

## NAREDCO'S Comments on Haryana Draft Real Estate (Regulation & Development) Bill, 2013

Clause No.	Issues	Suggestions
2(i)	"carpet area" means the net usable floor area of an immovable property, excluding the area covered by the walls and balcony but including the area under kitchen, toilet, bathroom etc;	This should be based on " Built up area" which could include walls, balconies and common areas such as staircase/ shafts etc.
2(j)	"Commencement certificate" means the certificate issued by the competent authority to allow or permit the promoter to begin development works on immovable property which shall also include any licence granted under the Haryana Development and Regulation of Urban Areas Act, 1975;	"Commencement Certificate" is a new requirement envisaged under this bill. It is suggested that the current requirement of licenses, zoning plans, and approved layout / building plans should continue and a new requirement for commencement certificate should not be introduced.
2(o)	"cost of apartment" shall be an all inclusive cost including but not limited to the land cost, construction cost, all fees and charges	"Cost of apartment" should be based on Built up area and Change in government charges / fees / levies after launch should be to account



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	payable to the Government including External Development Charges/ Infrastructure Development charges, etc. beyond which nothing else shall be recoverable from the allottee which shall be prescribed on „per square metre of carpet area“ basis in all advertisements and agreements/ documents.	of customer.
2(w)  2(zi)	“immovable property” includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;  “real estate project” includes the activities of development, sale, transfer and management of immovable property	The Bill ambitiously defines “immoveable property” and “Real Estate Project”. The aforesaid definitions intends to include “sale of immoveable property and development of immoveable property” both to be covered by the Bill. The object of the Bill indicates that the Bill intends to provide comprehensive legislative Scheme for development of immoveable property and construction and management thereof and Regulations in respect of development of immoveable property.



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		<ul style="list-style-type: none"><li>• Further the Bill takes into its sweep even “alteration”.</li><li>• The subject of Sale and Transfer of Immoveable Property is already covered by the Transfer of Property Act, 1882 and which has stood the test of time. The Bill needs to be rationalized in this area.</li></ul> <p>The Bill whilst defining “immoveable property” should provide for clarification on the Township development, Lay Out development, Division of Larger properties, phase-wise development upon division of larger property, development of Plots or colonies or group housing schemes.</p>
2(zf)	"promoter" means,- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts	'Promoter includes: <ul style="list-style-type: none"><li>• a buyer who purchases in bulk for resale. 'Bulk' is not defined. Will this include a collaborator who contribute land in lieu of</li></ul>



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	<p>an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees and also includes a buyer who purchases in bulk for resale; or</p> <p>(ii) a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon; or</p> <p>(iii) any development authority or any other public body in respect of allottees of-</p> <p>(a) buildings or apartments constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or</p> <p>(b) plots owned by such authority or body or placed at their disposal by the Government; for the purpose of selling all or some of the apartments or plots, or</p> <p>(iv) an apex State level co-operative housing finance society and a primary co-operative</p>	<p>developed area? Not clear.</p> <ul style="list-style-type: none"><li>• Contractor. Therefore, for the same project, the developer, the contractor &amp; the bulk purchaser will be deemed as promoters.</li></ul>



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	<p>housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or</p> <p>(v) any other person who acts himself as a builder, colonizer, 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 colony is developed for sale; or</p> <p>(vi) such other person who constructs any building or apartment for sale to the general public. Explanation.- For the .purposes of this clause where the person who constructs or converts a building into apartments or develops a colony for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters;</p>	



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3	No booking, sale without registration with Haryana Real Estate Regulatory Authority.	Registration should be online and there should be no need of obtaining certificate of registration.
3(a)	No registration required when area of land to be developed does not exceed 1000 sqm.	1. Retain the limit as it is. 2. Should be made applicable to all developments - plots / units /flats which is not for personal use.
4(2)(i) (A)	Declaration signed by Promoter or any officer authorized stating that he has legal title to the land.	Certificate from practicing Lawyer with minimum 5 years experience should suffice.
4(2)(i)(B)	Declaration signed by Promoter that the land is free from all encumbrances, or as the case may be, of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;	Promoter should be allowed to hypothecate land to raise finance for the project and remove it before transferring to buyers. The clause accordingly should be modified. There may not be adequate booking or finance to complete the project from sale proceeds.
4(2)(i) (C)	The likely period of time within which he	In case of force majeure circumstances and



