

**S. S. Hussain** I.A.S. (Ex)  
Chief Executive Officer

Ref No: MCHI/CEO/14-15/098

October 09, 2014

Dear

First of all I, would like to congratulate and appreciate you for your intensive efforts taken by the entire team of Housing department along with Chief Minister's Secretariat to finalise the "Maharashtra Housing (Regulation & Development) Act, 2012" by obtaining the assent of Hon'ble President of India.

Accordingly Govt of Maharashtra issued the Draft Notifications on 10<sup>th</sup> September 2014 for Deemed Conveyance, Appellate Authority & General Conditions to finalise the Rules & Regulations for the said Act, and simultaneously requested for suggestions and views upon the same up to 10<sup>th</sup> October 2014.


Hence, with reference to the above matter, we would like to submit our suggestions with respect to your draft notifications. We in MCHI-CREDAI, also personally request you that the government department may please give us some time to meet and to present our views & concerns as a group as the only recognized body of Real Estate developers in Mumbai Region. We are also enclosing our views & concerns along with annexure with this letter.

Yours



**S. S. Hussain**

To,  
**Shri Debashish Chakrabarty (I.A.S.)**  
Principal Secretary  
Housing Department  
Govt of Maharashtra,  
Mantralaya, Mumbai 400032

  
P. A. to Principal Secretary to the  
Government of Maharashtra  
Housing Department  
Mantralaya, Mumbai 400032

**The Maharashtra Housing (Regulation and development) (Appellate Tribunal) Rules 2014.**

Please permit us, Sir, to introduce our organisation to you. MCHI-CREDAI is an apex body consisting of members from Real Estate Industry among Mumbai Metropolitan Region (MMR). This organisation formed in 1982, and it's the most prominent and the only recognized body of Real Estate Developers in Mumbai and MMR. We bring together members dealing in Real Estate Development on one common platform to address various issues facing the Industry. With a strong Membership of over 1800 leading Developers in Mumbai and the MCHI-CREDAI has expanded across MMR, having its own units in the region of Thane, Kalyan Dombivli, Mira Virar City, Raigad and Navi Mumbai.

MCHI-CREDAI is recognized by Government of Maharashtra and the Central Government and helps in meeting their objectives of providing housing, which is a basic necessity. We also work towards raising awareness among the General Public, Real Estate and Construction Industry while providing them with detailed information on new developments in and around Mumbai and MMR. We are also a Member of Confederation of Real Estate Developers' Associations of India (CREDAI) the apex body for Private Real Estate Developers in India and is also affiliated with leading Industry Associations like CII, FICCI, IMC and others.

At the outset, we submit that perusal of the Proposed Draft Rules is a penalizing legislation on the Promoter rather than an attempt to balance out the shortcomings if any in the sector. We submit that the Proposed Rules has sought to only regulate the Promoter with no focus on other entities of the chain like statutory authorities, contractors, architects who all contribute to a real estate project. Without monitoring mechanism for these entities, merely regulating the Promoter in isolation will meet no purpose. Many of the provisions in the Proposed Rules are harsh towards Promoter and are invasive of the fundamental rights for carrying on business. Needless to state that such provisions will not only defeat the regulatory intent but will curb the growth of the real estate sector.

The real estate sector is reeling under the stress of faltering economy and actually needs a helping hand to stabilize. In the midst of such a scenario by enforcing arbitrary harsh conditions the Government may destroy the sector rather than boost it. Merely enforcing stringent measures on the Promoter with a hope that the same will regulate the industry is only a wishful thinking. The Proposed Rules seems to suggest that the final adjudication of the default and imposition of penalties will lie with the Authority/Tribunal and not with the judiciary. It is necessary that such powers are exercised by judicial authorities and not by members appointed by Government if the regulatory intent has to meet its purpose. Misuse, prejudice, bias and corruption could otherwise prevail. Without prejudice the following suggestions are made.

<b>Sr. No.</b>	<b>Page No.</b>	<b>Rule No.</b>	<b>Issue</b>	<b>Suggestion/Remarks</b>
1.	1	1	Short Title - These Rules may be called .....	The Word "Rule" be replaced with the Word " <b>Regulation</b> "
2.	3	5 (3) (g)	Fees of Rs.5000/- shall be paid through NEFT or RTGS ... at the office of the Housing Appellate Tribunal	There is no provision for making payment of fees by NEFT or RTGS at the time of filing online application. However, there is no provision under Rule 5 (1) for filing application online.

**The Maharashtra Housing (Regulation and development) (Deemed Conveyance) Rules 2014.**

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Sr. No.	Page No.	Rule No.	Issue	Suggestion/Remarks
1.	2	<b>R 1</b>	Short Title – These rules may be called the Maharashtra Housing (Regulation & Development) (Deemed Conveyance) (Rules 2014)	It should be Maharashtra Housing (Regulation & Development) the Competent Authority & (Deemed Conveyance Rule 2014) or Rule 2 1(g) be replaced.
2.	2	<b>R 2 (1)(g)</b>	The term (Conduct of Business)	The meaning of the Conduct of Business is not specified in the Act as well as in the said rules.
3.	2	<b>R 2 (2)</b>	“Words and expressions used in these rules ... <b>and whereas applicable, the singular includes plural and vice-versa</b> ”	The words <b>and wherever applicable, the singular includes plural and vice-versa</b> is not necessary, hence be deleted.
4.	2	<b>R 3 (4)</b>	“The Competent Authority ... <b>the State as it may deem fit</b> ”	The word <b>the State as it may deem fit</b> be replaced by the words <b>the area of his jurisdiction.</b>
5.	4	<b>R 7 (2)</b>	Every Competent Authority shall carry out such directions or instructions as may be issued from time to time, by the State Government for the efficient administration of the Act.	It is pertinent to note that there is no power given to the State Government to issue such directions or instructions under the Act. Hence, the said rule is in contradiction with the Act, hence sub-rule 2 of Rule 7 is required to be deleted.
6.	4 & 5	<b>R 9 (2) (a) (i), (iii), (iv)</b>	<b>Deemed Conveyance of a building in a layout</b>	- For deemed Conveyance of a building in a layout, it is not correct to make an application for exclusive right to the buildings and appropriate portion of land appurtenant thereto, together with undivided right, title and interest in the layout plot, common

