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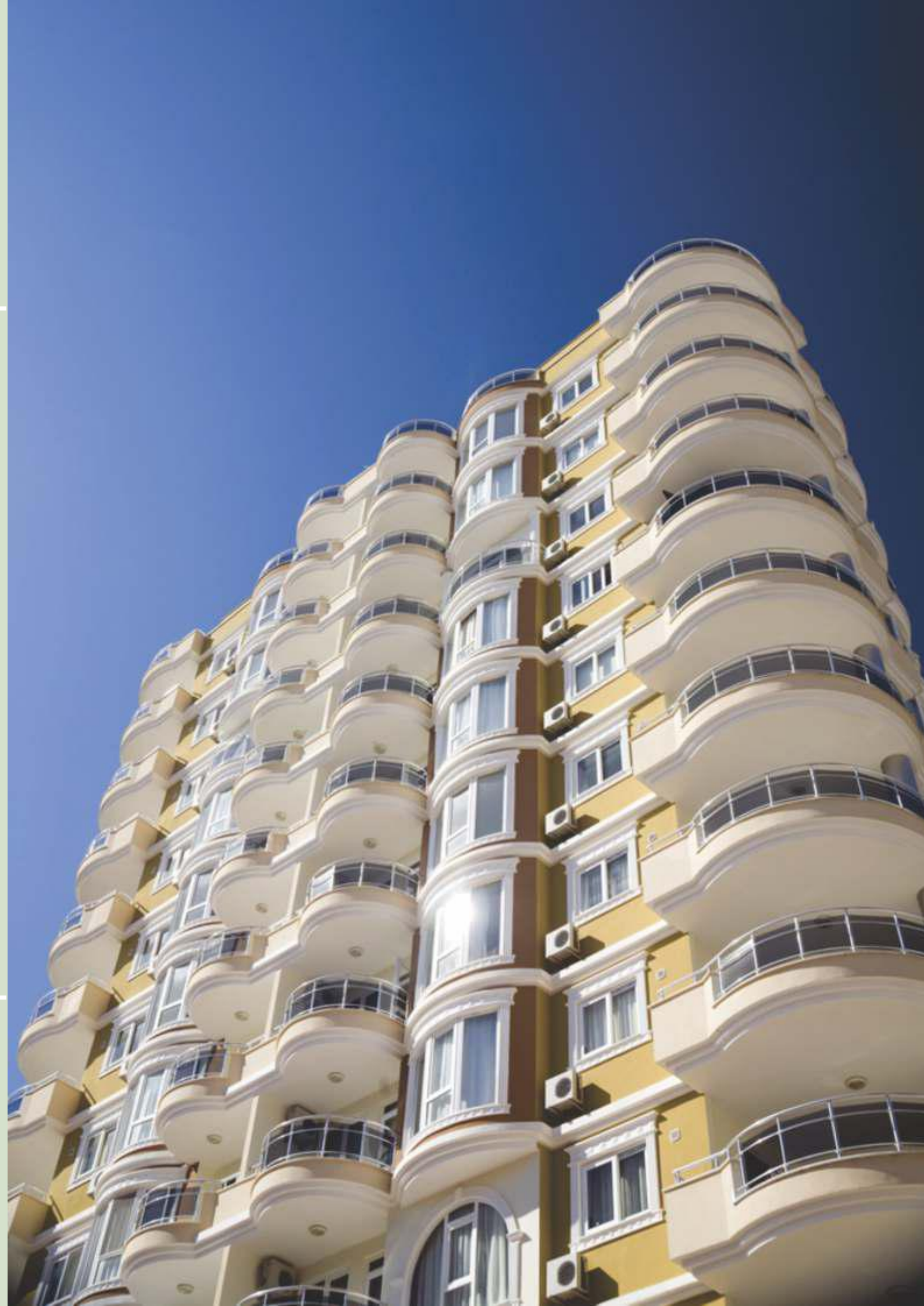


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# A STEP CLOSER TO HAPPY HOME-BUYING

AN INSIGHT INTO THE REAL ESTATE (REGULATION & DEVELOPMENT) BILL, 2016



With the changing skylines in many cities, the Bill takes within its ambit many factors, including development as well as redevelopment and therefore, paves the way for a smooth road ahead. The real estate Bill will impact the sector, positively, at two levels—first at the micro level, of homebuyers, and second at a macro level of the entire real estate sector.

