and REAT

The Committee note that Section 20 to 40 of the RERA deals with the establishment of Real Estate Regulatory Authority (RERA) and its functions for promotion of Real Estate Sector besides power to impose penalties in case of disputes between promoters, allottees and Real Estate agents etc. Section 20(1) envisages the formulation of RERA by the appropriate Government and was required to be formed within one year of coming into force of the Act i.e. by 30 April, 2017.

Similarly, Sections 43 to 58 of the RERA Act relate to the Real Estate Appellate Tribunals (REAT) which are required to be established by the appropriate Governments within one year of coming into force of the Act i.e. by 30.04.2017.

In this regard, the Committee feels concerned to find that so far only one State Madhya Pradesh has set up permanent Authority and 11 States/UTs namely Kerala, Maharashtra, Punjab, Rajasthan, Mizoram, Haryana, NCT of Delhi, Andaman and Nicobar Islands, Bihar, Chandigarh, UP had set up interim Authority, four states/UTs namely Puducherry, Chandigarh, Haryana and Bihar have set up interim Tribunal and 11 States/UTs are in advanced stage of setting up the Authority and Tribunal. In the opinion of the Committee, any delay in establishment of such statutory bodies mandated with the core tasks will severely affect the implementation of the RERA, 2016. Though the Ministry has impressed upon the States/UTs during the National Consultation with all the States/UT Government on 17.01.2017 and a regional consultation with North East and Eastern States but it has not yielded the desired result. The Committee, therefore, desires that the Ministry should make all out efforts and give a time bound target to the concerned States/UTs as per the provisions for the Act for the establishment of RERA and REAT under the RERA, 2016 without any further delay. Till such time these States should appoint an interim Authority or

appoint the Secretary of the Department dealing with housing as per Section 20(1) of the Act. Similarly, for the State which have not appointed REAT, the Ministry insist upon them to appoint an interim REAT or delegate powers for the time being to any existing Tribunal already functioning in the State as per Section 43(1).

Recommendation No. 2

Dilution of Rules by various States/UTs.

The Committee note that RERA, 2016 has an overriding effect on conflicting laws being made by some States by virtue of entries 6 & 7 under the Concurrent list of the Seventh Schedule of the Constitution of India and therefore, as per the proviso to Article 254(2) of the Constitution of India, the Central Government has the power to amend, vary, repeal any State law which has previously received Presidential assent. On this basis the Ministry has repealed the Maharashtra Housing (Regulation & Development) Act, 2012. The Committee, however, note with concern that rules notified by some of the States are not in consonance with the spirit of the Act and have resulted in the dilution of the effectiveness of the Act while observing that such works have been skewed in favour of builders hurting consumer interests particularly in areas like definition of ongoing projects, penalties for non-compliance with the Act and dealing with structural defects etc. In this context, the Ministry have informed the Committee that they have taken up the matter with the concerned States during the National Consultation held with all the States/UTs on 17th January, 2017 and during the Regional Consultation (East and North East) on 27th March, 2017 to adhere to the letter and spirit of the Act. In addition, letters have also been written by the Ministry, at various levels, to the States/UTs requesting them to adhere to the letter and spirit of the Act. The Committee are distressed to note that the Ministry have not clearly spelt out the ways and means in this regard. The Committee while recognizing that each State have their respective development laws, sanctioning procedures, and other land related unique issues, recommend that the Ministry of Urban Poverty Alleviation should strictly instruct the States to either amend their Rules or re-notify them in line with the letter and spirit of the Act. The Committee may also be apprised of the action taken on this recommendation as this legislation is going to have a great impact on Real Estate Sector.

Recommendation No. 3

Constitution of Advisory Council

The Committee are dismayed to note that even after the commencement of the Act, the Central Advisory Council has still not been constituted. As per the provision contained in the Act, the Central Advisory Council is required to be established to advise and recommend the Central Government on major question of policy and protection of consumer interests to foster the growth and development of Real Estate Sector on all matters concerning the implementation of the Act. However the Ministry of HUPA is still in the process of notifying the Central Advisory Council. The Committee express their unhappiness over the lackadaisical attitude of the Ministry towards this important issue. This proves beyond doubt that the Ministry's approach is very casual and it has not paid any serious attention towards the constitution of Central Advisory Council expeditiously. The Committee, therefore, strongly emphasize the Ministry to take urgent steps to constitute the Central Advisory Council under the Act so that the functions under Section 42 of the Act can be taken forward by the Council. The Committee would also like the Ministry to furnish a copy of the notification, under the provision of Sections 41 (1) and 42 (2) of the Real Estate (Regulation & Development) Act, 2016.