				<p>areas and facilities to the respective entities, complete description of proportionate rights, title and interest in each of the entities for buildings constructed in the layout plot under a scheme or project of development in a layout</p> <ul style="list-style-type: none"> <li>- This is in contradiction of Section 19 (2), which provides that in case of Conveyance of a building in a layout, where layout plot is not sub-divided or sub-division is not possible, then till the entire development of the layout is completed, such Conveyance shall be only in respect of the structures of the buildings along with the FSI consumed in such building.</li> </ul>
7.	5	<b>R 9 (2) (v)</b>	<b>Parties to the Application for Deemed Conveyance</b>	<ul style="list-style-type: none"> <li>- Application for Deemed Conveyance should be permitted to be filed only by the concerned organization in respect of respective building/wing</li> <li>- All other entities or persons having a building or structure on such layout plot or other interested persons should not be made party to the application for Deemed Conveyance made by any one entity. And if they are not made parties, then Competent Authority should not be entitled to direct the applicant to make them parties.</li> </ul>

8.	6 & 7	<b>R 10 (3) (b) &amp; Proviso</b>	<b>Appearance of Parties and Consequences of Non-appearance</b>	Rule 3 (b) & the proviso is contradictory, hence it is meaningless. The competent Authority be provided with the powers to set aside ex-parte order.
9.	8	<b>R 12 (1)</b>	<b>Procedure for hearing the Application the Opponent, the Applicant shall prove contents ..... No cross-examination of any of the parties shall be permitted.</b>	In the said rule liberty has been given to lead evidence then why to debar the opponent from cross-examining the applicant for proving his case. The rule is contradictory with the principal of Natural justice and fair trial.
10.	8 & 9	<b>R 13 (2) R 13 (3)</b>	<b>Form No. VI Form No. VII</b>	It is unheard of that rules provide for Model judgment order. Hence the Form No. VI & VII required to be deleted.
11.	10	<b>Form I Paras 5 &amp; 8</b>	<b>Form No. 1 Form of Application for Deemed Conveyance</b>	The mention of corresponding provisions of MOFA should be made as, it is possible that the respective Agreement for Sale may have been executed and/or the notices may have been given under provisions of that Act and not necessarily it would have been made / given only under this Act.



**Inputs regarding the Objections or Suggestions regarding the Maharashtra Housing (Regulation and development) (General) Rules 2014.**

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Sr. No	Page No.	Rule No.	Issue	Suggestion/Remarks
1.			<u>DEFINITION</u>	
	2	R 2 (1)(b)	<p><b><u>Agent</u></b>  <i>"Agent" should be a capitalized term as it is a definition.</i></p>	<p>Agent means any person ... who receives remuneration or fees or other charges for his services whether as commission or otherwise.</p> <p>-The term 'Agent' should not mean any person, but it should mean an authorized person, the term any person may be removed.</p> <p>-The term 'otherwise' is very vague and wide open for interpretation. This should be removed.</p> <p>As it is a definition of the term 'agent' the same should be a capitalized term in the definition and in subsequent references to the definition in the body of the Maharashtra Housing (Regulation and Development) (General) Rules, 2014 (the "<b>Rules</b>")</p> <p>The latter section of the draft rules provide guidelines to monitor the agent. This is unnecessary because by making it stringent, it will discourage many agents</p>

				<p>from doing real estate works, thereby leading to slow down in the pace of sale in the projects. Practically many of real estate agents operate at individual levels and are not an organised sector. Region specific, promoter specific, asset class specific agents operate in this realm. If so much of administrative burden is imposed on them, it will be obvious that agents will charge higher fee. Ultimately the purchasers will suffer.</p>
	2	R 2 (d)	<p><b>“Apartment Taker”</b> This definition is not required and should be deleted.</p>	<p>The scope of the definition of Flat Purchaser in Rule 2(j) is wide enough to include the term “Apartment-taker”</p> <p>The Maharashtra Apartment Ownership Act, 1970, the Maharashtra Ownership Flats Act, 1963 as well as the Main Act i.e. the Maharashtra Housing (Regulation and Development) Act, 2012 (the, “Act”) define the term “Apartment Owner” and there is no separate definition of Apartment-taker.</p> <p><b>&lt;&lt;&lt;Note: The subsequent use of apartment taker in Rule 11, 13 and 14(1) will have to be amended to refer to</b></p>

				the definition, that is, 'Apartment-taker'. It should also be noted that the definitions of Apartment-taker and Flat Purchaser are the same and therefore only one term should be referred to in the Rules.
	2	R 2 (e)	<b><u>Association</u></b> The definition should be titled "Association of Apartment Owners" as defined under Maharashtra Apartment Ownership Act, 1970.	<<<Note: The subsequent use of association in Rule 13, 14(1) and 14(2) will have to be amended to refer to the definition, that is, 'Association'.
	2	R 2 (f)	<b><u>Authorized Representative</u></b> "office bearer or bearers of the legal entities" the language "duly authorized by a resolution (where applicable) and a letter of the authority" should be amended to state, "duly authorized by a resolution (where applicable) and/or a letter of the authority"	Why is there reference to 'legal entities'? An association of Apartment Owner's isn't always a separate legal entity in law. The provision should state that either a letter of authority or a resolution is sufficient, both are not required.
	2	R 2 (g)	<b><u>Condominium</u></b> This definition should be deleted	As "Association" has been defined in the rules as meaning "the organization of holders of apartments in a property which has been submitted to the provisions of the Maharashtra Apartment Ownership Act, 1970", the definition of

				Condominium is redundant and therefore should be deleted.
2	R 2 (h)	<u><b>Declaration</b></u> “and includes the instrument by which the property is submitted to the provisions of the Maharashtra Apartment Ownership Act”.	It should be noted that there is only one declaration to be submitted under the said Act. Therefore, kindly clarify what other declarations are contemplated in this definition or the words “and includes the instrument” should be deleted. <b>&lt;&lt;&lt;Note: The use of the word declaration in Rule 11 will have to be amended to refer to the definition, that is, ‘Declaration’.</b>	
2	R 2 (i)	<u><b>Disclosures</b></u> “disclosures” should be a capitalized term as it is a definition	As it is a definition of the term ‘disclosures’ the same should be a capitalized term in the definition and in subsequent references to the definition in the body of the Maharashtra Housing (Regulation and Development)(General) Rules, 2014 (the, “Rules”) <b>&lt;&lt;&lt;Note: The subsequent use of the term ‘disclosures’ in Rules 3(1), 3(2), 5(4)(a) and 7(1) will have to be amended to refer to the definition, that is, ‘Disclosure’.</b>	