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	undertakes to complete the project or phase thereof,	delay in receipt of timely approvals from competent authority the project may get delayed, should be added.
4(2)(i)(D)	Seventy percent (70%) of the Sale proceeds to be deposited in a separate bank account.	<p>Each developer while applying for registration will estimate the total project cost depending on what the developer is going to construct such as layout / plotting / structures / row houses / bungalows / multi storied building etc.</p> <p>The booking proceeds and installments of adequate no. of apartments towards amount so determined, as actual development / construction cost will be kept in a separate account. From the said separate account, Developer will spend towards development / construction costs. Up to the estimated projected construction costs, developer will not be allowed to withdraw the sale proceeds. Once adequate proceeds from</p>



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		<p>bookings pertaining to the construction cost has been determined and deposited in the said account, the developer will be allowed to utilize the remaining surplus fund amount for any other purposes, to promote his business.</p> <p style="text-align: center;">or</p> <p>Alternatively 30%, of project cost could be retained in the project account towards the cost of construction and surplus withdrawn by developer for other proposals, as prevalent in Haryana.</p> <p>It would be obligatory on the developer to spend money for the development / construction from the said account.</p> <p style="text-align: center;">or</p> <p>The developer may give a Performance BG for amount equal to development cost for completed layout or construction layout for the complete development project, which shall be released automatically on obtaining</p>



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		occupation certificate.  The authority shall not hold BG or the proportionate no lien account once occupation certificate by the developer is obtained.
5(1)(a)	The Authority shall grant registration if satisfied that Promoter has Entered into agreement with competent authority for the development works.	No registration required.  Developers need to upload the title, and sanctions such as license/CLU, copy of submissions/sanction plans etc through the password provided by the authority.
7 (1)	Revocation of registration	Authority should bridge the gap and make efforts to get the project completed by the developer. Cancellation of registration should be the last option.
7(1)(a)(b)(	Revocation of registration if the promoter	Willful default is difficult to ascertain. No



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c)	makes willful default in doing anything required of him by or under this Act or the rules or the regulations made thereunder;	Revocation of registration without proper investigation by the authority and before hearing the promoter. If promoter is found guilty, a monetary penalty should be imposed and promoter, if willing, given a chance to complete the work. Revocation of registration should be undertaken as last resort.
7(3)	The Authority may, instead of revoking the registration under subsection (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.	<p>The promoter should be allowed to complete the project as per the terms and conditions under the guidance of the authority and the terms and conditions should be as similar as to other industries. (This is must, otherwise, lot of complications will be faced by the promoter such as banks, financial institutions, authority approvals, commitment to the land owner etc.)</p> <p>In case at any stage, the developer is unable to complete the project, on account of circumstances beyond his control, then the</p>



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		developer should be allowed 'exit' after the refund of money paid to him by customers along with interest at a rate allowed by public sector banks on fixed deposits or after payment of cost required to complete balance work.
7(4)	Upon revocation of registration by the Authority, Promoter shall be debarred and his name will be declared in the list of defaulters with regulatory authority including authorities in other states	<p>Promoter should be directed to complete the work as stipulated in the Agreement failing which authorities will get the work executed by appointing a Contractor on behalf of the promoter and recover the cost from BG / no lien account.</p> <p>The decision to revoke the Registration should be passed by at least three member bench comprising of judicial officers and a detailed order along with findings and reasons for revoking the Registration should be given by the Bench/ Authority after giving proper opportunity to the Promoter.</p>



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8	Obligation of authority consequent upon lapse of or revocation of registration.	This should be done only after promoter is found incapable.
9	Registration of Real Estate Agents.	Licensing for doing business by State will be more appropriate.
10(2)	In the advertisement website address of the regulatory authority is to be mentioned, so that consumer can directly approach to the authority website.	As no sale is allowed without registration, why this.
12(1)	Promoter not allowed to accept sum more than 10% without written Agreement of the Sale.	20% (maximum) of the total sale value to be allowed as advance towards registration and balance after execution of Agreement of sale as the bookings are done across the world, across several points of contact, online as well as by property brokers and it is not possible to ensure which apartment gets allotted, whereas at same time apartments can only be



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		allotted at one control place and then agreement executed. Maharashtra Act allows 20%.
14(1)	Transfer of title to allottee	<p>Possession date is subject to force majeure conditions and connection of services by municipality as also on infrastructure development by authority.</p> <p>If service provider is unable to provide the required services, then the promoter will not be responsible – should be added.</p>
14(2)	Obtain occupation / Completion Certificate	The Act should make local authority accountable for giving 'occupancy/Completion Certificate' within a maximum period of one month after application.
15	If the promoter fails to complete or is unable to give possession of a apartment , plot or	Remedy for delay in possession: This is too wide ranging since it provides for:



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	<p>building,- (a) in accordance with the terms of the agreement or, as the case may be, duly completed by the date specified therein or any further date agreed to by the parties or (b) due to discontinuance of his business as a developer on account of suspension or revocation of his license under this Act or For any other reason he shall be liable to demand, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including penalty as may be determined by the Authority.</p>	<ul style="list-style-type: none"><li>• interest as may be prescribed. This should be as per Agreement with buyers.</li><li>• penalty as may be determined by the Authority. This also should be as per Agreement with buyers.</li><li>• any other remedy available. This could open a pandoras box.</li></ul>
16(2)	Obligation of allottees for paying interest.	Charging of interest on delayed payments shall be as per the agreement signed between buyer and promoter. (Agreement of Sale).



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18 & 19	Authority shall consist of Chairperson and not less than two whole time members to be appointed by State Govt.	<p>The Authority shall consist of a Chairperson and not less than three whole time Members to be appointed by the State Government.</p> <p>Chairperson should be a retired Chief Justice/ judge of High Court. No Government official (serving or retired) should be appointed chairperson.</p> <p>Out of the three (3) members to be appointed by the Govt., one should be from DTCP, one from real estate industry and one from State Consumer Forum.</p>
28 & 29	Functions of Authority	Provides for functions of Authority for planned land development and promotions of Real Estate Sector. Authority has multiple functions requiring multiple skills and abilities with vast infrastructure. The following are the nature of functions expected to be performed by Real Estate Regulatory Authority.



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		<p>a) to protect the interest of the allottees.</p> <p>b) to improve processes and procedures for clearance and sanctions of plans and get them put the process online and issue of certificate by local body to implement social and economic planning. To make clearance process simple, transparent and hassle free (with time limits) under single window for land title certification to CLU/ licensing, building plans, health, environment clearance, DGCA clearance.</p> <p>c) to encourage adequate supplies construction of all environmentally, sustainable and affordable housing, to promote standardization of construction materials.</p> <p>d) Ensure affordable supply of housing for all segment of society as per local requirement varying from city to city and area to area so that all income groups have</p>



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		<p>access to affordable housing by making FAR &amp; density norms as per demand of areas.</p> <ul style="list-style-type: none"><li>e) to publish and maintain web sites.</li><li>f) to act as nodal Agent, coordinate efforts of appropriate Government regarding development of Real Estate Sector .</li><li>g) to act as a watch dog of Real Estate Industry &amp; advise ways to augment supply to contain prices.</li><li>h) to act as Infrastructure Authority.</li><li>i) to monitor malpractices leading to escalated cost of construction</li><li>j) to give technical advice, conduct investigation and implementation.</li><li>k) to perform judicial functions.</li><li>l) to act as executive body and to coordinate between Promoter and Purchasers, Local Body and Government.</li></ul> <p>The functions as envisaged in the Bill are</p>



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		<p>highly ambitious and at the same time non-realistic to be achieved in real life. In fact, RERA is modeled to become a Local Body, Planning Authority, Executive Authority, Town Planning Authority and Judicial Authority. Each of the aforesaid functions is at present performed by respective Authorities constituted under the existing Statutes. Be it, Municipal Corporation Act, Town Planning Act, Housing Boards, Infrastructure Law, Civil Procedure Code.</p> <p>The Government must review the functions of RERA and rationalize if necessary, providing for hierarchy of functionaries and bodies within the same Bill or coordinate with other Authorities under the statutes operating in the areas or holding fields for effective functioning. There is a grave danger of RERA becoming too large and wide an Authority which will be ultimately unable to carry out its</p>



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		functions and satisfy the expectations and become merely a “paper authority”, failing to achieve most of the objects of the Bill and the Bill going the same way as several legislations have gone in the past and become ineffective legislations.
30(1)(2)	Dispute resolution mechanism	The ombudsman/ dispute reconciliation/ mediation/ arbitration mechanism should be fast & effective. This section relating to appointment of Conciliators/Arbitrators/Mediators should be subject to the Agreement between the parties and other relevant laws prevailing thereto. The mediators preferably should be retired high court judges.
31	Powers of Authority to call for information, conduct investigation etc.	The promoter will appoint an architect / lawyer / officer to represent the matter and promoter personally need not be summoned



