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## ROLE OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016 IN PROMOTION OF GROWTH OF REAL ESTATE SECTOR

**Dr. N. VISALAKSHI**  
**PROFESSOR & PRINCIPAL**  
**ADITYA GLOBAL BUSINESS SCHOOL**  
**SURAMPALEM**

**Dr. K. KANAKA RAJU**  
**ASST. PROFESSOR**  
**DEPARTMENT OF COMMERCE**  
**SCHOOL OF COMMERCE & MANAGEMENT STUDIES**  
**CENTRAL UNIVERSITY OF TAMIL NADU**  
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### ABSTRACT

*This Act facilitate to protect the interest of the real estate agent, promoter and the allottee. It also contribute completion of the project at appropriate time, more foreign inflow, ranking of promoters as well as the projects, digitalization of the records, increase the domestic as well as global mergers and acquisitions in this sector, promote the growth of the real estate sector, standardization in usage of machinery and fixtures, increases the quality of building and plot, increases the GDP, reduce the burden of government in managing the affairs of the real estate, speedy disposal of real estate grievances and strengthen the corporate governance. The study found that the grey areas of this Act represents the promoter has to deposit seventy percent of the total project cost in an escrow account, imprisonment for the promoters or builders and shortage of further supply of buildings. The lacunas of this act are free from the fake advertisements. The buyer has a right to refund of an amount paid including interest and compensation, enhance the transparency of the project, disputes also resolved through the consumer courts, stick to the sanctioned plans by the promoter, protection of the uncertainty of the project. This Act impact on liquidity position of the promoter in short term. The study also found that the following criticisms, not able to design the comprehensive framework of all the stake holders, ignore the concept of black money and shortage of supply of houses, necessary to provide further finance, more provisions lead to the delay in completion of the projects and also has a chance to red tapism. It is suggested that to finance the promoters introduce the mortgage bonds as well as notarial bonds as a chance of pledging of shares to hold by the promoter.*

### KEYWORDS

mortgage bonds, shortage of supply of houses, delay in completion of projects, ranking of promoters and projects.

### JEL CODE

L85

### INTRODUCTION

**R**eal Estate (Regulation and Development) Act, 2016 promote the growth of real estate sector, ensure transparency in the activities of the sale of plot, building, apartment and real estate project through the establishment of the Real Estate Regulatory Authority and also create a adjudicating mechanism for protection of the consumers and redressal of the disputes. The product of this act Appellate Tribunal consider the appeals from the directions, decisions or orders of the Real Estate Regulatory Authority. It comprises of the 92 sectors within a ten chapters.

### OBJECTIVES OF THE STUDY

The study carried with the following objectives.

1. To make an attempt to extract the comprehensive view of the Real Estate (Regulation and Development) Act 2016.
2. To identify the various advantages through the implementation of the Real Estate (Regulation and Development) Act 2016.
3. To know the perceptions of the respondents of various organizations in introducing of the Real Estate (Regulation and Development) Act, 2016.
4. To extract and examine the various grey areas and the lacunas of the Real Estate (Regulation and Development) Act 2016.
5. To know the impact of Real Estate (Regulation and Development) Act 2016 on stake holders.
6. To examine the reliability of the criticisms of the Real Estate (Regulation and Development) Act 2016.
7. To identify the possible suggestions to further strengthening of the Real Estate (Regulation and Development) Act 2016.

### METHODOLOGY OF THE STUDY

The data collected from the Gazette of India and from the various websites.

**DATA COLLECTION:** The data collected through the structured questionnaire from the 160 respondents and also from the existing journals and magazines.

**SELECTION OF THE SAMPLE:** The data collected from the 160 respondents, comprises of the real estate agents, real estate owners, academicians and the town administrators.

**TECHNIQUES:** The descriptive statistics used to infer the results through the SPSS software.

### CONTENT OF THE ACT

Sec 1 says that it is a Real Estate (Regulation and Development) Act, 2016. Section 2 contributes the various definitions and section 3 suggests that promoter has to register his real estate project with real estate regulatory authority. Section 4 gives the process of application for registration, section 5 discloses the information of grant of registration, section 6 relevant to the deference of the registration, section 7 relevant to the revocation of the registration, section 8 stipulates the responsibility in the case of lapse of an registration. The section 9 means to registration of the agents of the real estates and section 10 describes the functions of the real estate agent.