	2	R 2 (j)	<b><u>Flat Purchaser</u></b> the language “trust, partnership, entity” should be incorporated after the language “means a person, Company”.	
	3	R 2 (l)	<b><u>F.S.I. or Floor Space Index</u></b>	The Term FSI shall carry the same meaning as assigned to it in Development Control Regulations.
	3	R 2 (m)	<b><u>Legal Entity</u></b> “a Company <u>registered</u> under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013), an <u>Association</u> or <u>Condominium</u> formed by submitting...” “an Association or Condominium” to be amended to state “an Association, Condominium or <u>Organizations</u> ”	As there is no registration of companies but an incorporation of the same the language has to be amended accordingly. There may be certain organizations that are not included within the purview of an Association or Condominium. <b>&lt;&lt;&lt;Note: The subsequent use of legal entity in Rule 10(e)(i), 10(e)(ii) and 11 will have to be amended to refer to the definition, that is, 'Legal Entity'.</b>
	3	R 2 (q)	<b><u>“T.D.R. or Transfer of Development Rights”</u></b>	This Definition should include the FSI or right to construct or... development potential arising from or in respect of one plot of land which is allowed to be used on or transferred to another piece of land

2.	3 & 4	R 3 (1)	<p><b><u>MANNER OF MAKING DISCLOSURE BY PROMOTERS</u></b></p> <p>The provision refers to the Promoter permitting inspection of the documents, plans and specifications by an intending purchaser at the Promoters registered office.</p> <p>The language “if available and in possession of the Promoter” to be incorporated before the language “of such document if so demanded, in writing by the person intending to purchase one or more flats” in the last line of the said provision.</p>	<p>This could be an unending process and the Promoter may have to set up a separate department to deal with the volume of request.</p> <p>The documents requested by the intending purchaser should be available with, and in the possession of, the Promoter.</p> <p>It is submitted that there is no relevance requiring Promoter to give detail and self certified information such as ongoing and completed project details, details of bookings and other information if demanded by the purchaser. The draft rules seem to overlook that a flat purchaser has his own ways of establishing a trVack record and identifies a flat only after independent research. Such provisions have no value addition to the purchaser. The need to maintain a register in the prescribed form will also add to administrative burden without helping any cause.</p>
	4	R 3 (3)	<p><b>Details regarding other on-going and completed projects is required to be given</b></p>	<p>Disclosure regarding Promoter's other on-going and completed projects (other than the</p>

				<p>project under registration) is neither required nor is it in concurrence with the Act. This is also not relevant from the point of view of protecting the right of the purchaser under the Act. This Rule therefore, should be deleted</p>
<b>3.</b>	<b>4</b>	R 4	<p><b><u>True copies of documents to be given by the Promoter</u></b></p> <p>“The Promoter shall, on demand and after payment of fees at the rate as applicable under the Right to Information Act, 2005 (22 of 2005) for furnishing a copy of a document...”</p>	<p>Will the Right to Information Act, 2005 apply? Why is reference to the same required?</p> <p>There is no relevance of relating these Rules to the Right to Information Act, 2005 as this Act is not applicable to private persons like Promoter. There is no such mention in the Act also</p> <p>Documents listed at Sub-Rule (b) - Title Certificate, (d) - Plans and (e) - List of fixtures and fittings and amenities are anyway required to be attached to the Agreement for Sale. This Rule is not necessary and should be deleted</p> <p>Promoter may be required to provide copies of documents which are in his possession and if he is not in possession of such documents e.g. mortgage deed, it should not be treated as his non-compliance or violation.</p>



	4	R 4 (c)	the language “in possession of the Promoter” should be incorporated after the words “all documents”	The documents must be in possession of the Promoter and the same should be specified in these Rules.
	4	R 4 (d)		This provision should be amended with appropriate language to reflect (i) not all buildings, but only those in which phase construction is to commence or has commenced, and (ii) an intending purchaser should be entitled to ask for only plans and specifications of the phase in respect of which the flat to be purchased is located and not the layout, which may be part of the phase/project under past/future development.
4.	5	R 5 (2)	<b>Registration of on-going projects</b>	This should be applicable only to such part / phase of the project which is not complete or in respect of the buildings for which OC is not issued. The buildings which form part of the same project/phase, if complete or in respect of which OC is already issued, should not be required to be registered merely because they would be part of the same project

				<p>There should be exemption in registration of the project (or incomplete part / phase of the project) where the buildings are near-completion or in respect of which application for issue of OC has been submitted or is likely to be submitted within a period of 90 days from the date of commencement of the Act</p> <p>There is no clarity if during the period of 90 days or thereafter, till the project or its part/phase will be registered, if the Promoter shall be entitled to continue to advertise, market or sell the unsold flats in such project</p> <p>There is no clarity regarding 'Retained Flats' in the ongoing project.</p>
	5	R 5 (3)	<p><b>Agreement for Sale to be submitted along with the application for registration of the project</b></p>	<p>The S. 4 (2) of the Act stipulates the documents to be submitted along with the application for registration of the project. R. 5 substantially enhances the scope of the Act, which is not in concurrence with the Act</p> <p>In view of the above, the Rule 5 (3) should be wholly deleted.</p> <p>Without prejudice to the above, the followings suggestions are made:</p>

	5	<b>R 5 (3)(a)(ii)</b>	the language “or rights to develop” should be incorporated after the words “the nature of the Promoters’ title”	The Promoter may have acquired only the development rights in the land.
	5	<b>R 5(3)(a)(iv)</b>	the language “known to the Promoter and as disclosed in the title certificate” to be added after the words “including the right, title, interest or claim”	The Promoter can only disclose any encumbrances on the land if it is known to the Promoter and is disclosed in the title certificate issued in respect of the land.
	5	<b>R 5(3)(a)(v)</b>	The language “description of” should be incorporated after the words “approximate carpet area of each flat and the” “the approximate carpet area of each flat and the facilities”	Why does the carpet area of the facilities have to be made available to the Flat Purchasers?
	5	<b>R 5(3)(a)(vi)</b>	“or where the plan is not sanctioned at the time of making the application including an undertaking by the applicant to the effect that the approved plan will be submitted by him as soon as and within 72 hours of it being sanctioned”	This provision conflicts with provision 5(3)(a)(vii), which states that the Promoter shall attach “detailed technical specifications of the construction of building as <u>approved</u> by any competent authority”
	5	<b>R 5(3)(a)(vii)</b>	The language “as submitted for approval” to be incorporated in place of ‘approved’ in the language “detailed technical specifications	\The language amendment is required as the same conflicts with provision 5(3)(a)(vi) Technical specifications are not approved by the Competent Authority

