

# उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण

राज्य नियोजन संस्थान (नवीन भवन)

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**विषय: Draft Guidelines on formation of RWAs and Maintenance of Real Estate Projects for discussion and comments by stakeholders.**

महोदय,

उ.प्र. रेरा के संज्ञान में भू-सम्पदा परियोजनाओं में RWA तथा AOA के गठन एवं परियोजनाओं के रख-रखाव से सम्बन्धित समस्याएं एवं सुझाव आते रहते हैं। प्राधिकरण द्वारा इन सुझावों तथा समस्याओं का संज्ञान लेते हुए रियल इस्टेट परियोजनाओं में रेजिडेन्ट वेलफेयर एसोसिएशन के गठन तथा परियोजनाओं के रख-रखाव हेतु गाईडलाइन्स तैयार की गयी है।

ड्राफ्ट गाईडलाइन्स की प्रति प्रेषित करते हुए अनुरोध है कि आपके सुझाव, यदि कोई हैं, तो उ.प्र. रेरा को [contactuprera@up-rera.in](mailto:contactuprera@up-rera.in) पर उपलब्ध कराने का कष्ट करें।

संलग्नक-यथोक्त।

भवदीय,  
14/9/20  
(अब्रार अहमद)  
सचिव

## **Draft Guidelines on formation of RWAs and Maintenance of Real Estate Projects for discussion and comments by stakeholders.**

The Real Estate (Regulation and Development) Act, 2016 mandated registration of projects of real estate by promoter with the Real Estate Regulatory Authority. The act requires certain obligations from both the Promoter and buyers. The Functions and duties of the promoter on one hand and rights and duties of the allottees on the other hand are clearly defined. In this respect as per provision of Section 11(4) b, c, d, e the promoter is responsible for obtaining completion certificate from the competent authority and make it available to the allottees individually or to the association of allottees. He is also responsible to make the lease certificate available to the association of allottees. Till the taking over of the project by the association of allottees, he is responsible to provide and maintain the essential services on reasonable charges. The promoter is mandated to enable the formation of an association or society or co-operative society as the case may be, of the allottees or a federation of the same under the laws applicable. Similarly as per section 19 subsection 9 it is provided that every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees or a federation of the same. If this provision is read with Section 11 subsection 4 (e) which mandates the promoter to enable formation of association of allottees or a society or co-operative society or federation of allottees, then it is crystal clear that both promoter and allottees have to make efforts to form association of allottees as per applicable laws.

2. The UP Real estate (Regulation and Development) (Agreement for sale/Lease) Rules, 2018 also provides for maintenance of building/projects, Sub Rule 11 of the above Rule makes the following provision –

*The promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of allottees upon the issuance of the completion certificate of the project. The cost of maintenance of 1 (one) year from the date of Completion Certificate has been included in the total Price of the apartment/plot.*

*However, if the Association of Allottees is not formed within 1 year of completion certificate the promoter will be entitled to collect from the allottees amount equal to the amount of maintenance disclosed in para 1.2 + 10% in lieu of price escalation for the purpose of the maintenance charge to association of Allottees once it is formed.*

similarly Sub Rule 19 makes the following provision :

The promoter has assured the Allottees that the project in its entirety is in accordance with the provisions of the U.P. Apartment (Promotion of Construction,

Ownership and Maintenance) Act, 2010. The Promoter showing compliance of various laws/regulations as applicable in Uttar Pradesh.

