

Agreement for Sale under the Real Estate (Regulation and Development) Act, 2016: Format, Mandatory Clauses, and Legal Implications

The Real Estate (Regulation and Development) Act, 2016 (“**RERA**” or the “**Act**”) represents a landmark in the regulation of India's real estate sector. For decades, the industry operated with limited oversight, leaving purchasers vulnerable to information asymmetry, chronic project delays, and significant imbalances in bargaining power relative to promoters of real estate projects. The Act addresses these longstanding concerns by establishing a uniform regulatory framework across states, with the dual objectives of enhancing transparency and consumer protection while holding developers to greater standards of accountability.

A cornerstone of this regulatory architecture is the agreement for sale (“**AFS**”), which governs the contractual relationship between the promoter and the allottee. Recognizing the critical importance of this document, the Act mandates a model form of AFS and proscribes promoters from entering into agreements that deviate from the prescribed format or contain unfair or one-sided provisions. The format for the model AFS is prescribed by each state’s RERA authority and is included in the respective state rules relating to RERA.

In this context, a careful review of the format, mandatory clauses, and legal implications of the AFS becomes essential—not only for promoters to ensure regulatory compliance, but also for allottees, investors, and lenders to safeguard their legal and commercial interests in a RERA-governed project. This note discusses the key requirements in relation to the AFS as prescribed under the Act and the orders of the Maharashtra Real Estate Regulatory Authority (“**MahaRERA/Authority**”).

REQUIREMENT FOR AFS

Section 13 of the Act mandates that a promoter cannot accept more than 10% of the cost of the apartment, plot, or building without first entering into a registered written

AFS. This provision ensures that the buyer's rights are safeguarded from the outset by eliminating the possibility for informal or ambiguous agreements between promoters and allottees, a recurring cause of conflicts.

COMPULSORY CLAUSES

Order No. 38/2022 issued by the Authority ("**Order 1**") mandates that certain clauses in the AFS are non-negotiable and must mandatorily be incorporated by promoters. The Order 1 was prompted by MahaRERA's finding that promoters were deviating from the prescribed model AFS, thereby undermining allottee protections under the Act.

Order 1 specifies two category of clauses. First, there are clauses that must be included exactly as stated in the model AFS. These clauses pertain to:

a. Area difference

As per Clause 1(g) of the model AFS, the promoter shall confirm the final carpet area upon completion and receipt of the occupancy certificate, subject to a maximum variation of 3%. The total price will be adjusted (refunded to/paid by allottee) accordingly.

b. Termination of AFS by promoter

Clause 4.2 of the model AFS provides that if the allottee defaults on three instalments, the promoter may terminate the agreement after giving 15 days' written notice and an opportunity to cure. If the defaults are not rectified within this period, the agreement may be terminated. Upon termination, the promoter shall refund the amounts paid within 30 days, subject to adjustment of any agreed dues or damages.

Second, there are clauses that must be included, but a certain degree of variation from the language in the model AFS is permitted. These clauses are:

a. Force majeure

Explanation to Section 6 of the Act describes force majeure as case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project. The Authority has generally required the AFS to include a force majeure clause that is broadly aligned to the language in Clause 6 of the model AFS which provides for the following:

The promoter may reasonably extend the delivery date if construction of the building is delayed on account of –

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- i. war, civil commotion or act of God;
 - ii. any notice, order, rule, notification of the Government and/or other public or competent authority/court.

b. Formation of association of allottees

Section 11(4)(e) of the Act and Rule 9(1) of the Maharashtra Real Estate (Regulation and Development)(Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017 (“**Rules**”), *requires* the promoter to form a legal entity within 3 months of 51% of allottees booking units. In layout projects, an apex body must be formed within 3 months of receipt of the occupancy certificate for the last building. In case of failure, the Authority may direct the promoter to comply or permit the allottees to initiate the formation. Clause 9 of the model AFS provides for the formation of the association of allottees; however, no fixed percentage of allottees or timeline is mentioned for formation of the association.

c. Conveyance of title

Section 17 of the Act and Rule 9(2) of the Rules requires that:

- i. In a single building project, the promoter shall convey title to the allottees’ entity within 3 months of receipt of the occupancy certificate, subject to sale of remaining units;
- ii. In a layout project, the structure of each building/wing (excluding basements and podiums) shall be conveyed within 3 months of receipt of the occupancy certificate; and the underlying land shall be conveyed within 3 months of the occupancy certificate of the last building/wing. However, Clause 9.1 and 9.2 of the model AFS provides that the promoter shall transfer its title in the (a) building within 3 months of registration of legal entity to legal entity and (b) project land on which the building with multiple wings or buildings within 3 months of registration of apex body to apex body.

d. Defect liability period

Under clause 7.4 of the model AFS, if any structural or other defects in quality, workmanship, services, or obligations are reported within 5 years from possession, the promoter must rectify them free of cost within 30 days. If the promoter fails to do so, the allottee is entitled to compensation under the Act.