			of the construction of building as <u>approved</u> by any competent authority”	
		<b>R 5 (3) (a) (viii)</b>		Promoter should not be required to disclose the estimate of expenditure of the construction of the building and source from which such expenditure is sought to be financed. The sub-Rule is totally irrelevant and should be removed.
		<b>R 5 (3) (a) (ix)</b>		<p>Promoter should not be required to disclose the details of financial Agreement made with any Bank or other financial institution recognised by RBI and of the legal safeguards taken for construction of the building, or transfer by way of sale...</p> <p>There is no <i>legal</i> safeguards taken for transfer by way of sale, gift or mortgage or otherwise. The sub-Rule is totally irrelevant and should be removed.</p>
		<b>R 5 (3) (a) (xi)</b>		<p>it is not possible to submit the copies of the Agreements entered into or proposed to be entered into with the Flat Purchaser as required under R. 5 (3) (xi)</p> <p>At the time of making application of registration, these</p>

				<p>Agreements will not be in place. Hence, at the least, this sub-rule 5 (3) (xi) should be deleted</p>
	6	<b>R5(3)(a)(xiii) first proviso</b>	<p>“Provided that, if there is any change of contractor proposed to be engaged or actually engaged”</p>	<p>This Rule deals with the procedure pertaining to a change of contractor, however there are no provisions which deal with a change of architect, etc.</p> <p>This section requires submission of an application for registration accompanied with proof of title to land, approvals of the layout/building plans, carpet area and number of flats. Grant of registration amounts to a licence involving detailed investigation for which there is no justification in the Proposed Bill. The Authority will not undertake scrutiny of authenticity of the documents. So registration of a project is reduced to an administrative burden for the Promoter. Objections can always be raised even on flimsy grounds to overcome the prescribed period for granting registration. The Promoter will have tremendous dependency on outside agency and at the same time will have</p>

				<p>no control over them. This is not a facilitating provision at all. We submit that if at all then it should be the Promoter (and not the project) which should be registered as a member for longer tenure and not the project.</p> <p>The Authority has also been vested with the discretion to reject registration of the project. In case of rejection, all the investments of the Promoter in acquiring land and obtaining approvals, go futile and the Promoter will be put to hardship and immense losses. This further supports the contention that requirement of registration be dispensed with.</p>
	6	<b>R5(3)(b) proviso</b>	<p>The language “or rights to develop” should be incorporated after the words “where the Promoter has no title”</p> <p>The language “that is” should be incorporated after the words “Promoter has no title to the land”</p>	<p>The developer may not have title to the land but may have acquired development rights therein.</p>
	6	<b>R 5(4)(b)</b>	<p>“the Project is in consonance with the provisions of the Act or rules made thereunder</p>	<p>The provision is redundant as the same is dealt with in Rule 4(a) which states, “the project</p>

			and the regulations made by the Housing Regulatory Authority”	meets the criteria as laid down by the Act or rules made thereunder, the norms of disclosure and criteria as laid down by the Housing Regulatory Authority, by regulations”. Further, the Project cannot be in ‘consonance’ with the Act.
	6	R 5(4)(c)	“the Promoter has appropriate financial, technical, construction and management capacity to execute the proposed Project”.	This is a subjective consideration. What are the parameters? It should be specifically clarified.
	6 & 7	R 5 (5) (a) r/w R (5) (11)	Promoter’s right to commence selling of flats after registration of the Project	This sub-Rule should be extended so as to mean that on the Housing Regulatory Authority’s granting registration number to the project, and the Promoter’s entering the required project details as provided in this Sub-Rule, should be conclusive of the registration of the Project, and it shall be deemed to be registered under the Act and thereafter, the Promoter shall be entitled to freely advertise, market and sell the flats/shops in the Project.
	7	R 5 (6)	<b>Furnishing of guarantee, indemnity or such other security</b>	The Act does not provide for furnishing any guarantee or indemnity or security for



				<p>registration of the project. This condition is not in concurrence with the Act and should be removed/deleted</p> <p>Without prejudice to the above –</p> <p>The provision is highly arbitrary and subjective</p> <p>There are no parameters specified for furnishing of guarantee or indemnity or security</p> <p>If any parameters are to be specified, they should (i) be pre-determined, (ii) be in relation to the size of the project and (iii) not be without any basis or at the discretion of the Housing Regulatory Authority</p>
	7	R 5(8)	The language “to any reason provided in the said notice” should be amended to state “to <u>the reasons for refusal</u> provided in the said notice”	The Promoter should only be required to make representations to the Housing Regulatory Authority with respect to the reasons for refusal and not ‘any’ reason.
	7	R 5(12)	“subject to such terms and conditions as the Authority may impose”	What terms and conditions are contemplated? This provision is highly arbitrary.
<b>5.</b>	7	<b>R 6</b>	Cancellation of Registration of the Project and disqualification of the Promoter to advertise and sale of the flats	This section is arbitrary and harsh. Powers to cancel registration can be misused. The section also does not clarify whether the cancellation can be done only if the contract/title document is

				declared invalid by the court. Orders passed by lower courts are appealable so at what stage would the registration get cancelled is not clarified.
<b>6.</b>	<b>8</b>	<b>R 7</b>	<b>Registration of the Agents</b>	<p>There is no provision for registration of the Agents under the Act. Hence, Rules 7 and 8 should be deleted.</p> <p>Without prejudice to the above, there is no clarity regarding –</p> <p>If the Agent will have to separately register for all projects of one promoter or for various projects of different promoters to whom he may be providing service;</p> <p>If the Agent will be required to separately pay registration fees for his separate registrations as above;</p> <p>If the Agent sources any flat in the Promoter's registered Project without his own registration, will it amount to violation of Rules by the Promoter or in such an event, if the Promoter shall be liable for any consequences.</p> <p>Registration of agents is not an enabling provision. The fees and administrative expense that the agent may incur</p>

