



# MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

## महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Order No. ३८ / 2022

No. MahaRERA/Secy/File No.27/744/2022

Date: 13/12/2022

Sub: In the matter of non-negotiable clauses in the agreement for sale to be executed with the allottees.

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as "the Authority".

And whereas, the Government of Maharashtra has notified the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures of Website) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, under Section 34 of the Act, some of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act as well as to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the Rules and Regulations made thereunder.

And whereas, the Authority under Section 37 of the Act, and Regulation 38 of the Regulations is vested with the powers to issue directions to promoters, real estate agents and allottees from time to time as it may consider necessary.

And whereas, the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

### **MAHARERA HEADQUARTERS**

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**महारेरा मुख्यालय**

हाउसफिन भवन, प्लॉट नं. सी-21, ई-ब्लॉक, वांद्रे-कुर्ला-कॉम्प्लेक्स, वांद्रे (पूर्व), मुंबई ४०००५१.

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And whereas, Section 4 (2)(g) of the Act mandates promoters to upload along with application for registration of the real estate project, the proforma of the agreement for sale proposed to be signed with the allottees.

And whereas, Rule 10 (1) of the Rules states that for the purpose of Section 13 (2) of the Act, the agreement for sale shall be in conformity with the provisions of the Act, the Rules and Regulations made thereunder and shall be in accordance with the model form of agreement at Annexure 'A'.

And whereas, promoters along with their application for registration of the real estate projects upload the proforma of the agreement for sale proposed to be signed with the allottees, however, most of the times the proforma of the agreement for sale as uploaded are not in accordance with the model form of agreement at Annexure 'A' of Rule 10 (1) of the Rules.

And whereas, the Explanatory Note in the model form of agreement at Annexure 'A' of Rule 10 (1) of the Rules categorically states that the model form of agreement may be modified and adopted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are in accordance with the statute and mandatory according to the provisions of the Act shall be retained in each and every agreement executed between the promoter and allottee and any clause found contrary to or inconsistent with any provisions of the Act, the Rules and Regulations would be void ab initio.

And whereas, in view of the above-referred Explanatory Note the Authority has permitted modifications in the agreement for sale however such modification are to be highlighted and also mentioned in the deviation sheet and also to be uploaded in order to enable the allottee to have proper and easy understanding of the modification made.

And whereas, inspite of the above, promoters are modifying the clauses which are mandated as per the provisions of the Act, the Rules and the Regulations made thereunder, some of such deviations (not exhaustive) that are modified by the promoters in the proforma of the agreement for sale to be signed with the allottees are as follows:

- (a) It is noticed that promoters are attempting to expand the definition of force majeure to include items beyond the law. Force majeure clause not being in accordance with the explanation given under Section 6 of Act

and Rule 6 (a) of the Regulations which provisions are reproduced herein below for ready reference.

*Section 6 "Explanation. - For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."*

*Rule 6 (a) "Upon the registration ... .. number in Form "C". The period for which registration shall be valid shall exclude such period where actual work could not be carried by the promoter as per the sanctioned plan due to specific stay or injunction orders relating to the real estate project from any Court of law, or Tribunal, competent authority, statutory authority, high power committee, etc."*

- (b) Time period for the formation of association of allottees by whatever name called, not being in compliance with the proviso of Section 11 (4)(e) of the Act read with Rule 9 (1) of the Rules which proviso and Rule are as follows:

*Section 11(4)(e) "Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;"*

*Rule 9(1)(i) "Where a Co-operative Housing Society ... .. the Promoter shall submit the application in*