Sec 18 explains regarding the various duties and functions of promoters.

Sec 19 stipulates that duties and rights of an allottees.

Sec 20 discuss regarding the incorporation and establishment of real estate regulatory authority.

Sec 21 facilitate the comprises of the chairperson minimum two whole time members to be appointed by concerned government.

Sec 22 prescribes the qualifications for appointment of chairman and members through the selection committee.

Section 23 The chairperson as well as members will be allowed upto 45 years from the date of joining or 65 years whichever is earlier and they are not eligible for reappointment.

Section 24 specifies the allowances and salaries of the chairperson and members of the authority of real estate.

Sec 25 explains the chairpersons administrative functions and powers of the authority along with the presiding over the meetings of the authority and the powers of superintendence and the directions.

Sec 26 focus on removal of members and chairperson.

Sec 27 Retired Chairperson or Members not accessible employment after cessation of office.

Sec 29 stipulates that duration of meetings of the authority.

Sec 30 Vacancies or any defect in terms of appointment of person acting as a member of the authority.

Sec 31 facilitate for any unjustified person.

Sec 32 promotes the healthy transparent, competitive and efficient real estate sector.

As per Sec. 33 that the authority should take necessary steps to import training regarding the real estate sector and policies.

Sec 34 facilitate the register and supervise the real estate agents and real estate project

Sec 35 empowers the authority may be carried out investigations upon receiving of complaint or suomotu relating to this act

Sec. 36 empowers the authority may issue the interim orders up to the finalization of the inquiry.

As per Sec 37 the authority can issue the directions to the allottees or promoters or real estate agents for enforcing of the provisions of this act.

According to Sec 38 the authority can impose penalty or interest for violations of the provisions of this act by promoters, estate agents and the allottees.

Sec 39: It is not possible to amendments with reference to any order which a complaint has been received under this act, but it is possible before two years from the date of order if the mistake is revealed to authority notice by the concerned parties.

Sec 40 stipulates that issue the order to recover the compensation interest and penalty

Sec 41 facilitate to establish the Central Advisory Council.

Sec 42 stipulates the functions of the council of the central advisory.

Sec 43 narrates the mechanism involved in establishment of real estate appellate tribunal.

Sec 44 concentration on resolution of the appeals and disputes through the submission of application.

Sec 45 concern to the appointment of chairman and two whole time members. The appropriate Government will appoint not less than two whole time members along with a chair person. The one member represents the judicial and the other one represents the technical or administrative stream.

Sec 46 stipulates the qualifications of the chairperson and the members.

Sec 47 says that be hold the 5 years, where will not hold office after 67 years regarding the chairperson and members.

Sec 48 specifies that it is not possible to disfavor able regarding chairperson and members allowances and salary.

Sec 49 emphasizes on removal of member and chair person.

Sec 50 emphasizes on the restrictions concern to the judicial member or chairperson.

Sec 51 says that The appropriate Government shall facilitate such an officers and employees and they are discharge their functions as per the directions of its chairperson and the prescribed salary and allowances will be paid to them.

Sec 52 provides that the appropriate Government will appoint person in the arise vacancy.

Section 53 emphasizes the powers of tribunal

Section 54 facilitates the chairpersons administrative powers

Section 55 says that it cannot be invalidation regarding the proceedings of appellate tribunal.

Sec 56 emphasis on the right to legal representation.

**Decree Appellate Tribunal – Sec 57:** Every order prepared by the Appellate Tribunal under this Act shall be treated by the Appellate Tribunal as a decree of Civil Court, to exercise this purpose, the Appellate Tribunal exercise the powers of a civil court.

**Appeal to High Court – Sec 58:** An aggrieved person may file an appeal to the High Court, with in a 60 days from the date of information to the decision or order of the Appellate Tribunal on the grounds specified in Section 100 of the Code of Civil Procedure 1908, even the High Court may accept the appeal after expiry of 60 days, if it is within that there is reasonable cause in delay of appeal.

#### **ADJUDICATION, OFFENCES AND PENALTIES**

**Punishment for Non-Registration by the Promoter – Sec 3:** If any promoter violates the provisions of Section 3, he has to pay 10 percent of the estimated cost of the real estate project and he also imprisoned for a term of three years with fine, for does not follow the decisions, orders issued under Sub-section (1) or continues to deviations of the provisions of Section 3.