3. Section 11 of the Real Estate (Regulation and Development) Act, 2016 mentions various functions and duties of the promoter. He is responsible to enable the formation of an association or society or co-operative society as the case may be of the allottees or a federation of the same under the laws applicable. The Uttar Pradesh Apartment Act, published on 19-03-2010 is the local law applicable for formation of an Association of Allottees. State Government has notified the Uttar Pradesh Apartment (Promotion of Construction, ownership and Maintenance Rules, 2011 on 16-11-2010). The model by laws to be adopted by every Association of apartment owners in its first meeting made under Sub Section of Section 14 of the Uttar Pradesh Apartment Act, 2010 were also notified on 16-11-2011. The Uttar Pradesh Apartment Act, 2010 makes provision for association of Apartment owners and Bye-laws for the registration of the affairs of such association, Section 14 of the Apartment Act makes provision for Association of apartment owner for the administration of the affairs of the apartment and the property appertaining there to and for the management of common areas and facilities. As per Section 14(2) forming of association of the apartment owners is the joint responsibility of the promoter and apartment owners. It is responsibility of the promoter to get the association registered when required conditions are fulfilled as provided there. It is further provided in section 14(5) that on formation of Association of the apartment owners, the management of the affairs of the apartments regarding their common areas and facilities shall be deemed to be transferred from the promoter to the association which shall maintain them.

4. Hon'ble High Court, Allahabad while deciding Writ Petition no-12110 of 2013 Olive Country Apartment Owners Association vs State of UP & ors along with other Writ Petitions has discussed in details about the various provisions of the Apartment Act, 2010, Rules 2011 and Model bye-laws regarding the Association of Allottees. Hon'ble Court has opined that 'The UP Apartment Act, 2010 and UP Apartment Rules 2011 provides a complete code for regulating the rights, duties and liabilities and for resolving the issues and disputes between the promoter and apartment owners. The following paras of the above mentioned judgment of the Hon'ble High Court needs special mention regarding formation of Association of Allottees and maintenance:-

#### **Para-59**

59. We are of the view that the requirement of the completion certificate to be obtained from the local authority under sub-section (2) of Section 14 before forming and registration of the association of apartment owners does not mean final completion certificate, as the issuance of the final completion certificate may take long time and that until then rights and liabilities and the corresponding duties are not provided to be under suspension. It may take several years for the promoter, or a promoter may delay the formalities and in applying for issuance of completion certificate to deny the apartment owner to form an association. This would defeat the object of

enacting Section 13, which provides for registration of deed of apartment with true copy of declaration made under Section 12 to such deed of transfer. The form of declaration, therefore, to be made within 12 months from the date of approval of the plans or where the building has been constructed or is under construction prior to the commencement of the Rules to be submitted within 90 days from such commencement under Rule 3 of the Rules of 2011 is sufficient for the purposes of forming and registration of the association for bringing for enforcement of the rights and liabilities of the apartment owners and the general liabilities of the promoters under Sections 5 and 6 and Section 4 respectively of the U.P. Apartment Act, 2010.

#### **Para 60**

60. In our view after the enforcement of the U.P. Apartment Act, 2010 no builder, promoter can resist/ or delay the formation of association of apartment owners under Section 14 of the Act. If the promoter does not get the association registered, the apartment owners can get such association registered after a notice giving reasonable period to the promoter, say a month, and to adopting model bye-laws, if they have not adopted earlier. In such case the Registrar of Societies shall not refuse the registration of the association of the apartment owners. The promoter, however, has to be made a member as he is jointly responsible with the apartment owners to form an association. Even if he does not get the association registered and does not join or his authorised agents and subscribe to be a member of the association, he will be deemed to be member of the association for the purposes of enforcement of the Act as the promoter being the member of the association has duties and liabilities under the Act to be enforced.

#### **Para 65**

65. (1) The U.P. Apartment Act, 2010 and the U.P. Apartment Rules, 2011 provides for a complete code for regulating the rights, duties and liabilities and for resolving the issues and disputes between the promoters and the apartment owners. The Act has overriding effect under Section 31 (1) over all other laws on the subject notwithstanding anything inconsistent therewith contained in any other law for the time being enforced.

