

**small book on DEFECT LIABILITY UNDER REAL ESTATE  
(REGULATION AND DEVELOPMENT) ACT, 2016**



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## **DEFECT LIABILITY PERIOD UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016:**

A Defect Liability period is a set period of time after the completion of a project and handing over the possession to the allottee, where the builder/promoter is held responsible/answerable to the allottees, for any kind of structural defects in the project and is duty bound to set right such structural defects within the given time and without any further collection of money / charge to the allottees.

The Real Estate (Regulation and Development) Act, 2016, which is laid down to establish regulation and promotion of the real estate sector in an efficient and transparent manner and to protect the interest of consumers in the real estate sector, has introduced a provision in which Act speaks/*highlights* on the “Defect Liability”.

Section 14 (3) of the Real Estate (Regulation and Development) Act, 2016 lays down that,

“In case any *structural defect* or any other defect in *workmanship, quality* or *provision of services* or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of *five years* by the allottee from the *date of handing over possession*, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter’s failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act”.

One of the concerns in the real estate sector before this Act came into force was the quality of construction and sense of responsibility on the part of the builder/promoter towards the allottee. The builder/promoter was not bound by any Act or Regulations to check on the materials used for the construction and also quality of construction in a project building. The builder/promoter would not take any responsibility in rectifying the structural defects once the possession of the building was handed over to the allottee/s and allottee were forced to rectify the structural defects again by spending from his pocket, in spite of investing huge/heavy amount on the project building. There was no sense of security to the allottees in regard to the quality of construction on any project building constructed by the builder/promoter/s.

Section 14(3) of the Real Estate (Regulation and Development) Act, 2016, now eliminates the absence of professionalism in the real estate sector and makes it mandatory for promoter/developers to rectify any construction/structural defects that may be noticed, even after possession has been handed over to the allottee/buyer/investor for a period of five years and within thirty days after the structural defect coming into the knowledge/notice of the builder and thus, making the allottee feel secure on his investment on the project building.

#### WHAT ACCORDING TO THE ACT IS DEFECT LIABILITY/STRUCTURAL DEFECTS?

As the word “Defect Liability/Structural Defect” is not specifically defined in the Karnataka Real Estate (Regulation and Development) Rules, 2017, thus giving rise to confusion on the definition, we are referring to the Rules framed by other States on Real Estate Act, 2016 which have explicitly defined the word “Structural Defect”.

**Telengana State Real Estate (Regulation and Development) Rules, 2017** defines “Defect Liability” in its Agreement of Sale as,

“Structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act”.

The Telengana Rules, 2017 further defines the word “Defect Liability” as;

Notwithstanding anything contained in the above clause the following exclusions are made:

- a) Equipment (lifts, generator, motors, STP, transformers, gym equipment etc.) which carry manufacturer’s guarantees for a limited period.
- b) Fittings related to plumbing, sanitary, electrical, hardware, etc., having natural wear and tear.
- c) Allowable structural and other deformations including expansion quotient.
- d) The terms of work like painting etc., which are subject to wear and tear.

**The Haryana Real Estate (Regulation and Development) Rules, 2017 (draft rules)** defines “Defect Liability/Structural Defect” as,

actual physical damage/ defects to the designated load-bearing elements of the building, apartment or unit like faults, breakage or cracks, appearing over time in elements such as load bearing columns, walls, slabs, beams etc. which can affect the strength and stability of the apartment or the building and shall include any of the following, namely:-

- (i) defects due to design attributes of reinforced cement concrete (RCC) or structural mild steel (MS) elements of an engineered (structurally designed) building structure;
- (ii) defects due to faulty or bad workmanship of RCC or MS work;
- (iii) defects due to materials used in such RCC or MS work;
- (iv) major cracks in masonry work that are induced as result of failures of RCC or MS work;
- (v) Any defect which is established to have occurred on account of negligence, use of inferior materials or non-adherence to the regulatory codes of practice by the promoter.

Explanation: - The promoter shall not be liable for any such 3 structural/ architectural defect induced by the allottee, by means of carrying out structural or architectural changes from the original specifications/ design.

## **CONCLUSION:**

Thus, the clause “Defect Liability” will give rise to careful consideration on the quality of construction in a project by the promoters and in case of any structural defects, then gives the allottee/buyer a window to get the defects rectified by the promoter for a period of five years from the date of possession being handed over by the promoter and hence securing the interest and safeguarding the investment made by the allottee in a project building.

## **Best Practices –**

- 1) Promoters to enter into contract with Contractors / Suppliers / Service providers back to back (min 5 years) to pass on the risk of defect liability.
- 2) If Contractors / Suppliers / Service providers are not covers for 5 years, then to rely on separate AMC’s to protect and mitigate financial risks.
- 3) Promoter to consider the increased cost due to defect liability as part of their project cost.

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*References -*

- [www.rera.karnataka.gov.in](http://www.rera.karnataka.gov.in)
- Telangana RERD Rules
- Haryana RERD Rules

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Being a pioneer in the field of providing consultancy services in all matters related to The Real Estate (Regulation and Development) Act, 2016, RERA CONSULTANTS LLP is a one stop consulting firm backed by seasoned professionals having expertise in the fields of Real Estate, Legal, Accounts, Taxation, Construction, Information Technology, providing consultancy services to Promoters for registration of Projects, Agents, Allottees and all other matters related and ancillary to the registration of the Projects.

RERA CONSULTANTS LLP aims at providing all services under The Real Estate (Regulation and Development) Act, 2016 to the Promoters, Agents as well as the Allottees/Purchasers of Apartments and Plots.

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7. Land title search report
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10. Allottees dispute redressal assistance
11. Promoter dispute redressal assistance
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