Recommendation No. 4

Registration of ongoing Projects

The Committee note that in terms of section 3 (1) of the RERA Act, the ongoing and under construction projects are required to be registered with the Authority and are thereby supposed to come under the regulator's ambit. It has been clearly specified therein that the promoters of all those projects, which have not received the completion certificate prior to the commencement of the Act should also come under the purview of the Act and they shall get the project registered with the regulatory authority of the State within three months from the date of commencement of Act making it amply clear that all under construction projects are needed to be registered. In this context, the Committee feel perturbed from the frequently appearing reports in the media that in some States particularly in Uttar Pradesh, Haryana and Gujarat, the same is not being adhered to and the developers/builders are resorting to taking partial completion certificates and handing over the flats to the applicants without fulfilling the obligatory requirement of handing over the flats in complete shape. According to the media reports, Haryana and Uttar Pradesh's RERA Rules have saved a majority of the ongoing real estate projects in NCR outside the ambit of real estate law as these States have excluded ongoing projects from registration. Similarly, in Gurugram, a large number of flats under various stages of construction or completion, have either received occupancy certificate or have received part-completion (unoccupancy on paper). This is resulting in home buyers getting delayed possession of their flats because of the violation of main Act by these States. Further, there is a tendency among builders/developers to develop a specific society or project in phases resulting in buyers getting entrapped in the deal, though RERA Act very clearly says that where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

In the opinion of the Committee the builder/developer is supposed to give possession of the flat only after completion of all facilities like finishing work, water supply, sewerage disposal, electricity, installation of generators, operational lifts and common entry-exit areas etc. The Committee feel that these essential requirements cannot be overridden by resorting to the practice of part-completion certificate as the same tantamount to violation of RERA Act and also serves as an escape route to the builder/developer from fulfilling the requirement of registration besides resulting in enormous mental agony and financial hardship to the buyers who had invested their hard earned money for a living. The Committee feel such kind of malpractices should not go unchecked as the purpose of establishing a RERA act will only be served if it is implemented in its entirety by all the stakeholders. The Committee, therefore, strongly recommend that the Government must take all possible remedial measures for ensuring all such ongoing projects are registered and executed under the provisions of RERA Act in order to extend the stipulated benefits to the home buyers under the RERA. The Committee further recommend that the provisions of the RERA Act should be uniformly applicable all across the country and any flouting of norms is to be severely dealt with under the penal provisions of the RERA Act for ensuring that the developers and the builders timely complete the project in all respects and hand over possession of flats/plots to home buyers and saving them from mental agony, harassment , cost overrun etc. at the hands of the builders/ developers. In this context, the Committee desire that the Ministry may also ask the States to amend / formulate their Rules by including the definition of 'ongoing projects' for doing away with any kind of ambiguity.

Recommendation No. 5

Awareness Programme

The Committee note that public are not fully aware of the Real Estate (Regulation & Development) Act, 2016. In this regard, Committee have been informed that the Government are planning to come out with advertisements on the Act to create awareness among the public and making an endeavour to attend as many public functions as possible on the subject. The Committee are of the opinion that more efforts are needed to give wider publicity to this Act highlighting the requisite formalities, rights and duties of all the stake holders involved in any particular scheme. The Committee, therefore, urges the Ministry that special measures/mechanisms be put in place including organising of awareness programmes to help the public to gain knowledge about their rights. The Committee also feel that the Central Advisory Council could be entrusted with the task of implementation of the awareness programmes. All appropriate Governments should also take action in this regard.