Section 60: If any promoter submit the false information or violations of the provisions of Section 4, he will be imposed penalty up to 5 percent of the estimated cost of the real estate project as decided by the authority.

Sec 61: If any promoter violates the other provisions of this Act, other than Section 3 and 4 may impose penalty up to five percent of the estimated cost of the real estate project decided by the authority.

Sec 62: If any real estate agent violates the provisions of Section 9 or 10, penalty of ten thousand rupees for every day of default, cumulative to the 5 percent of the cost of apartment, plot, buildings or the real estate project.

Sect 63: Penalty for everyday of default, cumulatively about to five percent of the estimated cost of the real estate project for failure to cope up with the orders of the authority by the promoter.

Sec 64: Penalty for deviation to the orders of Appellate Tribunal by the promoter with imprisonment for a term up to three years or with a fine of every day of such continued default, with cumulatively ten percent of the estimated cost of the real estate project.

Sec 65: Penalty cumulative of 5 percent of estimated cost of building, apartment, plot of the real estate project, for deviation of the orders of the authority by the real estate agent.

Sec 66: Penalty for cumulatively extend up to ten percent of the estimated cost of apartment, building, plot of the real estate project and imprisonment for one year or with both for deviations with the orders of Appellate Tribunal by real estate agent.

Section 67: Penalty extend up to five percent of the building cost, apartment, plot for deviation to the orders of authority by the allottee.

Section 68: Penalty cumulatively furthered up to ten percent of the apartment or building cost, plot or imprisonment up to one year and with both for violation of orders of Appellate Tribunal by allottee.

Section 69: Offences by the companies : When an offence as per this Act committed by a company was responsible to the firm for the conduct of the business of the firm.

Section 70: Compounding of offences : This section deals with the code of criminal procedure 1973 along with the Real Estate Act 2016.

Section 71: Power to Adjudicate : The authority shall appoint in suggestion of the appropriate Government of one or more judicial officer may deemed necessary for adjudging compensation under Sections 12, 14, 18 and 19.

Section 72: The following factors will be considered to assess the quantum of interest or compensation by the adjudicating officer. Unfair advantage or disproportionate gain as a result of the default, amount of loss and other factors of the default, with recurring nature of the default.

Finance, Accounts, Audits and Reports, Loans and Grants by the Central Government – Sec 73

Loans and Grants by the State Government – Sec 74

**Real Estate Regulatory Fund – Sec 75:** The appropriate Government constitutes this fund and credit this account by the grants received from the Government, fees received according to this Act – Real Estate Act 2016, accrued interest on the amounts specified in clauses (a) to (b) of Section 72. The amount of this fund utilized for the salaries and allowances of the Chairperson, adjudicating officer and other members of Tribunal along with the employees of the Appellate Tribunal and the authority. This fund also meet the expenses which discharging the purposes and functions of this Act. The fund shall be operated through the committee of such members of authority decided by the chairperson.

**Consolidated Fund of India – Sec 76:** The sums realized through the penalties imposed by the Union Territories, authority or by the Appellate Tribunal, in the Union Territories or State Governments shall be credited to the consolidated fund of India.

**Accounts, Audit and Budget – Sec 77:** In consultation with the Comptroller and Auditor General of India, the authority shall maintain the accounts; prepare a budget and other concern records suggested by the appropriate Government. Its accounts audited and certified by the Comptroller and Auditor General India, and his nominee and this prepared audit report shall submit to the appropriate Government, House of Parliament or the State Legislature or the Union Territory legislature.

**Annual Report – Sec 78:** Under the guidance of an appropriate Government, the Authority shall prepare the annual report comprises of the detailed activities of the previous year, annual accounts of the last year with forthcoming programmes for the coming year and copy of report should be submitted before House of Parliament or State Legislature or the Union Territory.

**Bar of Jurisdiction – Sec 79:** No injunction will be granted by any authority or court with reference to the action taken or to be taken in light of any power provided by this Act.