65. (9) The association of apartment owners is to be registered by the Registrar, Deputy Registrar or Sub- Registrar under the Societies Registration Act as amended in the State of U.P. If bye-laws are in conformity with the model byelaws as notified on 16.11.2011, the Registrar/ Deputy Registrar/ Sub- Registrar cannot refuse to

register association on the ground that it contains less than minimum number of members of the society under the Societies Registration Act or that it does not comply with any of the provisions of the Societies Registration Act as amended in the State of U.P. The registration of the association is in compliance with the provisions of the U.P. Apartment Act, 2010, U.P. Apartment Rules, 2011 and model byelaws. It shall be the joint responsibility of the promoter and apartment owners to obtain the registration. The Registrar/ Deputy Registrar/ Sub Registrar shall not refuse to register the association, if the promoter does not join even after one month's notice given by the apartment owners or 33% of the apartment owners, whichever is more. It is clarified that the completion of all infrastructure services and completion certificate from local authority will not be a ground to deny the registration, as the issuance of completion certificate depends on the steps to be taken by the promoter. The delay caused by him in obtaining such certificate will defeat the object of formation of the society and the enforcement of the rights and liabilities of the promoter and the apartment owners. In such case the society will be registered provisionally under the certificate to be given by the competent authority as defined in Rule 2 (c) of the Act, who will give a time period to the promoter to provide all infrastructure services and to obtain completion certificate, failing which the promoter will invite the punishment for the offence as prescribed under Section

5. After the formation of Real Estate Regulatory Authority, the issue of non-formation of association of allottees or non-cooperation of promoter in maintaining the essential services in the intervening period and making exorbitant charges for the maintenance has been coming up before the Authority on the administrative side and also during regular hearing in the benches. Such complaints are pending for hearing and disposal both at Lucknow and Greater Noida.

6. On one hand allottees or their association are filing complaints against promoter for various issues relating to formation of association and maintenance of essential services, the association of promoters, credai on the other hand has raised issues about the non-cooperation of the allottees in formation of association of allottees. Credai, in one of its representation to Authority, has said that :

*“ In many projects, even after the requests of the promoters, the allottees are not ready to form Association of Allottees which is a mandate of the RERA Act. The cooperation of allottees is required as*

*volunteer members are required for registration of the society. Further in many cases though the allottees have formed the AOA, they refuse to take over the maintenance of the common areas of the Project, even after issuance of Completion Certificate to the Project. They cite irrelevant complaints regarding construction quality or other matters which can otherwise be resolved under the ambit of RERA. Builders are forced to continue with providing subsidized maintenance services under the threat of litigation from allottees and AOA. Many times the AOA cites low habitation levels in the complex to postpone the handover. This is not a valid excuse as non resident allottees are also covered under maintenance charges and for unsold units the developer is responsible.*

*After the passage of a few years, AOA demands virtual renewal of the whole complex as a precondition for taking over the management including epainting, new pumps, new DG's., repair and replacement of plumbing etc. It is requested to issue directives for formation of the AOA and handing over-taking over the maintenance from the builder in a time bound manner, ideally within the first year of completion."*

7. As seen above the Real Estate (Regulation and Development) Act, 2016 and UP Apartment Act, 2010 & Uttar Pradesh Apartment (Promotion of Construction, ownership and Maintenance Rules, 2011 & model bye-laws notified by govt. of Uttar Pradesh have explicit and elaborate provisions for maintenance of essential services and formation of Association of Allottees. Various important issues have been clarified by Hon'ble High Court in the Writ Petition no- 12110 of 2013, Olive Country Apartment Owners Association vs State of UP & Ors, dated 14-11-2013. But the fulfilment of the provisions made is not being complied properly hence the disputes are coming up at different forums. This on one hand is troubling both the allottees and the builders and on the other hand it is disreputing the Real Estate Sector itself. Hence it is very important to look into the problem in totality. Some steps to minimise this issue are suggested below-

- I. The agreement between allottees and promoter should be strictly in accordance with the Uttar with the Uttar Pradesh Real Estate (Regulation and Deveopment) (Agreement for Sale/lease) Rules 2018.*
- II. Strict quality control should be ensured by different authorities involved in the process. Rera Technical Cell may be enabled to have strict quality control on ongoing Projects.*
- III. Association of promoters be advised to make sincere efforts to complete the projects in time and maintain quality so that no issues of quality etc comes after the completion certificate is given by the competnet authority.*
- IV. Where Association of Allottees is found lagging in its reponsibility, steps for their deregistration may be taken with the competent authority responsible for registration.*