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		(many multi-nationals corporate companies are in the field of construction and technically not possible for them to attend the matter & promoter should be able to focus on quality & delivery).
32	Powers of Authority to issue direction	Direction needs to be specified, otherwise it would result into a vague clause with discretionary powers to the authority, which could create problems.
35	Establishment of Real Estate Appellate Tribunal.	Tribunal should adjudicate - (a) adjudicate any dispute - <ul style="list-style-type: none"><li>– between promoter and authority</li><li>– between LA and promoter</li><li>– between government , government agency and promoter</li><li>– between bank ,financial institution and promoter</li><li>– between service provider and promoter</li></ul>



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		<p>– services consultant( architect, advocate, structural engineer, MEP ,surveyor, engineer and promoter</p> <p>(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.</p>
44(1)(3)	<p>(1) Appellate Tribunal not bound by procedure laid down in the Code of Civil Procedures 1908, but shall be guided by principles of natural justice.</p> <p>(3) Appellate Tribunal not bound by rules of evidence, contained in Indian evidence act 1872.</p>	<p>Chapter V and Section 35 establishes Real Estate Appellate Tribunal (“Tribunal”) which takes within its sweep various disputes between the Promoter and the Allottee, Promoter and the Authority and Government and Authority. However, under Section 44(1), the Bill provides that the Tribunal will not be bound by Civil Procedure Code, 1908 and by the Indian Evidence Act, 1872. The Bill proposes to oust the jurisdiction of Civil Court to adjudicate all the disputes and vests the Tribunal with the power to decide such matters. There is no justification or need to</p>



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		<p>do away with the applicability of Civil Procedure Code, 1908 and Indian Evidence Act, 1872. The Tribunal is not expected to be Lok-Adalat or merely Arbitral Tribunal, but the Tribunal is “SPECIAL COURT” for Real Estate Industry. The Tribunal as envisaged by the Bill ought to be bound by the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872.</p> <p>The regular civil court procedure to be followed wherein a fair opportunity is given to either party.</p>
44(4)(a-h)	Appellate Tribunal has power to summon and enforce the attendance /ask for production of the document / examine the witness.	The regular civil court procedure to be followed wherein a fair opportunity is given to either party.
46	High Court and Supreme Court.	There is no appeal provision to High Court / Supreme Court. As the Tribunal is expected to be a “SPECIAL COURT” and therefore the



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		<p>regular right of two appeals should be available to any litigant who approaches the Tribunal. The Government must consider to provide for right of first appeal to the High Court and the right of second appeal to the Supreme Court from the order of the High Court.</p> <p>Further, it should be specifically provided that the appeal shall lie even against the interim orders. Experience shows that interim orders are of far reaching consequences and if any litigant is rendered remediless, then such a provision will be struck down by the Courts.</p>
48	'If any promoter knowingly provides false information or contravenes the provisions of section 4, he shall be liable to penalty which may extend upto five percent of the estimated cost of the real estate project.	The provision is too wide in its applicability and the penalty needs to be in absolute terms in accordance with the existing provisions in the Haryana Urban development laws.



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50 to 53	<p>Punishment for non registration.</p> <p>Penalty for contravention of other provisions of Act.</p> <p>Penalty for willful failure to comply with orders of Authority.</p> <p>Penalty for willful failure to comply with orders of Appellate Tribunal.</p>	<p>Chapter VI and Sections 47, 48, 49, 50, 51, 52, 53 and 54 provide for punishment for non-registration u/s 3, contravention of section 4, contravention of other provisions of Act, non registration u/s 9, willful failure to comply with orders or authority, willful failure to comply with orders of Appellate tribunal Punishment for allottee.</p> <p>Prime facie, the aforesaid Sections indicate that there is excessive and/or disproportionate punishment or penalty provided in the Bill. For example, non registration of Real Estate Project can attract imprisonment for three years or penalty which may extend to 10% of the estimate cost of Real Estate Project. The punishment has to be commensurate with the offence or violation. The aforesaid provision is evidently disproportionate, excessive and arbitrary.</p>