Buying a house has not been an easy process, even for those who can afford it. The recently-passed Real Estate (Regulation & Development) Bill, 2016, in the Rajya Sabha and the Lok Sabha, is set to ease the home-buying process. The Bill has undergone several amendments and will be effective in bringing transparency and accountability in the real estate sector, thus increasing consumer confidence and benefiting the sector as a whole. Nevertheless, the Bill as it stands now, appears that it will receive the Presidential assent and become an Act.

The Real Estate Bill sets a firm foothold in the real estate sector and would be a foundation for this sector for many years to come. With the changing skylines in many cities, it takes within its ambit many factors, including development as well as redevelopment and therefore, paves the way for a smooth road ahead. The real estate Bill will impact the sector, positively, at two levels—first at the micro level, of homebuyers, and second at a macro level of the entire real estate sector.

## MICRO LEVEL IMPACT

Homebuyers have till date got a raw deal, especially with regards to their dealings in the real estate sector. The Bill, when it becomes an Act, will embolden them; make them more confident, which in the long run will help the sector grow.

The Bill is an attempt by the government to give a set of laws to the stakeholders of the sector, so that the sector as a whole is well managed.

### More transparency

The Bill makes it mandatory for promoters to register all projects with the State Real Estate Regulatory Authority (RERA), along with extensive information about them, the project implementation schedule, layout plan, land status, government approvals, sub-contractors, etc., which will be made available to consumers. All commercial and residential projects with a plot area of more than 500 sq. mts or eight apartments inclusive of all phases will have to be registered with RERA. The states will have the right to lower this ceiling. This will bring more projects into the ambit of the Bill. Projects which have not received a completion certificate and are ongoing will also be required to be registered with the Authority within a period

of three months of the commencement of the Act. Today consumers have access to some of the information. However, this information is available only for listed companies in the realty sector. Homebuyers do not have access to similar kind of information in case of unlisted companies. Making it mandatory to provide this comprehensive information available in respect of upcoming as well as ongoing projects to all will help homebuyers take an informed decision, irrespective of whether they buy from a listed company or from an unlisted company. It will also ensure that projects get completed on time and consumers get what they have been promised. But there are other enabling factors that will go a long way in projects being completed on time.

### Timely completion and delivery

Project delays are one of the major issues currently plaguing the real estate sector. In the residential property sector, a delay of three to four years is the accepted norm; in certain cases, projects get delayed by more than seven to eight years. Over-leveraging by developers is a primary reason for such delays – they typically divert funds from one project to another, which results in a shortage of funds to complete the ongoing project. The Bill mandates that developers will now have to deposit 70% of the collections from homebuyers in a dedicated account to be used only for that particular project. It has been clarified that if the land cost has already been incurred by the Promoter, he can withdraw the amount to that extent.

Another factor that will help in the timely completion of projects is that land will be free from encumbrances. It has been observed that after the initiation of construction, claims are made in respect to the land. This often results in litigation and deters the homebuyer from approaching the promoter for the purchase of a flat. Concerns are also raised in respect of monetary claims made in respect of disputes over the land on which the project is constructed. For this purpose, the Bill provides for insurance of the land title which will ensure that claims made on the land can be satisfied by the insurance

companies. The developer will not be burdened to make payments in respect thereof. So far, insurance companies have not launched such schemes but it is prevalent in some European countries. The same shall ensure marketability of the apartment to be purchased by the homebuyer.

These provisions, coupled with the mandate that developers need to furnish all information regarding the project, will go a long way in ensuring that projects get completed on time. There is another compelling reason for developers to complete the project on time—imposition of similar penal interest for developers and homebuyers.