- V. *Existing disputes between Association of Allottees and Promoter should be expeditiously disposed off /resolved amicably.*
- VI. *As per Section 11(4) of the Real Estate (Regulation and Development) Act, 2016 the promoter shall enable the formation of association of the allottees under the law applicable. The UP Apartment (Promotion of Construction, ownership and Maintenance) Act, 2010 is the local law applicable. The Uttar Pradesh Apartment (Promotion of Construction, ownership and Maintenance) Rules, 2011 and Model bye-laws notified in 2011 have been issued by the state. The Hon'ble High Court Allahabad has also clarified different provisions of the Act and Rules and Model Bye-laws while deciding Writ Petition No- 12110 of 2013, Olive Country Apartment Owners Association vs State of UP & Ors, dated 14-11-2013.*

*Following Question and answer will explain various provisions based on the above Act Rules Model bye-laws and Hon'ble High Courts Directions:-*

*Questions-*

Q1. When Association of Allottees need to be formed and registered ?

Ans- As per Section 14(2) of the Apartment Act the association has to be formed and registered when such numbers of apartment have been handed over to the owners which are necessary to form an Association or sixty percent of the apartments which is more by way of sale, transfer of possession provided the building has been completed along with all infrastructure services and Completion Certificate obtained from the concerned local authority.

Q2. What is the procedure for Registration ?

Ans- Apartment owners may form Association by subscribing their names to a Memorandum of Association. Thus apartment owners form themselves into a society which needs to be registered in the office of Registrar Firms, Societies and chits. The association in its first meeting will make its Bye-laws which shall be in accordance with the model bye-laws notified by the State Government. Model Bye-laws cannot be changed unless approved by at least 2/3<sup>rd</sup> of the owners of total no. of apartments with the prior approval of the competent Authority.

Q3. Who will take initiative in formation and Registration of AOA?

Ans- Though it is responsibility of both promoter and allottee to form an Association, the promoter has been made responsible to get the Association Registered as per Section 14(2) of the

Apartment Act. Hon'ble High Court has clarified that if the promoter is not responding or creating hindrance, The apartment owners may go ahead with the formation of Association by giving one month notice to the promoter. This point has been clarified by Hon'ble High Court Allahabad Writ Petition No- (12110 of 2013, Olive Country Apartment Owners Association vs State of UP & Ors, dated 14-11-2013) as follows-

*Para 60-*

*In our view after the enforcement of the U.P. Apartment Act, 2010 no builder, promoter can resist/ or delay the formation of association of apartment owners under Section 14 of the Act. If the promoter does not get the association registered, the apartment owners can get such association registered after a notice giving reasonable period to the promoter, say a month, and to adopting model bye-laws, if they have not adopted earlier. In such case the Registrar of Societies shall not refuse the registration of the association of the apartment owners. The promoter, however, has to be made a member as he is jointly responsible with the apartment owners to form an association. Even if he does not get the association registered and does not join or his authorised agents and subscribe to be a member of the association, he will be deemed to be member of the association for the purposes of enforcement of the Act as the promoter being the member of the association has duties and liabilities under the Act to be enforced.*

Q4- If the Promoter is not taking action Towards formation of AOA what should the allottee do ?

Ans- As seen in the question no-3, if the promoter is not Taking action towards formation of AOA, the apartment owners may give one month notice to be promoter to co-operate. If he does not reply the apartment owners may go ahead with formation and registration of AOA.

Q5- If the allottees are not willing to take over what should the promoter do?

Ans- In such a situation the promoter should continue to maintain the essential services and common Areas by charging extra money as provide in Rule 11 of the UP Real Estate (Regulation and Development) (Agreement and Sale/Lease) Rule 2011.

The promoter can file complaint against the AOA, for Violation of Provisions of Section 19 of Rera, 2016.

Q6- Who will arbitrate the disputes between allottees and promoter?



