



Common area under the Real Estate (Regulation and Development) Act, 2016

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Abstract

Common Area is defined under Sec. 2(n) of the Real Estate (Regulation and Development) Act, 2016. The Act was enacted in order to regulate and promote the real estate sector with respect to the sale of plots, buildings or apartments in an efficient and transparent manner that protects the interests of the consumers. The paper is a critical analysis of the meaning of common area under the Real Estate (Regulation and Development) Act, 2016 wherein the objective of real estate laws in the country is first referred to and analysed. Common areas, as the name suggests are various habitual, regular, everyday areas in a real estate project. The definition under the Real Estate (Regulation and Development) Act, 2016 provides scope for various aspects to be included within the ambit of a common area. Therefore, the various aspects of a common area as per the definition is discussed upon which the rights and duties of allottees under the law are critically analysed. The functions and duties of a promoter under the Act are also critically analysed, including the role of various State Governments in furthering the enhancement of the real estate sector in the nation. The role of promoters, allottees of associations in the transfer and maintenance of common areas are further analysed, wherein the scope, aim and objective of the Real Estate (Regulation and Development) Act, 2016 is revisited in the conclusion to differentiate between carpet, built-up and super built-up areas.

Keywords: Real estate regulation, common areas, RERA 2016, promoter duties, allottees rights

Introduction

The Real Estate (Regulation and Development) Act, 2016 was enacted in order to establish a Real Estate Regulatory Authority for the oversight of regulation, enhancement and promotion of the real estate sector in furtherance with the sale of real estate properties such as plots, apartments, buildings or sale of any other real estate project. In order to perform the said functions such as regulate, enhance, promote and sell real estate properties, in an efficient and transparent manner, as well as protect the interests of the buyers, that is, the consumers of the real estate sector and ultimately to establish an adjudicatory mechanism as an Appellate Tribunal to hear appeals of decisions put forth by the Real Estate Regulatory Authority (inclusive of other adjudicating officers and authorities) concerning matters relating to the real estate sector.

The development of real estate immovable properties such as buildings, apartments, conversion of existing buildings or parts thereof into apartments, the development of land into plots or apartments for the purpose of sale of such properties can be referred to as Real Estate Projects. Such development of Real Estate Projects includes as the case may be, the purpose of selling all or some of the said apartments or plots or building, including the common areas, the development works, all improvements and structures thereon. It has also been estimated that Real Estate contribution to India's Gross Domestic Product (Hereinafter referred to as GDP) is estimated to increase to about 13 per cent by 2028. Increasing share of real estate in the GDP would be supported by increasing industrial activity, improving income level, and urbanization.

Common Area Under Real Estate (Regulation and Development) Act, 2016

The basis of calculation of all costs that are to be included in the total price is based on the Carpet Area under the Real

Estate (Regulation and Development) Act, 2016. Prior to this fixation of Carpet Area under the Real Estate (Regulation and Development) Act, 2016, the conventional norm in the housing sector was pricing on the basis of the Super Area.

Sec. 2(n), Real Estate (Regulation and Development) Act, 2016 defines a Common Area. It is defined as 'details of all facilities, amenities, whether proposed or not and its percentage of completion are required to be provided. The definition clause further provides details as to what comprises a common area under the Real Estate (Regulation and Development) Act, 2016. They are-

1. The entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase is a common area.
2. The stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings.
3. The common basements, terraces, parks, play areas, open parking areas and common storage spaces.
4. The premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel.
5. Installations of central services such as electricity, gas, water and sanitation, air conditioning and incinerating, system for water conservation and renewable energy.
6. The water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use.
7. All community and commercial facilities as provided in the real estate project.
8. All other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.

Common Area, Rights and Duties of Allottee Under Real Estate (Regulation and Development) Act, 2016

Chapter IV, Sec. 19 of the Real Estate (Regulation and Development) Act, 2016, provides for the various rights and duties of an allottee. An Allottee in relation to a real estate project, means a person to whom a plot, apartment or building, has been allotted or sold or otherwise transferred by the promoter, and also includes the person who subsequently acquires the said allotment through sale but does not include a person to whom the plot or apartment is given on rent.

Therefore, the various rights of an allottee regarding common areas enumerated under Chapter IV, Sec. 19 of the Real Estate (Regulation and Development) Act, 2016 are that the allottee can seek information related to sanctioned plans, layouts plans, approvals from the competent authorities. The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment, plot or building, as the case may be, by the promoter. The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter. The allottee can seek information on the progress towards completion and provision of basic amenities like water, electricity, sanitation. The allottee can demand refund or compensation in case the builder makes any breach of clause as per the Real Estate (Regulation and Development) Act, 2016.

It is possible that the State Real Estate (Regulation and Development) Rules stipulate common areas to be included in the total price of a property. The individual buyer holds of pro rata share in the common areas and pays for it. The builder has to disclose the proportionate cost of common areas to each buyer when mentioning the total price of the property bought by the buyer. This is further evident in critical analysis of the Karnataka Real Estate (Regulation and Development) Rules, 2020 wherein the allottee has the undivided proportionate share in the common areas. It is to be noted that various States in India such Gujarat, Punjab, Karnataka etc. have enacted Real Estate (Regulation and Development) Rules, wherein the State Government of Gujarat and Punjab passed the Notification of Rules in 2017 while the Karnataka State Government passed the Rules in 2020, in order to provide common areas which shall be included in the total price of the property.