### Level playing field

At present, rights of both developer and homebuyer emanate from the agreement for sale. However, these agreements are heavily loaded in favour of the developer. For example, interest on late payments, for consumers is as high as 18%, but the compensation paid to them, by developers, in case of a project delay, is abysmally low and varies across contracts.

The Bill states that henceforward, both developers and consumers will have to pay the same rate of interest for delays on their respective parts. Developers will now have to deliver on time, adhering to the level of quality stated in the information provided to the regulatory authority during registration. A provision in the Bill

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ensures that developers meet the latter commitment.

### Better quality buildings

To counter issues related to building defects and promote good practices in the sector, some developers provide a warranty for structural damages for periods of one to three years. Extending this period, the Bill states that the liability of the developers for structural defects will now be five years from the date of handing over possession.

### Majority to hold sway

Developers cannot make alterations or additions in the sanctioned plans/layout plans and specifications of the building or the common areas without the consent of two-thirds of the buyers. Such provisions in the Bill will ensure



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The most ideal situation would be to have a single regulator for one state. There could, however, be instances where a single state may have two regulators and two states could share one regulator. The Bill further provides that till the establishment of the Regulatory Authority, an officer of the department dealing with Housing shall be appointed as the Regulator.

that homebuyers are getting the exact apartment for which they have paid and have a say in the revision of the layout. However, this provision of obtaining 2/3 consent of buyers may cause a delay. Buyers may raise unnecessary objections and it may result in legal proceedings. This may be a problem in cases where it is not affecting the premises/flats already sold and/or the open areas/common areas, as also in cases where the total layout allows construction of more buildings in compliance of the building rules or building bye-laws or Development Control Regulations. Similarly, it also restricts the Promoter from transferring and assigning his majority rights and liabilities in respect of a real estate project to a

third party, unless prior written consent of two-third allottees and the written approval of the Real Estate Regulatory Authority is obtained. This may not be favourable in situations where there could be a genuine need to transfer and non-availability of two-third consent could result in a chaotic situation.

### Speedy justice

Homebuyers facing problems with developers currently have to resort to the existing judicial mechanism—consumer courts or civil courts—if meetings with the developer fail. Obtaining justice through this route is a lengthy and

tedious process. The Bill bars the jurisdiction of civil court and empowers appellate tribunals and regulatory authorities to resolve complaints faster, with clearly-specified timelines. Erring parties face a prison sentence of a year (for real estate agents and homebuyers) or three years (for developers).

### THE BIG PICTURE

The provisions in the Bill, without doubt, will make the process of home-buying much easier for homebuyers. However, on a larger scale, provisions in the Bill will have repercussions on the entire real estate sector.

### Panacea for all ills

The passage of the Bill in both the Houses, was eagerly awaited by most stakeholders of the real estate sector. For long the Bill had been touted as the magic wand that would eradicate the sector, of all its ills, once it becomes an Act. Now that the Bill has moved a step closer towards becoming an Act, will it really be a cure for all that is ailing the real estate sector?

Despite the enthusiasm surrounding the passage of the Bill, and the notion that it will be a magic wand for the sector, the reality is that the Bill may not be

able to accomplish any of this, at least in one go. The Bill is an attempt by the government to give a set of laws to the stakeholders of the sector, so that the sector as a whole is well managed. The sector is at one level, especially at the developers end, over-regulated, and the other level, in case of homebuyers, is largely unregulated. The painful points, in implementing the provisions of this Bill when it becomes an Act, will certainly be there, but in the long run the sector will grow. Over-regulation in any industry is a bad thing but regulation in a manner that is beneficial to all stakeholders, will lead to further growth of the sector. The growth of

the telecom sector, mobile telephony to be precise, is a good example to show how a sector can grow when proper rules are put in place. We are confident that the Bill, after it becomes an Act, will gradually cleanse the sector and help it grow. However, for the sector to grow there needs to be ample doses of confidence, among the respective stakeholders.