Ans- Main disputes between allottees and promoter can be classified as follows-

- i. *If it is a dispute about registration of AOA, the registrar chit funds is the proper authority. Hon'ble High Court that the registrar can not refuse registration on the ground that certain provisions of Society Registration are not complied. The registration has to be under the UP Apartment Act, Rule and Model bye-laws. Hence compliance of the provisions of these Act and Rules is required. In this Regard the Hon'ble Court has laid down as follows-*

*Para 65(9)*

The association of apartment owners is to be registered by the Registrar, Deputy Registrar or Sub Registrar under the Societies Registration Act as amended in the State of U.P. If bye-laws are inconformity with the model byelaws as notified on 16.11.2011, the Registrar/ Deputy Registrar/ Sub Registrar cannot refuse to register association on the ground that it contains less than minimum number of members of the society under the Societies Registration Act or that it does not comply with any of the provisions of the Societies Registration Act as amended in the State of U.P. The registration of the association is in compliance with the provisions of the U.P. Apartment Act, 2010, U.P. Apartment Rules, 2011 and model byelaws.

Similarly, the Registrar, Dy Registrar, Sub Registrar shall not refuse to register the association of the promoter is not showing interest to join formation of AOA even after one month notice-

*Para 65 (9)*

The Registrar/ Deputy Registrar/ Sub Registrar shall not refuse to register the association, if the promoter does not join even after one month's notice given by the apartment owners or 33% of the apartment owners, whichever is more. It is clarified that the completion of all infrastructure services and completion certificate from local authority will not be a ground to deny the registration, as the issuance of completion certificate depends on the steps to be taken by the promoter. The delay caused by him in obtaining such certificate will defeat the object of formation of the society and the enforcement of the rights and liabilities of the promoter and the apartment owners. In such case the society will be registered provisionally under the certificate to be

given by the competent authority as defined in Rule 2 (c) of the Act, who will give a time period to the promoter to provide all infrastructure services and to obtain completion certificate, failing which the promoter will invite the punishment for the offence as prescribed under Section 25 of the Act including the punishment of imprisonment under Section 25 (1) of the Act.

- ii. *Matters concerning election etc shall be in the domain of Registrar /Dy. Registrar Chit Funds.*
- iii. ***In all such disputes where the violation of provisions of Rera Act, 2016 Rules and Regulation is involved The Real Estate Regulatory Authority will be approached by the allottee, promoter or a agent as the case may be.***

*As far as disputes related to terms & conditions of agreement are concerned UP Real Estate (Regulation & Development) (Agreement for Sale/Lease) Rules 2018 provides as follows- Rule 1 Subrule 33 Dispute Resolution- All or any disputes arising out or touching upon or in relation to the terms and conditions of this agreement, including interpretation and validity of the terms there of and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which the same shall be settled as the case may be through the Authority or Adjudicating officer appointed under the Act.*

- iv. *Where any violation of Apartment Act, 2010 Rules 2011 or Model Bye-laws is involved the competent Authority, Vice Chairman of Development Authority, Chief Executive of Industrial Development Authority, The Collector of District where no such authority exist or their delegated Authorities will have power to arbitrate the dispute. Following matters may come for decision by a competent authority.*
  - a) *Where AOA wants some change in the Model bye laws it will come up for approval before the competent authority Section 14 (6) of the Apartment Act.*
  - b) *If the Board of AOA after majority decision wants to make written complaint against a promoter or allottee for prosecution under Section 25 of the Apartment Act obtaining prior permission of the competent Authority is required.*

*Such type of disputes relate to*

- *If any promoter transfers by way of sale or otherwise any land appertanant to a building and such land was originally shown as “ Common Areas and facilities” such as park, open space pathways, circulation areas etc in the plan approved by the prescribed sanctioning authority.*
  - *If the promoter illegally makes construction, in Contravention of the plan approved by the prescribed sanctioning authority.*
  - *If the owner of an apartment contravenes the provisions of Section 5,6 of the Apartment Act or if contravenes any bye-laws made under apartment Act.*
- c) As per Section 20(2) of the Apartment Act, if apartment owner does not pay due amount towards common expenses for more than 12 months then the AOA may approach the Competent Authority. The Competent Authority on being Satisfied may proceed for its recovery as arrears of land revenue from the owner of the apartment .*
- d) Any dispute regarding membership of an apartment owner, it has to the resolved by the members of Association in annual or special meeting and in case of any further disputes this will come to the competent authority.*