Recommendation No. 6

New Delhi;

August, 2017
Sravana, 1939 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson
Committee on Subordinate Legislation

MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)

The Twelfth sitting of the Committee (2016-2017) was held on Wednesday, the 26th April, 2017 from 1000 to 1230 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Dilipkumar Mansukhlal Gandhi Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri S.P. Muddahanume Gowda
5. Shri Shyama Charan Gupta
6. Shri Chandulal Sahu
7. Shri Alok Sanjar
8. Shri Ram Prasad Sarmah
9. Shri Ram Kumar Sharma

SECRETARIAT

1. Smt. Sudesh Luthra - Additional Secretary
2. Shri Ajay Kumar Garg - Director
3. Shri Nabin Kumar Jha - Additional Director
4. Smt. Jagriti Tewatia - Deputy Secretary

WITNESSES

Ministry of Housing and Urban Poverty Alleviation

1. Dr. Nandita Chatterjee : Secretary
2. Shri Rajiv Ranjan Mishra : Joint Secretary (Housing)
3. Shri Satinder Pal Singh : Director (Housing)
4. Shri Sailesh Jogiani : Under Secretary (Housing)
5. Shri Nagendra Goel : Legal Adviser

2. At the outset, the Chairperson welcomed the Members of the Committee. Thereafter, representatives of the Ministry of Housing and Poverty Alleviation were called in. The Chairperson then welcomed the representatives of the Ministry of Housing and Poverty Alleviation to the sitting of the Committee and also drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings. The Committee then had a briefing by the representatives of the Ministry of Housing and Poverty Alleviation on the dilution and tardy implementation of the Real Estate (Regulation and Development) Act, 2016 by various States and Union Territories, establishment of Real Estate Regulatory Authority and Appellate Tribunal, appointment of interim Regulator etc.

3. The representatives of the Ministry in the beginning made a power point presentation on the subject and briefed the Committee about salient features of the Act, status of notification of various sections of the Act and their implementation etc. Thereafter, the

Committee deliberated on various issues broadly covering aspects such as non-notification of some of the sections of the Act, status of Rules framed by various States/Union Territories, publicity of the provisions of Act/Rules, Real Estate Regulatory Authority and Regulatory Tribunal, affordable housing scheme, dilution of Rules by various States/Union Territories, procedure regarding registration of the projects, penal provision in case of non registration etc.

4. The representatives of the Ministry furnished clarifications to the queries raised by the Committee. On some of the points, the information on which was not readily available with the representatives of the Ministry, the Chairperson asked them to furnish written replies to those points within 15 days to the Lok Sabha Secretariat.

5. The Chairperson then thanked the representatives of the Ministry for presenting their inputs on the subject before the Committee.

6. The witnesses then withdrew.

7. Thereafter, the Committee decided to undertake study visit during the last week of May, 2017 / first week of June, 2017.

8. The verbatim proceedings were kept on record.

The Committee then adjourned.

EXTRACTS FROM MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)

The Nineteenth sitting of the Committee (2016-2017) was held on Friday, the 4th August, 2017 from 1500 hours to 1600 hours in Chairperson's Chamber, Room No. 146, Third Floor, Parliament House, New Delhi.

PRESENT

Shri Dilipkumar Mansukhlal Gandhi Chairperson

MEMBERS

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Jhina Hikaka
6. Shri Janardan Mishra
7. Shri Prem Das Rai
8. Shri Chandulal Sahu
9. Shri Alok Sanjar
10. Shri Ram Prasad Sarmah
11. Adv. Narendra Keshav Sawaikar

SECRETARIAT

1. Smt Sudesh Luthra - Additional Secretary
2. Shri Ajay Kumar Garg - Director
3. Shri Nabin Kumar Jha - Additional Director
4. Smt Jagriti Tewatia - Deputy Secretary

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then considered the following draft Reports:-

- (i) XX XX XX
- (ii) Draft Twenty-first Report on the Rules / Regulations framed under the Real Estate (Regulation and Development) Act, 2016.
- (iii) XX XX XX
- (iv) XX XX XX

3. After deliberations, the Committee adopted the same without any modification. The Committee also authorized the Chairperson to present the same to the House.

The Committee then adjourned.

**Omitted portion of the Minutes are not relevant to this Report