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Real Estate (Regulation and Development) Bill

The Union Cabinet has reportedly approved the Real Estate Regulation & Development Bill (the "**Bill**") on June 04, 2013, which seeks to regulate the real estate sector, which has so far been largely unregulated. Due to the lack of a robust regulatory mechanism and speedy litigation process, consumers have been at the receiving end in transactions with developers/builders with their rights often being compromised. It is expected that the Bill will reduce frauds, delays and corruption in the real estate sector and protect the interests of consumers.

The Bill aims to establish a regulatory oversight mechanism to enforce much needed accountability and transparency in the real estate sector and housing transactions.

The Bill, *inter alia*, mandates creation of a dispute resolution mechanism for property matters and addresses consumer grievances, such as, inordinate delays in handing over possession.

The salient features of the Bill are:

- The provisions of the Bill are applicable to residential projects only;
- Establishment of 'Real Estate Regulatory Authority' ("**Authority**") in each State to adjudicate property related disputes and a 'Real Estate Appellate Tribunal' ("**Tribunal**") at the Centre to hear appeals from the orders of the Authority;

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- Mandatory registration of real estate project and real estate agents/brokers with the Authority, except when the land proposed to be developed is less than 1000 square meters;
- Setting aside seventy percent or less of the amounts realized for the real estate project from the buyer in a separate account, to be used exclusively for meeting the costs of that particular real estate project;
- Disclosure of material information, such as, plans, approvals, etc., on the Authoritys' website;
- Mandatory for the developer to disclose and define carpet area as opposed to the super area;
- Prohibition on taking more than ten per cent as advance from the buyers without a written agreement and full refund to the buyers in case of delay in projects;
- Civil and criminal liability as specified for contravention of different provisions of the Bill, such as, imprisonment up to three years or a penalty up to ten per cent of the estimated cost of the real estate project for putting out misleading information in advertisements or prospectus.

The Bill is likely to attract significant opposition from the developers, who are of the view that it is one-sided, addressing only the needs of the consumers. Another criticism is that the Bill does not ease the developers'/builders' concerns regarding time-bound grant of approvals required for commencement of real estate projects.

All in all the approval of the Bill by the Union Cabinet is a welcome measure as it is expected to prevent funds from being diverted, ensure timely completion of projects and quick redressal of consumer complaints.

Foreign Direct Investment Policy – 'Group Company' Defined

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("**DIPP**") has on June 03, 2013, incorporated the definition of 'group company' in the Indian foreign direct investment policy ("**FDI policy**").

The definition reads as follows, "Group Company means two or more enterprises which, directly or indirectly, are in a position to:

a) exercise twenty-six percent, or more of voting rights in other enterprise; or

b) appoint more than fifty per cent, of members of board of directors in the other enterprise".

The definition adopted by the DIPP, which comes into effect immediately, is identical to the definition of 'group company' in the Foreign Trade Policy 2009-2014.

Clarity on what would constitute 'group company' was long awaited, particularly due to alleged flouting of foreign direct investment norms which restrict wholesale cash-and-carry companies from selling more than 25 per cent of their total wholesale turnover to 'group companies'.

Feedback