*Hon’ble High Court has clarified as follows:-*

*Para 58-*

*Though the apartment owner has been defined to mean; 'a person or persons owning an apartment or promoter or his nominee in case of unsold apartment', since there is no restriction on the occupation of the apartment by members of any joint family, which has been defined under Section 2 (q) and by the family members of the apartment owner as well as lawful tenant or lawful occupant, who may be authorized by the society/ firm / company or any validly recognized association of persons, such lawful occupation will also be included*

*within the meaning of the apartment owner both for the purposes of enjoying rights and obligations and corresponding general liabilities of the promoter, but also for the purposes of becoming members of the association of apartment owners. In case of any dispute on the validity of his membership, it has to be first resolved by the members of the association in an annual meeting or special meeting of the association and in case of any further dispute by the Competent Authority under Rule 2 (c) of the U.P. Apartment Rules, 2011 and thereafter before the State Government before it is raised before any Court of law.*

*Q7- Is completion Certificate necessary to form AOA in all circumstances ?*

*Ans- Section 14(2) of the Apartment Act stipulates three conditions for forming AOA-*

- a) Handing over to the owners 60% of the apartments.*
- b) Building has been completed, along with all infrastructure services.*
- c) Completion Certificate obtained from the local authority.*

*Provision to Section 4(5) of the Apartment Act provides that if the completion Certificate is not issued by the prescribed Sanctioning Authority within 3 months of the Submission of the application by the promoter along with all formalities the Completion Certificate shall be deemed to be issued after expiration of three months period on this issues Hon'ble High Court has clarified as follow-*

*Para 59-*

*We are of the view that the requirement of the completion certificate to be obtained from the local authority under sub-section (2) of Section 14 before forming and registration of the association of apartment owners does not mean final completion certificate, as the issuance of the final completion certificate may take long time and that until then rights and liabilities and the corresponding duties are not provided to be under suspension. It may take several years for the promoter, or a promoter may delay the formalities and in applying for issuance of completion certificate to deny the apartment owner to form an association. This would defeat the object of enacting Section 13, which provides for registration of deed of apartment with true copy of declaration made under 46 Section 12 to such deed of transfer. The form of declaration, therefore, to be made within 12 months from the date of approval of the plans or where the building has been*

*constructed or is under construction prior to the commencement of the Rules to be submitted within 90 days from such commencement under Rule 3 of the Rules of 2011 is sufficient for the purposes of forming and registration of the association for bringing for enforcement of the rights and liabilities of the apartment owners and the general liabilities of the promoters under Sections 5 and 6 and Section 4 respectively of the U.P. Apartment Act, 2010.*

It is further clarified by Hon'ble High Court :-

*Para 65*

*It is clarified that the completion of all infrastructure services and completion certificate from local authority will not be a ground to deny the registration, as the issuance of completion certificate depends on the steps to be taken by the promoter. The delay caused by him in obtaining such certificate will defeat the object of formation of the society and the enforcement of the rights and liabilities of the promoter and the apartment owners. In such case the society will be registered provisionally under the certificate to be given by the competent authority as defined in Rule 2 (c) of the Act, who will give a time period to the promoter to provide all infrastructure services and to obtain completion certificate, failing which the promoter will invite the punishment for the offence as prescribed under Section 25 of the Act including the punishment of imprisonment under Section 25 (1) of the Act.*

It is clarified that the completion of all infrastructure services and completion Certificate from local authority will not be a ground to deny registration, as the issuance of completion certificate depends on steps to be taken by the promoter.

Q-8. Where the project is registered as a single phase project. What is the role of OC/Partial CC ?