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		<p>Further, the penalty upto 5% of the estimated cost of the Real Estate Project for “contravention of any other provisions of the Act” is too wide and sweeping and there is complete lack of proportionality between the contravention on the one hand and penalty on the other.</p> <p>Further, the punishment of penalty of 5% of estimate cost for contravention of orders or directions of RERA, is also similarly excessive and disproportionate. Non-compliance of orders of Court or Authority can have provision for execution of such orders or for contempt of orders of the Court (which is applicable to RERA). Further, higher penalty can be prescribed for willful failure of compliance of specific orders or directions and cannot be for any order or direction of the Authority across the board.</p>



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		<p>The main provision applies to non compliance of orders of the Appellate Tribunal and the punishment provided under Section 52 is of a penalty which may extend to 10% of the estimated cost of the Real Estate Project. The aforesaid provision requires review by the Government.</p> <p>We suggest that a compensation, maximum 2 times of the damages suffered by the person should be allowed like any other industry. No imprisonment clause to be kept, which is outdated and also removed by authorities like SEBI, FEMA, FERA. etc.</p> <p>Maharashtra Housing (Regulation and Development) Act 2011 caters for maximum monetary punishment of upto Rs. 1 crore and a minimum of Rs. 1,000 per day as under</p> <p>(a) punishment for non registration of flats/apartments for sale – penalty upto</p>



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		<p>Rs. 1,000 per day of default.</p> <p>(b) Penalty for contravention wrt veracity of advertisements, non refund of amount with interest on failure to give possession within specified time and creation of mortgage without consent of parties after execution of agreement of sale – Rs. 10 thousand each day during which such non compliance continues, or Rs. 50 lakh whichever is lower.</p> <p>(c) Penalty for nonpayment by allottee – Rs. 10 thousand or 1% of sale price of the property whichever is higher.</p> <p>(d) Penalty for non compliance of orders or directions of regulatory authority or appellate tribunal – upto Rs. 10 lakhs.</p> <p>(e) Penalty for contravention of other provisions of the act – upto Rs. 50 thousand.</p> <p>(f) Penalty for non registration of agreement of sale, non operating of separate account,</p>



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		<p>additions/alterations without consent after plans are disclosed, non adherence to defect rectification, non formation of cooperative society/association and non conveyance of title etc – punishment upto Rs. 1 crore.</p> <p>(g) Promoter, without reasonable excuse fails to comply with or contravenes any other provision of the act or rule – punishment upto Rs. 10 lakhs.</p>
55	<p><b>Offences by Companies –</b> Companies’ Directors its officials and every person responsible to the company will be liable for the offence</p>	<p>Company nominates one project coordinator who will be liable and responsible for the company affairs. All directors working either executive / non executive cannot be held responsible as they are not involved in day to day interactions, at times with thousands of customers and their issues.</p>

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	General	The purpose of this Act is to protect consumer. Consumer also should not have any other option to remaining judicial mechanism such as consumer forums, criminal courts, civil courts, CCI. He can simply make prayer to the regulatory Authority who in turn will direct the concerned court to register the offence and proceed.

<b>General points</b>	
1.	In NAREDCO's perception, the draft RERD bill will not be an effective instrument to regulate real estate development in the country for the reason that it does not take into its ambit the important stakeholders like authorities responsible to issue licenses, approvals and permits, financial institutions responsible to provide credit for project financing and home loans, brokers responsible to market project and engineers, architects and contractors responsible for planning, design and construction.
2.	Draft RERD bill seems to have been designed to protect consumer's interest only.



3.	The question, therefore, is why have RERD Act. Consumer's protection could be taken care of by the existing Consumer Protection Act or at best a separate bench, in each State, could be created to deal with real estate issues.
4.	Draft bill has panel provisions contemplating criminal action including imprisonment. No other Business sector in India is controlled under an Act with such provisions.
5.	Draft bill gives moral blow to developer's basic right of cancellation of allotment in the event of default in payment by the allottee. Rather, it makes it obligatory for developer to refund the amount collected along with interest.
6.	Draft bill does not make allottees accountable to developers while obligating them to keep their commitments to allottees wrt. terms of allotment.
7.	Cancellation is the only instrument available to developer which deters buyers from defaulting. If the buyer is entitled to full refund with interest, why should he pay if he does not want to?
8.	The bill obligates developers to form societies/associations of residents/allottees and hand over maintenance management. There is no provision in the bill to levy penalty on allottee who refuses to become member or refuses to pay maintenance charges.



9.	The bill does not bar allottee from approaching any other authority/court/commission before exhausting the appeal available under the bill.
10.	Allottee should be made responsible to the terms and conditions of Builders - Buyers Agreement and that of allotment.