**Cognizance of offences – Sec 80:** No court enforce this nature of offence.

**Delegation – Sec 81:** The authority may delegate the power in writing to any member or officer.

**Power of Appropriate Government to supersede Authority – Sec 82:** If the authority is unable to discharge of its functions and the duties as per the provisions of the Real Estate Act 2016, as a result the financial position as well as administration of authority has suffered and the disturbances of the public interest, the appropriate Government will supersede the authority for such period not exceeding six months, as may be determined in the notification and appoint a person or persons or the Governor or President to exercise powers and discharge functions under the Real Estate Act 2016.

Powers of appropriate Government to obtain the reports and returns and to issue directions to the Authority – Sec 83

Sec 84 refers to the preparation of rules.

**Power to make Regulations – Sec 85** concern to the right to make regulations.

**Laying of Rules – Sec 86 :** Every rule prepared by the Central Government, every regulation made by the authority as per the union territory of Delhi and the Union Territories without legislature and each notification notified by the Central Government.

**Public Servants – Section 87:** The members and the chairperson and employees and officers of this Authority deemed to be public servants.

Application of other laws not barred – Sec 88

Real Estate Act to have over riding effect – Sec 89

Protection of an action considered in good faith – Sec 90

**Power to Remove Difficulties – Sec 91:** If any difficulty emerges in congruent with the provisions of this Act, the central Government may take appropriate action.

**Maharashtra Act No. 11 of 2014 – Sec 92:** The Maharashtra Housing (Regulation and Development Act 2012, is hereby repealed.

### ADVANTAGES OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

1. Protection of the interest of the Real Estate Agent, promoter and allottee
2. Helps to finishing the project at appropriate time
3. Possible to create transparent grievances redressal mechanism
4. More investment in the sector of real estate
4. Environmentally sustainable buildings
5. Affordability in Housing
6. Promote standardization in usage of construction, fixtures, materials and fittings
7. Possibility of Grading of projects
8. Possibility of grading of promoters
9. Digitalization of land records with property title and the title guarantee
10. Authority may render suggestions to the government
11. Strengthen the corporate governance
12. Increases in Global mergers and acquisitions in real estate sector
13. Increases in mergers and Acquisitions in India
14. Lending activities of financial institutions increases
15. NPA s will be reduced in real estate sector
16. Increases in Professional employment
17. Transparency in rules and regulations in this Act
18. Promote growth of real estate sector
19. Increases in GDP
20. Growth of an employment
21. Leads to developed country
22. Growth in Expansion of cities
23. Adequate infrastructure facilities
24. Growth of standard of living
25. Reduce the burden of government in managing the affairs of the real estate issues
26. Speedy disposal of grievances of real estate
27. Increase the quality of plot, buildings or apartments
28. Planned growth of an economy
29. Reduce the grievances

### GREY AREAS OF REAL ESTATE ACT, 2016

1. Seventy per cent of the realized amount from the buyer has to deposit in a separate account, as a result the cash will be idle and he will be depends on the additional borrowings which leads to payment of interest on them, so that cost of debt increases.
2. The majority of the punitive actions of this Act related to builders, agents etc. rather than project approval authority, hence they may be misuse the provisions of this Act.
3. The further supply of new buildings, plots may be reduced, because of delay in operation of construction.

**LACUNAS OF REAL ESTATE ACT, 2016**

1. If a builder wants to launch a project, he has to get prior approval from the Regulatory Real Estate Authority, so that buyers will free from the advertisements of fake projects.
2. The buyers have a right to refund of an amount paid including compensation for delay in allotment of the plot, building along with the interest on that amount.
3. The transparency of the project will be enhanced due to furnish the information of project details in terms of name and address of the promoters, real estate agents, contractors, structural engineers and architects.
4. The disputes will be resolved quickly through the consumer courts at district level besides that real estate authority.
5. This Act facilitate to stick to the sanctioned plans, because of builders have no right to amend the plans, buildings, apartment, specifications of the land and the structural designs without prior approval or consent of the two-third of the buyers.
6. The promoter has to deposit of received amount of seventy per cent of project from buyers will be deposit in to an escrow account as a result the uncertainty of the project will be protected.

**IMPACT OF REAL ESTATE REGULATION AND DEVELOPMENT ACT-2016 ON STAKE HOLDERS**

This Act influence the liquidity position of the parties of the real estate in shorter period, because of it requires the numerous approvals before launching of the project and seventy per cent of the realized amount has to deposit in an escrow account by the promoter as a result of the situation of the shortage of funds emerged, which may delay in completion of the project.