				<p>will be passed on to the purchasers. Eventually the cost of flat for the purchasers will increase. Hence such a provision will only derail the speed of sale of flats. The ability of HRA to accept/reject the application is arbitrary, irrelevant and allows a window for corruption to set in. No time period is given within which the HRA will grant registration to the agent. Payment of fees at each renewal will make it further difficult for the agents. Revocation or suspension of an agent can be deleted. The draft is presuming that the agent is an industry by itself whereas in reality most of the agents operate on promoter basis, region basis or project basis. It is therefore submitted that such restrictions on individual sale facilitators is discouraging.</p>
	8	R 7(2)(b)	<p>“reject the application for registration of the Agent for reasons to be recorded in writing”</p>	<p>There is no registration of an agent contemplated under the Act. Further, the Housing Regulatory Authority should record the reasons for refusal of the application for registration of the Agent.</p>

7.	9	R 8	<b>Functions of the Agent</b>	<p>A lot of administrative burden is imposed on agents. There are very few organised broking firms for residential sector. Agents are typically individuals and by imposing such guidelines the proposed Bill is discouraging agents to pitch in for revival of the industry.</p>
8.	9	R 9	<b>Accepting any advance payment before execution of Agreement for Sale</b>	<p>S. 9 (1) of the Act stipulates that before the Promoter accepts any sum of money as advance payment or deposit in excess of 20% of the sale price, he will enter into a written Agreement for Sale and this agreement shall be registered.</p> <p>The Act permits the promoter to accept the amount of flat cost upto 20% of the sale price of the flat.</p> <p>However, this Rule prohibits the Promoter from taking any advance payment of deposit before execution of the Agreement for Sale</p> <p>This Rule should be modified in line with S. 9 (1) of the Act.</p> <p>Presently under the MOFA Act, a threshold of 20% is provided. The current draft rules require</p>

				<p>the Promoter to sign an agreement before accepting any advance or deposit. This however contradicts clause 2(i) of Form VI of the draft rules which provides for 20% threshold. Hence it is submitted that the provisions of section and of model form VI are not in harmony. There is already a model agreement contemplated under MOFA Act. It is therefore not necessary to once again adopt another model format. The draft Form VI provides the delayed interest payable by the purchaser @9% p.a. The cost of borrowing for Promoters is upwards of 15% so if few purchasers delay in payment it can be a financial burden on the Promoters. On the other hand the Promoter is required to refund entire money to the purchasers in case of termination. There is no right to forfeiture of any money even if purchasers commit default in payment. There is hence no deterrent on the purchasers to perform their obligations. It is therefore once again submitted that the draft rules do not have a balanced intent. Incase of</p>
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				<p>delay in possession the interest payable by the Promoters remains to be decided by HRA. Discretion is given to the HRA to determine the interest. It is submitted that this is likely to cause high handedness and arbitrary use of authority.</p>
<b>9.</b>	<b>9</b>	<b>R 10</b>	<b>Prescribed percentage of Retained flats</b>	<p>The percentage of the flat/area to be retained as 'Retained Flats' in the new project is not prescribed in the Rules as stipulated in S. 5 (2), which should not exceed 10% of the total area. <u>OR</u> there should be clarity that the Housing Regulatory Authority shall prescribe the percentage of Retained Flats project-wise, at the time of registering each project</p> <p>The Promoter should be entitled to release the flats once marked as Retained Flats, before issue of OC, provided he retains other flats in lieu of such released flats, subject to retaining the total area/flats as prescribed; particularly in case of the Competent Authority sanctioning plans in parts and from time to time and not in entirety at one point of time</p>

	10		<p><b>“regarding Promoters and lists of all their approved Projects and their <u>grading</u> and lists of cancelled Projects and deregistered Promoters, if any”</b></p>	<p>This goes beyond the scope of the Act as the Act does not provide for grading the Promoter or his projects. Further it is not clear as to how the grading is to be determined?</p> <p>The objective of HRA should be to regulate any unfair practices in the industry. However it is submitted that the draft rules are traversing beyond the stated intent. The rules seem to dictate the manner in which the Promoters should do their business. This is violative of the fundamental right available to the Promoters under the Constitution of India. The displayed grading of projects, list of cancelled projects and list of de-registered Promoters does not by any means attempt to curtail the malpractices if any. The accountability of HRA towards the published information and the consequences thereof is not provided for. As regards completion of incomplete construction, the same is not an appropriate mechanism. No provision has been made to consider about</p>



				<p>the ability of the escrow agent to complete the construction, maintain quality standards etc. Interestingly, such escrow agent will not be subject to any of the provisions of the draft rules. Hence, if the escrow agent defaults or sells the remaining flats in the manner it likes thereby creating a distinction between the Promoters and the escrow agents.</p>
<b>10.</b>	<b>10</b>	<b>R 11</b>	<p><b>Registration of co-operative society or a company or any other legal entity</b></p>	<p>There is contradiction in the Act and Rules regarding the time permitted for submission of application for registration of the organization - within four months from the date of issue of OC or a minimum of sixty percent of the total flat purchasers have taken possession of the flats or the Promoter has received full consideration amounts from all the flat purchasers - the Act [S. 18 (1) and (2)] stipulates - within four months of the event occurring '<i>earlier</i>' whereas Rule 11 stipulates within four months of the event occurring '<i>later</i>'</p> <p>This contradiction should be removed</p>

		<b>R 11</b>	The language “Where the apartment takers propose to submit the apartments to the Maharashtra Apartment Ownership Act” should be amended to state “Where the Apartment Takers propose to submit the apartments <u>and Land underneath and appurtenant</u> to the Maharashtra Apartment Ownership Act”	Technically the land underneath and appurtenant to the apartments would also have to be submitted to the Act.
<b>11.</b>	<b>10 &amp; 11</b>	<b>R 12</b>	“Where a Promoter is required to form an Apex Body either as a federation of separate and independent Co-operative Housing Societies or Companies or any other Legal Entities or as a Holding Company of separate and independent Co-operative Housing Societies or companies or any other Legal Entities”	This Rule refers to legal entities however the same does not take into consideration a Condominium/ Association of Apartment Owners which is not a separate legal entity. Additionally “Holding Company” appears as a capitalized defined term in the said paragraph, however the same is not defined in the Rules or under the Act and hence it is also not clear as to what is meant by the term ‘Holding Company’.
<b>12.</b>	<b>11</b>	<b>R 13</b>	“if no period for conveying the title of the Promoter to the organization of the Flat Purchasers... the company is registered	Should be 4 months after obtaining the occupation certificate. What if Co-operative Society or Company is unilaterally formed by