OTHER COMPULSORY CLAUSES

Parking

Separately, following persistent complaints regarding inadequate and unusable parking despite MahaRERA Circular No. 36/2021, the Authority issued Order No. 54 ("**Order 2**"). Order 2 mandates that promoters specify the number, type, size (length x breadth x vertical clearance), and location (basement, stilt, and/or podium) of each parking space allotted in the allotment letter and AFS. The parking layout plan approved by the planning authority, reflecting these particulars, must be annexed to the allotment letter/AFS. The language in relation to parking is provided under Order 2 and cannot be altered in any manner.

Common areas

As per Order no. 60 issued by the MahaRERA ("**Order 3**") MahaRERA requires the promoter to mention in detail (including proposed date of handover, etc.) the details regarding common areas in the real estate project.

Real estate agent

In case a transaction is facilitated by a registered real estate agent, then all amounts (including taxes) payable to the registered real estate agent, by the promoter and/or the allottee must be recorded in the AFS as per Order no. 64 issued by the Maharashtra Real Estate Regulatory Authority.

Deviation report

When an application for registration of a project is made to the Authority, various documents, including, *inter alia*, the legal title report, layout approval, details of legal and finance encumbrance, etc. are to be submitted by the promoter. Among other mandatory documents, the proposed draft of the allotment letter and AFS are also required to be submitted. In case of any deviation from the model allotment letter and model AFS, Order 3 requires the promoter to submit a deviation report, highlighting the deviations and modifications in a different colour. The AFS, along with the deviation report, is compulsorily required to be uploaded on the MahaRERA website to enable proposed purchasers to make an informed decision. If such deviation report is not submitted by the promoter, the application for registration of the project is liable to be rejected.

In summary, stakeholders should be aware of the following in relation to the AFS:

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- Compulsory clauses relating to area difference, termination and parking cannot be modified and are to be incorporated exactly as mentioned in the model AFS.
 - In case of clauses relating to force majeure, formation of association of allottees, conveyance of title and defect liability period, while language changes are permissible, any such modifications are required to be highlighted in a deviation report to be filed at the time of registration of the project.
 - In case of other clauses, the promoter may carry out limited amendments subject to such modifications being mentioned in the deviation report.

MahaRERA's Order 32/2022 provides that real estate project registration applications are scrutinised for completeness and compliance, with incomplete applications returned for correction. Repeated deficiencies (including any defect in AFS) require the applicant to attend an open house meeting and resubmit within seven days, failing which the application is closed. The order also imposes penalties for re-submissions after closure and for project corrections, with persistent non-compliance being referred to the MahaRERA Authority for further action.

CONSEQUENCES OF NON-ADHERENCE BY PROMOTERS

Failure on the part of the promoters to comply with the directions contained in the aforesaid Orders and the applicable provisions of the Act, the Rules and Regulations framed thereunder relating to the AFS, shall have the following consequences:

- a. Order 1 confirms that the Act, Rules, and Regulations—including the non-negotiable clauses in the model Agreement for Sale (Annexure 'A', Rule 10(1))—bind both promoters and allottees. Any contrary provisions are void ab initio and unenforceable against allottees.
- b. Order 3 mentions that any non-compliance or if the deviations/ modifications proposed by promoters in the proforma of the allotment letter or the proforma of the agreement for sale as uploaded is / are contrary to the provisions of the Act, the Rules and Regulations made thereunder, the application for registration of the real estate project shall be liable for summary rejection.

Any deviation from the prescribed statutory framework governing the AFS—whether relating to the model format, non-negotiable clauses, or directions issued by the Authority—exposes the promoter to penal consequences. Sections 61 and 63 of the Act provide, inter alia, that any non-compliance with the orders or directions of the

Authority in this regard may result in penalties extending up to 5% of the estimated project cost.

CONCLUSION

The AFS under the Act is no longer a contractual formality—it is a statutorily regulated instrument designed to ensure fairness, transparency, and accountability in real estate transactions. Through legislative mandates and regulatory enforcement, the scope for unilateral contractual practices has been significantly curtailed. The prescribed model format, non-negotiable clauses, and strict compliance requirements collectively establish a robust protective framework for allottees.

For promoters, adherence to the statutory format is essential—not only to avoid regulatory consequences such as registration rejection and financial penalties, but also to maintain credibility in an increasingly regulated market. For allottees, these provisions offer meaningful protection against contractual imbalances and post-agreement disputes.

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