**ROLE OF FINANCIAL INSTITUTIONS IN LENDING OF THE LOANS TO THE BORROWERS**

1. The financial institutions may introduce the mortgage bonds over the non-movable property.
2. There should be a surety or guarantee or both by the share holders, directors or by a parent company.
3. Introduce the notarial bonds for the movable property
4. Shares of promoters holding entity may be taken as a pledge.
5. If the borrower will not repay the debt or insolvent, lender has a right to recover the costs for maintaining security, interest and incurred costs for enforcing of this rights.

**CRITICISMS OF REAL ESTATE REGULATION AND DEVELOPMENT ACT, 2016**

1. This Act, Select committee and standing committee do not able to produce the comprehensive frame work of all the stakeholders.
2. It does not consider the major issues of black money and shortage of availability of houses due to high procedural compliance to launch a housing project.
3. There is a necessity to provide a further financing to the promoters, because of they have to deposit seventy per cent of realized amount in an escrow account.
4. Further provisions through the Real Estate Regulatory Act-2016 further delay in completion of the projects. Besides that the existing projects related to the ongoing also bear the provisions of this Act, as a result it would be further delay in the form of completion of the projects.
5. This Act facilitates the formation of the Central Advisory Council and Real Estate Authority may be possibility of comprising of the red tapism.

**ANALYSIS OF THE RESULTS**

Descriptive Statistics of the Various Responses of the Real Estate Act

**TABLE 1: DISTRIBUTION OF THE RESPONDENTS BASED ON THEIR AGE**

Age	Frequency	Valid Percent	Cumulative Percent
0-20	20	12.5	12.5
21-40	40	25.0	37.5
41-60	40	25.0	62.5
61-80	40	25.0	87.5
Above 80	20	12.5	100.0
Total	160	100.0	

Table 1: This table describes the distribution of the respondents based on their age. The respondents distributed in the age groups of 21-40, 41-60,61-80 were the same. It means the respondents distributed equally in majority of age groups.

**TABLE 2: DISTRIBUTION OF THE RESPONDENTS BASED ON THEIR INCOME**

Income	Frequency	Valid Percent	Cumulative Percent
0-20,000	23	14.4	14.4
20,001-40,000	46	28.8	43.1
40,001-60,000	46	28.8	71.9
60,001-80,000	23	14.4	86.3
Above 80,000	22	13.8	100.0
Total	160	100.0	

Table 2: This table describes the distribution of the respondents based on their income. The 27.5 per cent of the respondents earned their income in between 20,001-40,000 and 40001-60,000 and remaining respondents in other income levels.

**TABLE 3: DISTRIBUTION OF THEIR RESPONDENTS BASED ON THEIR GENDER**

	Frequency	Percent	Valid Percent	Cumulative Percent
Male	100	59.9	62.5	62.5
Total	160	95.8	100.0	

Table 3: This table describes the distribution of the respondents based on their gender. The majority of the respondents belonged to the male category and rest of them confined to the female category. Hence, It can be concluded that majority of the respondents belonged to the male category.

**TABLE 4: DISTRIBUTION OF THE RESPONDENTS BASED ON THEIR DESIGNATION**

Designation	Frequency	Per cent	Valid Percent	Cumulative Per cent
Real Estate Agents	40	25	25	25
Corporates	40	25	25	50
Public	40	25	25	75
Entrepreneurs	40	25	25	100
Total	160	100	100	

The above table explains the distribution of the respondents based on their designation. It indicates that 25 per cent of the respondents represented from the each category like the real estate agents, corporates, public and the entrepreneurs.

**TABLE 5: DISTRIBUTION OF THEIR RESPONDENTS BASED ON THEIR EDUCATIONAL QUALIFICATIONS**

Designation	Frequency	Percent	Valid Percent	Cumulative Percent
Intermediate	20	12.0	12.5	12.5
Graduation	20	12.0	12.5	25.0
Post Graduation	80	47.9	50.0	75.0
M.Phil.	20	12.0	12.5	87.5
PhD	20	12.0	12.5	100.0
Total	160	95.8	100.0	

The table 5 discloses the educational qualifications of the respondents. The majority of the respondents represented from the post-graduation and followed by the other qualifications.