			<p>or, as the case may be, the association of the flat takers is duly constituted”</p> <p>When a promoter has submitted his property to the provisions of the... executed by him under sub-section (4) of section 19 within a period of two months from the date of its execution”</p>	<p>the Flat Purchasers? The language conflicts with (i) above.</p>
<b>13.</b>	<b>11 &amp; 12</b>	<b>R 14</b>	<p>“When a Promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act... within four months from the date of the possession of the apartment has been handed over”</p>	<p>Should be 4 months after obtaining the occupation certificate.</p> <p>What if the Flat Purchasers unilaterally submit the property to the provisions of the Maharashtra Apartment Ownership Act, 1970? The language conflicts with (i) above.</p> <p>The provisions of these sections are already available and in existence under the MOFA Act. The objective of once again drafting the same provisions is not understood. It is submitted that the legislature should not waste productive time on drafts which are just cosmetically different than the existing one.</p>

14.	12	R 15 (2) (c)	Complaints received from the flat purchasers shall be maintained as database of the website	<p>The database maintained by the Housing Regulatory Authority should not consist of the complaints filed by flat purchasers. It is not clear as to what is meant by '<i>requiring on-site conciliation</i>'.</p> <p>Without prejudice to the above, it is not clear as to who will upload such complaints, the Housing Regulatory Authority or it will be the duty of the Promoter</p> <p>The database may, however, contain the Orders passed by the Housing Regulatory Authority and Housing Appellate Tribunal in the proceedings respectively disposed of by them. These Order may be uploaded by Housing Regulatory Authority.</p>
	12	R 15 (2) (d)	Grading of the Promoters	<p>There is no provision in the Act for <i>grading</i> the Promoter. Hence, there should be no provision in the Rule regarding <i>grading</i> the Promoter</p> <p>Without prejudice to the above, there are no set parameters for grading the Promoter, nor is there any process stipulated for the same, which the Housing Regulatory Authority would adopt</p> <p>This should, therefore, be removed</p>

	12	R 15 (3) (b)	“Free of charge to Mortgages, <u>Conveyancers</u> and Registered Housing Societies to assist them to meet their obligations in terms of section 19 of the Act”	Who is a Conveyancer? The term is not defined in the Rules or under the Act.
15.	18	R 22	The language “... not inconsistent with the provisions of the Act, and the rules made thereunder, with regard to the implementation of these rules.”should be amended to state “... not inconsistent with the provisions of the Act, and the rules made thereunder <u>and/or these rules,</u> with regard to the implementation of these rules.	Any Circulars or Orders issued by the Housing Regulatory Authority and Housing Appellate Tribunal with respect to the implementation of these rules will have to be consistent with the provisions and rules of the Act as well as and including the provisions of these Rules.  Presently the civil courts have jurisdiction to entertain disputes between the Promoter and flat purchasers. Setting up a tribunal with the stated quorum and the remuneration allowances and perks will only put more burden on the state treasury. The rules does not envisage the necessity of the chairperson or members to be from judiciary. It is therefore not clear as to how the tribunal will vouch proper understanding of the disputes and rendering of

				<p>justice. Section 18 provides that the interest payable by the Promoter to the flat purchaser will be at interest fixed by SBI or 15% whichever is lower. The purchasers however are liable to pay interest @9% p.a. Thus, there is no parity. The fees mentioned in section 19 are quite high and should be nominal. The HRA cannot pass on the burden of its administrative expenses on the Promoters. Eventually, all these expenses will increase the cost of the flats and the purchasers whose benefit HRA seeks to achieve will be lost. Consequentially the sales would drop, purchasers would buy less and the industry will experience a slow down. This cannot be the outcome of any legislation. The administrative process laid down is also cumbersome. There is no recourse to civil courts from the orders passed by the HRA. It leads to a situation whereby a legislation is sought to be enacted, whereby non-judicial officers will discharge justice and the orders passed by such non-judicial officers will have no recourse to the</p>
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				judiciary.
<b>Form V</b>				
<b>16.</b>	<b>22</b>	<b>2<sup>nd</sup> pg. on the top (pg. No. 22 of 40)</b>	<b>If Promoter has any other Project within its immediate group</b>	Detail regarding Promoter's other registered projects is not required It is not understood what is meant by ' <i>immediate group</i> ' This portion in the Application Form should be deleted from the From V
	<b>22</b>	<b>(pg. No. 22 of 40)</b>	<b>Notes provided on page 11-12</b>	There are no pages 11-12. Reference of this contention appears erroneous. Hence it should be deleted from the From V
	<b>23</b>	<b>(pg. No. 23 of 40)</b>	<b>Group Applications</b>	The list of group firms on behalf of which the application is being made, appears erroneous. Hence this should be deleted from the From V
	<b>24</b>	<b>Para 4 (5) (pg. No. 24 of 40)</b>	<b>Detail of Financer</b>	Detail of the Financer as part of the project detail, as required in Para 4 (5) of the Form V, is not a necessary details. It is also not in concurrence of the Act. Hence, this should be deleted from the From V
	<b>24</b>	<b>Para 6 (pg. No. 24 of 40)</b>	<b>Publishing project detail on the website</b>	The question in this regard appears to be erroneous. Hence, this question should be deleted from the Form V



	24	Section B clause no. 5	The language “Are you applying for ongoing project which does not received the Occupation Certificate?” is to be amended to state “Are you applying for ongoing project which <u>has</u> not received <u>an</u> Occupation Certificate?”	
	25	Section D	<u>Data Protection</u> “For the purposes of complying with the Data Protection Act, the personal information in this...”	There is no Data Protection Act applicable in India therefore reference to the same should be deleted.
	25	2 <sup>nd</sup> Bullet point (pg. No. 25 of 40)	<b>Declaration and Undertaking</b>	To knowingly or recklessly give any false or misleading information to Housing Regulatory Authority is not a criminal offence under the Act and hence, no Declaration in this regard should be required to be given by the Promoter
	26	NOTE at the end of the Form	<b>Financial condition and capacity assessment certificate is also to be submitted</b>	This is not required as per the Act. Hence, this should be deleted from the Form V  Without prejudice to this, it should be clarified as to who is qualified to issue such certificate and what are the parameters for assessing financial capacity.