Ans- If a project is registered as a single phase project but it contains different blocks or pockets which are clearly demarcated, the OC/Partial CC may be obtained by the promoter and in such a case the promoter can initiate for formation of AOA under Section 14 of the Apartment Act. This block or pocket has to be clearly demarcated and should be an independent area with required essential services.

Q-9. Where a project is a multiphased project registered with Rera will each have a separate association ?

Ans- Multiphased project will be completed in phases with time gap in construction. Since each phase will be clearly demarcated and will

be an independent area Association of Allottees has to be formed for each phase as per Section 14 of Apartment Act. Since the phases cannot be left stand alone and for administration of affairs in relation to the apartment and properties appertaining there to and for the management of common areas and facilities, the association of allottees has to be formed. Hence phase wise association of allottees is a legal and practical requirement.

Q-10. What should be the shape of AOA after the completion of all the phase? Will a fresh AOA would be a legal requirement ?

ANS- There is no much clarity on this issue, this may be discussed with the various stake holders and a decision legally tenable may be arrived at.

Q-11- Is 30 days notice to promoter mandatory to forming AOA?

Ans - If the promoter is not co-operating information and registration of the AOA, a 30 days notice is required to be given to the promoter. Hon'ble High Court has clarified this point as follows.

*In our view after the enforcement of the U.P. Apartment Act, 2010 no builder, promoter can resist/ or delay the formation of association of apartment owners under Section 14 of the Act. If the promoter does not get the association registered, the apartment owners can get such association registered after a notice giving reasonable period to the promoter, say a month, and to adopting model bye-laws, if they have not adopted earlier. In such case the Registrar of Societies shall not refuse the registration of the association of the apartment owners. The promoter, however, has to be made a member as he is jointly responsible with the apartment owners to form an association. Even if he does not get the association registered and does not join or his authorised agents and subscribe to be a member of the association, he will be deemed to be member of the association for the purposes of enforcement of the Act as the promoter being the member of the association has duties and liabilities under the Act to be enforced.*

Q-12. Should separate account be maintained by promoter for all income and expenditure on maintenance including interest of

deposits till handing over to the Association of Allottees ? What are the Provisions?

Ans- It is desirable to have a separate account by the promoter for income and expenditure on maintenance including interest of deposits because the promoter has to transfer the balance amount available with him against the maintenance charge to Association of Allottees once it is formed.

According to Rule 1 Para 11 of the UP Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018. The promoter enters into an agreement to transfer the balance amount available with him at the time of handing over to the Association of Allottees.

VII. *Guidelines on maintenance of projects may be issued by the Authority after Consultation with all stake holders. Following Points may be taken up in the guidelines-*

a) *The Promoter shall be responsible to provide and maintain essential services in the project on reasonable charges till the taking over of the Project by the association of Allottees upon the issuance of the completion Certificate of the project [Section 11 The Real Estate (Regulation and Development Act 2016 & Para 11 of Uttar Pradesh Real Estate (Regulation and Development) (Agreement for sale/lease) Rules 2018].*

*Prior to UP Real Estate (Regulation and Development (Agreement for sale/lease) Rules 2018, the promoter was made responsible as per Section 4(7) of the Apartment Act, 2010, to maintain the Common Areas and facilities till Association is formed. He was entitled to levy proportionate charges as specified in the declaration.*

b) *The cost of such maintenance for 1 (one) year from the date of completion certificate has been included in the total price of the apartment/plot as per Para 1.2 (iv) and Para 11 of the Uttar Pradesh Real Estate (Regulation and Development) (Agreement for sale/lease) Rules 2018].*

c) *If the Association of allottees is not formed within one year of the completion Certificate the promoter will keep on maintaining the Essential Services after collecting from the allottees amount equal to the amount of maintenance disclosed in Para 1.2 +10 % in*

lieu of price escalation for the purpose of the maintenance on next 1 year and so on. **However amount so collected shall be kept in separate account in nationalised bank** [Para 11 of Uttar Pradesh Real Estate (Regulation and Development) (Agreement for sale/lease) Rules 2018].