The Bill is peppered with provisions that will give the much needed confidence to the two most important stakeholders—homebuyers and developers—to move into the market.

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doubts, in the minds of consumers, such measures will give them the much needed confidence. On the face, the Bill may seem to give a raw deal to developers but that is not the case. If you read between the lines there is much more in store for developers as well. The developers have not been launching projects, as they used to in earlier days, because there is an inventory piling up and there are not too many takers for newly launched projects. Once the consumers, most importantly end users, comeback to the market, the developers too will be confident enough to come up with new projects. Of course there will be legalities that developers will need to fulfil before they launch a project. So the Bill will be beneficial, for the homebuyers as well as the developers, and act as a major confidence booster for the two most important stakeholders of the sector. But is the real estate market perfect?

### Confidence booster

One of the primary reasons why consumers have stayed away from the real estate sector (read residential property market), in the recent past, is that they are not confident of the product that they have to buy. To give an example, they do not have complete information about the product, timely delivery of the project is a big question mark and most importantly, the consumer has no clue about the area that he/she will finally get at the time of booking the house. The Bill has unequivocally dealt with all these issues. Apart from removing

### A perfect market

The real estate market is largely non-transparent. Most stakeholders in the sector operate in their own silos. This is true especially among developers. Due to the non-transparent nature of the sector, the flow of information is not seamless. Thus the consumer instead of making an informed decision at most times makes a choice by force. The absence of a regulator is to a great extent responsible for this plight. With a regulator in place, the real estate sector will be a



much more efficient sector, prices will be much more rationalised and most importantly, the regulator will ensure that malpractices are weeded out well in time. First and foremost, with good practices in place, information asymmetry between developers and consumers will go away. All these will lead to increased transparency within the sector, for the developers and consumers. For consumers, increased transparency will mean that they will have access to quality information, which was henceforth unavailable to them, and this will help them make an informed decision. For developers, it will mean that they

will have access to funds, institutional money, that too at a competitive cost. Higher transparency levels will lead to increased FDI inflows into the sector. The day is not far when the real estate sector will have a regulator. There are enough precedents, in India, which suggest that a regulator has proved to be beneficial for the particular sector. The telecom regulator, for example, has been largely responsible for the growth of mobile telephony and rationalisation in call rates. Similar effects can be expected, once there is a regulator, in place, for the real estate sector.

### Regulator at the state level

After the Bill becomes an Act how long will it take to have a regulator? States and union territories will need to establish a Real Estate Regulatory Authority within a period of one year from the date this Act comes into force.

The Bill in its current form however, leaves it to the states/union territories on the number of regulators that they can have. The most ideal situation would be to have a single regulator for one state. There could, however, be instances where a single state may have two regulators and two states could

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share one regulator. The Bill further provides that till the establishment of the Regulatory Authority, an officer of the department dealing with Housing shall be appointed as the Regulator.

By making a provision for appointment of Regulatory Authority and an Appellate Tribunal, the Bill has not only made the provisions but also provided an arm for regulating the estate projects and for implementing its provisions.

The two pillars through which the Bill seeks to bring about efficiencies in the sector is the Regulator and the single window clearance. The Regulator will be in place, a year after the Act comes into force, but if systems are not in place for single window clearance, from the local body to the central level, this will further create operational challenges for developers.

## TEETHING PROBLEMS

After this Act comes into force, the sector will become a more transparent and efficient one in the long term. However, we foresee certain challenges that this industry may face in the short term mainly from the supply side. The Bill lays down a plethora of guidelines that need to be met with by developers to launch a project. Compliance to these guidelines will bring about sweeping changes in the manner developers launch projects and will eventually force them to change their business model. Besides other major compliance guidelines, they will have little elbow room to utilise money collected from homebuyers. Combination of these factors may put brakes on the number of new launches, in the short term.