	26	NOTE at the end of the Form	Manual Information of	<p>There is no clarity about what kind of Manual of Information is proposed to be given</p> <p>The remarks 'Compulsory with new registration' is also not clear. Registration of all projects is going to be <i>new</i> after the Act will come into force. Hence, it should be clarified, in any event, that with what of the projects' registration, the Manual of Information will be compulsory.</p>
<b>Form VI - Model Agreement for Sale</b>				
17.	27	Form VI	Model Agreement for Sale	<p>This is primarily a reproduction of Form V appended to MOFA. This Model Form contains many irrelevant clauses and conditions which are irrelevant in the current situation – e.g. declarations regarding ULC by the flat purchaser (bottom fourth Recital clause before the Operative Part)</p>
	27	Note No. 1	Mandatory Clauses	<p>There is a mention of some clauses being mandatory clauses which must be retained in the Agreement for Sale. These clauses are described as '<i>certain clauses such as 1, 2, 3,...</i>'. This leaves the scope for interpretation as to which of the clauses are</p>

				mandatory and which are not. This ambiguity should be removed.
	27	Note No. 1	<b>Variation from Mandatory Clauses</b>	Any departure or <i>variation</i> from these statutory and mandatory clauses will not be binding and enforceable upon the parties - this will mean that such mandatory clauses will have to be incorporated in the Agreement for Sale <i>verbatim</i> and cannot even be redrafted / modified although, even if they would be redrafted keeping the same spirit of the clause intact.
	27	Note No. 2	<b>Owner's liability under the Agreement for Sale</b>	It is not correct to bind the Owner of the land with all the terms and conditions and covenants in the Tripartite Agreement for Sale. The Promoter is primarily bound by the terms, conditions and covenants in the Agreement for Sale and the Owner's covenant is only limited to the extent of conveying the land to the Promoter or his nominee i.e. the organization of the flat purchasers This intent to the effect of the limited liability of the Owner in the Tripartite Agreement, should be clarified.

	27	<b>Recital No. 1(unnumbered)</b>	“and the Promoter of the Other Part the Vendor agreed with the Promoter for the <u>absolute</u> sale to the Promoter/sold <u>absolutely</u> to the Promoter an immovable property”	There may not be an absolute sale to the Promoter therefore the word ‘absolute’ should be deleted from this recital.
	28	<b>Recital No. 3(unnumbered)</b>	“AND WHEREAS the lease/Agreement for Lease is with the benefit and right to construct any new building/s if so permitted by the concerned local authority”.	The local authority does not prohibit the construction of any new buildings on the plot of land leased by a Promoter. Additionally the benefit and right to construct any new building/s may not be a specific power.
	28	<b>Recital No. 4(unnumbered)</b>	“... the Original Owner granted to the Promoter a development rights to the piece or parcel of freehold land lying and being at ....”	This recital only deals with ‘freehold land’ and therefore will need to be suitably modified to incorporate leasehold land also.
	28	<b>Recital No. 5 (unnumbered)</b>	“AND WHEREAS as a result of the Urban land (Ceiling & Regulation) Act, 1976...”	The Urban Land (Ceiling & Regulation) Act, 1976 has been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999; therefore any reference to the same should be deleted.
	28,29,30	<b>Recital nos. 6,7,8,9,10,13 and 24 (unnumbere d)</b>		These recitals are redundant and therefore should be deleted.
	29	<b>Recital No. 17(unnumbere d)</b>	“by virtue of the Development Agreement/Power of Attorney the Promoter	There is no reference to an Ownership Agreement. The Promoter may also have the sole and

			alone has the sole and exclusive right to sell"	exclusive right to sell the flats to the purchaser/s by virtue of an Ownership Agreement by which he may have purchased the land and may have acquired ownership rights therein. Therefore the same should be incorporated.
	31	<b>Proviso under Cl. 1 of the Agreement at Form VI (pg. No. 31 of 40)</b>	<b>Prior consent of the Flat Purchaser in respect of variation or modification which may adversely affect the flat</b>	<ul style="list-style-type: none"> <li>- This provision is not relevant, and more so, under Clause 1</li> <li>- As is now prescribed, the flats would be sold only after the plans will have sanctioned. And as required by the Act, in case there shall be variation, the Promoter will be bound to take previous consent of the flat purchaser</li> <li>- There is no need to add this provision to this Clause and/or in the Agreement</li> </ul>
			<p>(i) "the Promoter shall have to obtain prior consent in writing to the Flat Purchaser in respect of variations or modifications which may adversely affect the flat.."</p> <p>(ii) "adversely affect the flat of the purchaser except any alteration or addition required by any Government authorities or due</p>	<p>(i). The language "the area or layout or location of" should be incorporated after the words "adversely affect"</p> <p>(ii). The word "Planning" should be incorporated after the word "Government"</p>

			change in law.”	
	<b>31</b>	<b>Cl. 2</b> <b>(pg. No. 31 of 40)</b>	<b>Payment Schedule</b>	<ul style="list-style-type: none"> <li>- It is not correct to restrict the quantum of payment relating to each stage of construction</li> <li>- As long as the Promoter shall not accept the consideration amount in excess of 20% of the sale price prior to execution of the Agreement for Sale, the Payment Schedule for the balance amounts should be left to the mutual consent of the Promoter and the Flat Purchaser and it should not be prescribed by the Rule</li> <li>- In view of the above, sub-clauses (ii) to (vii) of Cl. 2 of the Model Agreement at Form VI should be removed/deleted and Clause 2 should be modified accordingly so that there shall remain scope for the Promoter and the Flat Purchaser to mutually decide the payment terms in accordance with the Act and incorporate the same in the Agreement for Sale.</li> <li>-</li> </ul>
	<b>31</b>	<b>Clause 2(i)</b>	“Amount of Rs...../-(.....) (not exceeding 20% of the transaction price) to be	In place of the word “transaction price”, the word “purchase price” should be incorporated.