d) In such cases where promoter keeps on maintaining essential services, the allottees, if they get their association registered, will have option to take over maintenance after six month from the start of service. So if the promoter appoints any service provider for maintenance then his term should be for six months which can be extended for other six monthly periods till the services are taken over by association of allottees.

e) The promoter will pay the balance amount available with him against the maintenance charges to association of allottees once it is formed. [Clause 11 of Uttar Pradesh Real Estate (Regulation and Development)(Agreement for sale/lease) Rules 2018].

f) The promoter is liable to pay all outgoings before transferring the physical possession of the apartment to the allottees which it has collected from the allottees. The outgoings include among other things municipal or local taxes, charges for water and electricity and maintenance charges. If the Promoter fails to pay such charges before transfer, it will remain his responsibility even after the transfer, to pay such outgoings along with penalty if any imposed by the concerned authority [Rule 1.10 of Uttar Pradesh Real Estate (Regulation and Development) (Agreement for sale/lease) Rules 2018].

g) The promoter/Builder is responsible to properly maintain the common Areas and facilities until the formation of the Association of Apartment owners. The promoter shall be entitled to levy and collect the proportionate maintenance charges. [Section 4(7) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership And Maintenance) Act, 2010].

h) After obtaining the Completion Certificate and after handing over physical possession of the apartments by the Promoter to the allottees, the promoter is statutorily responsible to make a conveyance i.e. to hand over the possession of the Common Areas and facilities to the association of Apartment owners. After obtaining the completion certificate and handing over the



*possession of the apartments to the allottees it shall be the responsibility of the promoter to hand over the possession of the common areas and facilities and also the originals of the plans and documents to the Association of apartment owners formed and registered [Section 4(6) of Uttar Pradesh Apartment (Promotion of Construction, Ownership And Maintenance) Act, 2010].*

*The Competent Authority is responsible for ensuring compliance of different provisions of the Apartment Act, 2010. The Competent Authority as per Section 27 of the Apartment act works under control of State Government. The Competent Authority means Vice Chairman of a development Authority and where there is no development Authority. The Collector of the District, However the Hon'ble High Court Allahabad has clarified that the for Industrial Area the Chief Executive of the Industrial Area will work as Competent Authority. It has been further clarified. That Competent authority may delegate its functions to Joint Secretary including the legal officer in case of Authority and to sub divisional magistrate in case of a district.*

*i) On formation of association of Apartment owners, the management of the affairs of the apartments regarding their common areas and facilities shall be deemed to be transferred from the promoter to the association, which shall there upon maintain them. However till all the apartments are sold, or transferred the promoter shall proportionately share the maintenance cost of common areas and facilities. [Section 14 (5) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership And Maintenance) Act, 2010].*

*The amount collected by the promoter towards interest free maintenance security shall be transferred to the association at the time of handing over the common areas and facilities.*

*Though there are no clear provisions that promoter will keep a separate account to be maintained for all income and expenditure on maintenance including interest of deposits till handing over to the Association of Allottees, it is desirable that a separate account in a nationalised bank is opened for this purpose when the promoter is maintain the essential services and common areas beyond one year period. This is necessary because para-11 of the UP Real Estate (Regulation & Development) (Agreement for sale/lease) Rules, 2018 provides that promoter will pay the balance amount available with*

*him against maintenance charges to Association of allottees once it is formed. Thus a separate account is desirable.*

*j) There is no exemption to apartment owner, from liability for contribution towards the common expenses, either by Waiver of the use of the common areas and facilities, or by abandonment of his apartment. In addition to it if common expenses in relation to an apartment is unpaid for 12 months then the association of allottees may approach the competent authority for recovery of such dues as arrears of Land Revenue [Section 19 & 20(2) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership And Maintenance) Act, 2010].*

*k) The Promoter shall be responsible up to five years after handing over the apartments regarding the Construction and structural defects in the building constructed by him and he shall get such defects removed at his own cost failing which he shall be liable to pay compensation for the losses incurred by him for such defects Section 14(3) of Real Estate (Regulation & Development) Act, 2016 & [Section 4(8) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership And Maintenance) Act, 2010].*