**TABLE 6: DISTRIBUTION OF THE RESPONDENTS BASED ON THE MARITAL STATUS**

Marital Status	Frequency	Valid Percent	Cumulative Percent
Married	114	71.3	71.3
Total	160	100.0	100.0

Table 6 explains the distribution of the respondents based on their marital status and indicates that majority of the respondents represented from the married category.

**TABLE 7: PERCEPTIONS OF THE RESPONDENTS ON VARIOUS ISSUES OF THE REAL ESTATE ACT**

Particulars	N	Minimum	Maximum	Mean	Std. Deviation
Protection of the interest of the Real Estate Agent	160	1.00	5.00	3.2938	1.22652
Protection of the interest of the Promoter	160	1.00	5.00	3.3062	1.20792
Protection of the interest of the Allottees	160	1.00	5.00	3.7437	1.50991
Helps to finishing the project at appropriate time	160	1.00	5.00	3.5687	1.32524
Possible to create transparent grievances redressal mechanism	160	1.00	5.00	3.5875	1.29531
More investment in the sector of real estate	160	1.00	5.00	3.4687	1.35480
Environmentally sustainable buildings	160	1.00	5.00	3.5375	1.40479
Affordability in Housing	160	1.00	5.00	3.4375	1.34439
Promote standardization in usage of construction, fixtures, materials and fittings.	160	1.00	5.00	3.4312	1.33940
Possibility of Grading of projects	160	1.00	5.00	3.5000	1.41865
Possibility of grading of promoters	160	1.00	5.00	3.4125	1.35232
Digitalization of land records with property title and the title guarantee	160	1.00	5.00	3.5000	1.41865
Authority may render suggestions to the government	160	1.00	5.00	3.4625	1.35928
Strengthen the corporate governance	160	1.00	5.00	3.5000	1.41865
Increases in Global mergers and acquisitions in real estate sector	160	1.00	5.00	3.3625	1.31507
Increases in mergers and Acquisitions in India	160	1.00	5.00	3.4062	1.35190
Lending activities of financial institutions increases	160	1.00	5.00	3.4125	1.35232
NPA s will be reduced in real estate sector	160	1.00	5.00	3.5000	1.41865
Increases in Professional employment	160	1.00	5.00	3.4125	1.35232
Transparency in rules and regulations in this Act	160	2.00	5.00	4.1125	.81640
Promote growth of real estate sector	160	1.00	5.00	3.3937	1.36486
Increases in GDP	160	1.00	5.00	2.6125	1.35974
Growth of an employment	160	1.00	5.00	3.6750	1.42551
Leads to developed country	160	1.00	5.00	3.4875	1.42302
Growth in Expansion of cities	160	1.00	5.00	3.3313	1.34922
Adequate infrastructure facilities	160	1.00	5.00	3.2813	1.23457
Growth of standard of living	160	1.00	5.00	3.4125	1.35232
Removing of regional imbalances	160	1.00	5.00	3.4562	1.35446
Increase the level of satisfaction of allottee	160	1.00	5.00	3.4000	1.35610
Increase the level of satisfaction of promoter of real estates	160	1.00	5.00	2.9563	1.51033
Reduce the burden of government in managing the affairs of the real estate issues	160	1.00	5.00	3.5938	1.45064
Speedy disposal of grievances of real estate	160	1.00	5.00	3.4813	1.43177
Increase the quality of plot, buildings or apartments	160	1.00	5.00	3.5000	1.41865
Planned growth of an economy	160	1.00	5.00	3.4187	1.35736
Reduce the grievances	160	1.00	5.00	3.4625	1.35928
Valid N (listwise)	160				

This table explains the various advantages of the real estate act. It reveals that protection of the interest of the various stake holders and transparency in transactions were possible, speedy disposable of grievances and all these efforts leads to an overall development of an economy.

**CONCLUSION**

Finally, it can be concluded that, this act contributes the positive impact on the economy because of planned growth in the real estate sector it is also not able to design the comprehensive frame work of all the stake holders, ignore the concept of black money and shortage of supply of houses, necessary to provide further finance, more provisions lead to the delay in completion of the projects and also has a chance to red tapism. It is suggested that to finance the promoters introduce the mortgage bonds as well as notarial bonds as a chance of pledging of shares to hold by the promoter.

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