			paid to the Promoter on or before the execution of Agreement”	
	32	Clause 5	<p>(i) “In case the Promoter is acting as an agent of the Vendor/Lessor/Original Owner...”</p> <p>(ii) “( hereinafter referred to as " the Society"/ " the Limited Company)”</p> <p>(iii) “ensure that the said land is free from all encumbrances and that the Vendor/ Lessor/Original Owner/ the Promoter has/have absolute, clear and marketable title”</p>	<p>(i)The relationship between the Promoter and the Vendor/Lessor/Original Owner may not necessarily be that of an agent. It may also be on a principle to principle basis.</p> <p>(ii) There is no reference made to any other forms of entities as are permitted under the Act to be formed and registered.</p> <p>(iii) The factual position in India is that it is almost impossible to have a land that is free from all encumbrances therefore the language will have to be suitably amended. Additionally, Disclosures with respect to encumbrances are required to be made under the Rules. Therefore this is redundant and should be deleted.</p>
	33	Proviso to Clause 7	<p>(i) the language “...remedying such breach or breaches within a reasonable time after the giving of such notice”.</p> <p>(ii) the language “...Promoter shall not be liable to pay to the</p>	<p>(i) What is reasonable time? It should not be more than 15 days.</p> <p>(ii) The words “any other amounts or compensation or” should be incorporated before the words “any interest”.</p>

			Flat Purchaser any interest on the amount so refunded and upon termination of this Agreement."	
	33	<b>Proviso to Clause 9</b>	"The provisions of this proviso are not mandatory but negotiable."	There is no reference with respect to the procedure for negotiation, therefore it is merely indicative.
	33.	<b>Proviso under Cl. 10 of the Agreement at Form VI (pg. No. 31 of 40)</b>	<b>Defect Liability Period</b>	<p>- The liability of the Promoter for five years from the date of handing over possession of the flat to the flat purchaser, should not be extended to 'any defect' but should be limited only to '<i>structural defect</i>'</p> <p>For any other kind of defect, there should be some limitation e.g. unauthorised work, crack in the wall, broken tile, doors not fitting properly in the frame etc. should be pointed out by the flat purchaser immediately on taking possession as he has already checked and ensured everything in order, and will have taken possession only after that. Therefore, there should be some shorter time prescribed for pointing out such defects.</p>
	34	<b>Clause 12</b>	"building shall join in forming and registering the Society	There is no reference made to any other forms of entities as are



			or a Limited Company"	permitted under the Act to be formed and registered.
	34	Clause 13	"Unless it is otherwise agreed to by and between the parties here to..... the terms and provisions of this Agreement."	The said Clause conflicts with Rule 13 and Rule 14 regarding Condominium.
	35	Clause 14	The language "The amounts so paid by the Flat Purchaser to the Promoter shall not carry any interest and remain with the Promoter until a conveyance/assignment of lease is executed in favour of the society or a limited company as aforesaid" should be amended to state "The amounts so paid by the Flat Purchaser to the Promoter shall not carry any interest and remain with the Promoter until a conveyance/assignment of lease <u>or grant of lease</u> is executed in favour of the society or a limited company as aforesaid	It may not be an assignment of lease but a grant of a lease.
	37	Clause 18 (k)	"Till a conveyance of the building in which Flat is situated is executed the Flat Purchaser shall permit the Promoter and their surveyors and agents,	The Promoter will have to be allowed to enter upon the said land and buildings or any part thereof post the conveyance being executed for defect

			with or without workmen and others, at all reasonable times, to enter into and upon the said land and buildings or any part thereof ..."	rectification (if any) during the continuance of the Defect Liability Period of 5 years. Hence the clause should be suitably modified
	38	(Note)	the language "Testimonial clause to be finalized in individual cases having regard to the constitution of the parties to the Agreement." is incorrect.	The Testimonial clause is general and does not vary according to the parties to the individual agreements
	39	Annex. - A	<b>Format of Title Certificate</b>	<ul style="list-style-type: none"> <li>- No format should be specified for the Certificate of Title to be issued by the Advocate as required under the law</li> <li>- The format provided neither has any scope for mentioning the details relating to ownership of land nor does it have any provision for narrating the encumbrances if any</li> <li>- There are cases where despite the encumbrances e.g. mortgage, that the title of the Owner/Promoter may be clear and marketable. But the format as provided restricts the issuer from revealing them on the certificate</li> </ul>

## Other General Suggestions

1.	<b>Default of customer to pay instalments should make him liable to pay interest also, apart from the penalty</b>	<ul style="list-style-type: none"> <li>- Interest at the rate of at least 2 % more than the rate that the Promoter is required to pay on the funds</li> <li>- In the event of delay in handing over possession of the Flat, the customer is free to move the court and seek reliefs whereas in case of customer's default to pay his dues on time, the Promoter does not have any such remedy</li> <li>- Penalty imposed on customer is very less – it should be enhanced and he should be additionally liable to pay the penalty to the Promoter. Further, there is no clarity as to whom that penalty is payable – to the Promoter or to the Housing Regulatory Authority. If it is payable to Housing Regulatory Authority, then Promoter shall have no benefit of such penalty paid by the flat purchaser</li> <li>- Promoter should have right to terminate / cancel the Agreement though registered.</li> </ul>
2.	<b>Various government agencies who are required to give several sanctions and approvals, have not been included and no time limit is prescribed for them to grant respective sanctions and approvals</b>	<ul style="list-style-type: none"> <li>- The circumstances arising on account of want of requisite sanctions and approvals, should be treated as Force Majeure circumstances; and</li> <li>- The Promoter should not be held responsible for the delay occurring on such account in completion of the project and/or handing over possession of the flats to the flat purchasers</li> <li>- The Promoter should be entitled to extension of time taken by the agencies in giving sanctions and approvals.</li> <li>- The process for giving sanctions and</li> </ul>

			approvals should be uniformed. Conflict in internal policies and regulations of various authorities cause ambiguity in the compliance required on the part of the Promoter
3.	<b>The Government authorities like MHADA are excluded from the ambit of the Act.</b>		<ul style="list-style-type: none"> <li>- The customers purchasing flats from such government agencies have no law similar to this Act to rely upon or protect them</li> <li>- Plus, many projects are/would be developed by private Promoters for and on behalf of such agencies or as a part of Housing Policy for Inclusive Housing for the Low Income Group – there is no clarity about applicability of the Act in such cases</li> <li>- In the event of such government agencies failing to take possession of the flats constructed for them, the Promoter shall not be able to offer possession of the remaining flats in the same layout to the other purchasers</li> <li>- Housing Regulatory Authority should have jurisdiction also upon these agencies. Unless the Act is made applicable to them, this will not be possible</li> </ul>