The Karnataka Real Estate (Regulation and Development) Rules, 2017 state that

“Since the share/ interest of allottee in the common areas is undivided and cannot be divided or separated, the allottee shall use the common areas along with other occupants, maintenance staff etc., without causing any inconvenience or hindrance to them. Further, the right of the allottee to use the common areas shall always be subject to the timely payment of maintenance charges and other charges as applicable. It is clarified that the promoter shall convey undivided proportionate title in the common areas to the association of allottees as provided in the Act.”

Common Area, Functions and Duties of a Promoter Under Real Estate (Regulation and Development) Act, 2016

Chapter III, Sec. 11 to Sec. 18 of the Real Estate (Regulation and Development) Act, 2016, provides for the

various functions and duties of a promoter. A promoter is defined under Sec. 2(zk) of the Real Estate (Regulation and Development) Act, 2016 as-

“A person who constructs or causes to be constructed an independent building or a building consisting of apartments; a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; any development authority; an apex State level co-operative housing finance society and a primary co-operative housing society; any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale or such other person who constructs any building or apartment for sale to the general public.”

Therefore, the various functions and duties of a promoter with respect to a common area under the Real Estate (Development and Regulation) Act, 2016 include

- 1. Agreement for Sale:** All obligations, responsibilities and functions under the provisions of the Act are to be performed by the promoter. It is the promoter's duty to follow the rules and regulations made with respect to the agreement for sale to the allottee. This shall extend till all the buildings and infrastructure have been conveyed to the allottees.
- 2. Transfer of Title:** It is an important function and duty of the promoter to execute a registered conveyance deed of the infrastructure in favour of the allottee as provided under Sec. 11(4)(f) and Sec. 17(1) ^[1] of the Real Estate (Development and Regulation) Act, 2016. The possession of common areas and necessary documents to the allottee under Sec. 17(2) and therefore, transfer the title to the allottee.
- 3. Adherence to sanctioned plans and project specifications:** It is the duty of the promoter to make sure that the project proposed is developed and completed in accordance with the sanctioned plans, layout plans, specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees under Sec. 14(2)(ii).

Thus, a critical analysis of Sec. 17 of the Real Estate (Development and Regulation) Act, 2016 inclusive of its provisos, is clear that promoters are bound to execute and register the conveyance deed in favour of the allottee or association within the period provided under local laws. In the event there are no local laws prescribing such period, an outer time frame of three months from the date of issue of Occupancy Certificate has been stipulated.

Transfer of Common Areas

Various State Real Estate (Regulation and Development) Rules provide that the promoter has to abide by the time schedule for completing the project and handing over the apartment or plot to the allottee and the common areas to the association of the allottees after receiving the occupancy certificate or the completion certificate or both as the case may be.

There have been issues regarding the registration of conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees ever since the implementation of Real Estate (Regulation and Development), 2016. The Gujarat Real Estate Regulatory Authority directed that the promoter should convey proportionate undivided share in the common area in favour of the allottee who is paying full for these facilities and simultaneously handover the physical possession of the proportionate undivided portion in common area to the association of the allottees.

The Act specifies that the promoter has to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees and hand over the physical possession of property to the allottees and the common areas to the association of the allottees in the project. Furthermore, transfer other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. In the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees shall be carried out by the promoter within 3 months from date of issue of Occupancy Certificate. It is the duty of the Promoter to hand-over the necessary documents and plans, including that of common areas, to the association of the allottees after obtaining the occupancy certificate and handing over physical possession to the allottees; furthermore, the same ought to be done within 30 days in the absence of any specification provided in any local laws.

Maintenance of Common Areas

The promoter is responsible for all obligations, responsibilities and functions under the provisions of Real Estate (Regulation and Development), 2016, the rules and regulations made there under the association of allottees for the common areas until the conveyance of all common areas to the association of allottees. Furthermore, the promoter cannot make any additions and alterations in common areas irrespective of any proviso contained in any law, contract or agreement. Wherein the nature of common areas after being approved by the competent authority are disclosed or furnished to the buyer is inclusive as well. A promoter can make minor additions or alterations in the common areas as may be required by the allottee, or as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised architect or engineer after proper declaration and intimation to the allottees. However, no further alterations or additions in the common areas can be made by the builder within the real estate project including the common areas without the previous written consent of at least two-thirds of the allottees wherein, there shall be unrestricted access to the common areas for the builders, maintenance agencies, association of allottees in order to provide necessary maintenance services.

Conclusion

The Real Estate Regulatory Authority was established under the Real Estate (Regulation and Development) Act, 2016 in order to provide for an efficient and transparent regulation of the real estate sector which provides protection to the customers. a carpet area is the area which can be covered by a carpet. The built-up area is the comprehensive area which is the sum of the carpet area and the thickness of walls of

the housing unit. The super built-up area is the total sum of the built-up area and the space occupied by common areas like lobby, staircase, elevator, shafts, clubhouse, etc. It includes the entire land of the real estate project, open parking areas, play areas, parks, jogging tracks, common basements, terrace, common storage spaces, security personnel houses, water conservation places, central services installations used by all the people in the building, water tanks, slumps as well as commercial facilities provided in the real estate project.

References

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6. Sec. 2(n), Real Estate (Regulatory and Development) Act, 2016, No. 16.
7. Id.
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9. Sec. 2(d), Real Estate (Regulatory and Development) Act, 2016, No. 16.
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26. Id