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## PERTINENT POINTS RELATING TO DEFINITIONS IN THE BILL



Allottee in relation to a real estate project includes a person to whom a plot, apartment or building, as the case may be, has been allotted, sold (*whether as freehold or leasehold*) or otherwise transferred by the promoter but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. Normally, a person to whom the plot, apartment, building is given on leasehold basis would be paying rent and therefore a clarity is required to that effect.



The Bill clearly defines the components that make up the carpet area of a house and has specified that the carpet area will now be the base for all house-related calculations, including price. It includes area covered by internal partition walls of the apartment. It's a welcome move as it shall standardise the definition of carpet area for sale of apartment. However, so far as existing definition of carpet area as per Development Control Regulations 1991 applicable in Maharashtra is concerned internal partition walls are not included. Thus, the area that will be available for actual use to the home buyers will be lesser than what is prevalent today under the definition of carpet area.



It's a norm that generally the developers retain a certain portion of the project that is either in the land or in the building for its personal use or further exploitation. In the Bill, the common areas include the entire land for the real estate project or where the project is developed in phases, the entire land for that phase. This brings clarity to the concept of common area and thus the developers will not be able to arbitrarily retain any portion of the land in respect of a project, which in turn will reduce unnecessary disputes that arise subsequently after completion/pendency of a project. Further, by including terraces, open parking areas, etc. as being part of common areas, the malpractices of selling open parking areas, terraces, etc. will be discontinued. Though, common areas specifically do not include 'refuge areas' it does mention all other portion of the project necessary or convenient for its maintenance, safety, etc. and in common use.

Further, common basement and storage spaces are also covered under the definition of common areas. Therefore, in the event car parking/ storage spaces are provided in the common basement, it will also form part of common areas.



There are several brokerage firms established in India who work for aiding the homebuyer. But there are several brokers who through unscrupulous means have led the homebuyers in investing in real estate, which may have caused losses on account of various reasons. The Brokering business has been promoted in today's times through all mediums including online portals. The real estate agents till now were not governed by provisions of any act. They will now be required to register themselves and are required to conduct their activities in compliance with the provisions of the Bill. Penal provisions are also provided, which in turn give additional security to the homebuyer on account of default by the agent. The qualifications of a broker also ought to be registered along with other details of the real estate agent; however, the Bill is silent on this aspect.



In many parts of Northern India the owner executes a power of attorney in favour of the developer. The concept of Promoter is wide enough to include not only the owner and or the landlord but also the power of attorney holder from the landowner. Thus, a power of attorney holder will also be liable to comply with all the provisions of the Bill together with landowner as Promoter and will not be able to take advantage of immunity provided under the general law. This shall create transparency and accountability of promoters who under the guise of power of attorney seek to evade obligations under the law.



The definition of the 'Company' includes only the companies incorporated and registered under the Companies Act 2013. It totally disregards that the present developers are incorporated and registered under the erstwhile prevalent Companies Act, 1956 and projects taken thereunder. Therefore, it requires clarity whether these developers would need to comply with the provisions of the 2013 Act.



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## CONCLUSION

Though it appears that developers have got a raw deal, the Bill will ensure that only serious players remain in the real estate sector. This will lead to greater transparency, which, in the long run, will allow the sector to access institutional funds, at a competitive cost. The provisions in the Bill may also give the impression that urban development bodies will not have a major role if the Bill becomes an Act. This is not true. Even when the Bill becomes an Act, in its current form, urban development bodies will have a role to play. They will have to undertake the same role that they are currently playing. Urban local bodies will have to deal with issues pertaining to land usage. Regulatory authorities, on the other hand, will largely deal with various issues related to buyers and sellers. Now that the Bill has been passed by both the Houses of Parliament it is just a step away from becoming an Act after it receives the Presidential assent.

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## Update

The Bill received the assent of the President on 25th March, 2016 and has become an Act- "The Real Estate (Regulation and Development) Act, 2016". The Act is published in the Gazette of India on 26 March 2016. Section 2, Section 20 to 39, Section 41 to 58, Section 71 to 78 and Section 81 to 92 of the Act have come into force w.e.f 1 May 2016.

## A 2016 publication

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