

LAND LAWS

SYLLABUS

Land plays an important role in the lives of individuals because of which it is elevated in the level of a constitutional status. Of late there is a shift in the approach of the State towards land which is reflected in the laws and their interpretation. Apart from introducing the students to the basic legal regime applicable to land, it is important to introduce them to diverse aspects of land dealings like land revenue, prohibition of transfer, acquisition, conversion, compensation, rehabilitation, resettlement, etc. This course is designed towards this end.

UNIT – I

The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 – Determination of social impact and public purpose, provision to safeguard food security, notification and acquisition, rehabilitation and resettlement award and procedure

UNIT – II

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Utilisation, conversion : National Monitoring Committee, Acquisition, Rehabilitation and Resettlement Authority, apportionment of compensation and payment of compensation.

UNIT – III

The Karnataka Land Revenue Act, 1964 – Revenue Officers and their procedure, Revenue Appellate Tribunal, Appeal and Revision, Land and Land Revenue Record of rights, realisation of land revenue.

UNIT – IV

The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and Rules 1979 – The Karnataka Land Reforms Act, 1961 – General provisions regarding tenancies, conferment of ownership on tenants, ceiling on land holdings, restrictions on holding or transfer of agricultural lands, co-operative farms, fragmentation and consolidation of holdings.

UNIT – V

The Real Estate (Regulation and Development) Act, 2016 – Registration of real estate project and registration of real estate agents, functions and duties of promoter, rights and duties of allottees, the real estate regulatory authority, the real estate appellate tribunal, offences, penalties and adjudication.

The Karnataka Real Estate (Regulation and Development) Rules, 2017

Books prescribed :

S.G.Biradar, Land Acquisition – A Paradigm Shift, KAS Officers' Research and Training Institute, Bangalore

UNIT – I

Syllabus

The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 – Determination of social impact and public purpose, provision to safeguard food security, notification and acquisition, rehabilitation and resettlement award and procedure

SOCIAL IMPACT STUDY

Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, requires the Government to study the nature and extent of loss of revenue and livelihood that may be suffered by the affected families from the intended acquisition.

Whenever the appropriate government intends to acquire land for a public purpose it shall consult the Panchayats, Municipality or Municipal Corporation:

Consultation and Studies of Social Impact

In pursuance of its development plan,

- 1) the Government shall consult the Panchayat, Municipality or Municipal Corporation at village level or ward level in the concerned area.
- 2) With their help, the government shall conduct social impact assessment study in a specialized manner.
- 3) Such study shall be published in the local language, in the Offices of Deputy Commissioner, Assistant Commissioner and Tashildar and also uploaded on the Website of the Government.
- 4) The Government shall complete the study within six months from the date of commencement of it.

The Assessment study shall examine whether the proposed acquisition of land will be of public utility and whether any other place has been identified as an alternative, if needed.

The Social Impact Assessment Study report shall be made available to the public in the manner prescribed under Section 6 of the Act. The Social Impact Assessment study shall include the following. Namely,

- a) Assessment as to whether the proposed acquisition serves the public purpose
- b) Estimation of affected families and the number of families among them likely to be displaced
- c) Extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- d) Whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project;
- e) Whether land acquisition at an alternate place has been considered and found not feasible;
- f) Study of the social impact of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-à-vis the benefits of the project.
- g) Environmental Impact study, if any, shall also be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment Study.

The Social Impact Assessment study shall also examine the result of the proposed project on the livelihood of the affected families, the impact on public and community properties, civic facilities, roads, public transport sources of portable water, water sheds, grazing land, plantations, public utilities, food storage godown, educational facilities, anganwadies, places of worship, power supply and funeral grounds.

The assessment study shall also draw a Social Impact Management Plan by proposing ameliorative (improvement) measures to minimise adverse impact of the government projects on the livelihood of the inhabitants in the affected areas.

Where a Preliminary Notification under Section 11 of the Act is not issued within twelve months from the date of appraisal of the Social Impact Assessment Report submitted by the Expert Group, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings under Sec.11 of the Act. The appropriate government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same. Such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the Website of the concerned authority.

SPECIAL PROVISION TO SAFEGUARD FOOD SECURITY OBJECTIVE

Section 10 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, recognizes the critical importance of preserving irrigated land for production of food crops. This section, therefore, forbids acquisition arable (gaphplg;\$ba) land for developing its civil projects.

The Government shall not acquire any irrigated multi-cropped land for implementing its development project. Where it becomes necessary to do so, the government shall set limits for every district or State and notify such land as reserved for only agricultural purposes. These lands shall be known as “NOTIFIED LANDS”.

Such land may be acquired subject to the condition that it is being done under exceptional circumstances as a demonstrable (ep&gpf;fj;jf;f) last resort. Whenever multi-crop irrigated land is acquired, an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate government for investment in agriculture for enhancing food security.

This section is not applicable in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

PUBLICATION OF PRELIMINARY NOTIFICATION AND POWER OF OFFICERS

Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is intended to make acquisition of land by the government for public purposes open and transparent in all respects.

Before proposing to acquire land for developing a project, the government shall issue a preliminary notification for doing so providing details of such land. Publication of such notice shall be made in the official gazette, two news papers popular in the area, in the Panchayat, Municipality or Municipal Corporation and in the offices of the District Collector, sub-divisional Magistrate and the Thesil. The notification shall also be uploaded on the web site in the manner as prescribed in the Rules. The Gram Sabha at the village level, municipalities and the Autonomous Councils shall be informed of the notification.

The Notification shall describe:

- 1) the nature of the proposed project,
- 2) Reasons for re-location of affected persons; and
- 3) Contents of the Social Impact Assessment Report
- 4) Name of the Administrator for Rehabilitation and Resettlement of the displaced persons.

From the date of Notification, no encumbrances on such lands shall be created by any person until the proceedings of acquisition are completed. The bar may be lifted in special circumstances with the prior approval of the Collector. Within two months from the date of publication of notification, the Collector shall revise and update the lands.

Upon determining the location for implementing its project, the appropriate government shall have the right to entire upon a land, survey its suitability, dig or bore into sub-soil and do all necessary acts, to set out boundaries of the land and to clear away any part of any standing crop, fence or jungle.

The above such acts of the government shall be performed only in the presence of the owner of the land or his authorized agent. To ensure his present, the owner shall be given a notice of at-least 60 days prior to such survey. Where a person who is not the owner

is in occupation of the land, such person shall be given a notice of at least seven days.

Protection to the owner against loss or damage:

Section 13 of the Act, the aim is to protect the owner against any loss caused by any authorized Officer entering upon his land to conduct survey or determine its suitability. Under this section, the Officer of the government is responsible to compensate the owner of the land for any damage caused to such land on account of his entering upon it and performing any act thereon to determine its suitability of acquisition. The District Collector is the referee where the adequacy of compensation for loss due to damage is disputed.

Tenure of the Assessment Report :

If the process of acquisition is not commenced within twelve months of drawing of the assessment report, such report shall be considered as obsolete and no acquisition proceedings can be made there after, unless the government extends the period and justifies doing so.

Objections by the land owner:

Under Section 15 of the Act, the government shall also give an opportunity for the land owner to present his objections to the preliminary notification issued by it within 60 days thereof. Such objections may relate to the area and suitability of the land and its justification for using it for public purpose. The objection may also relate to the findings of the social impact assessment report. The District Collector shall record the objections and forward them along with his comments to the government. The District Collector shall also make a separate report on the approximate cost implied in the acquisition of land and the number of families that may be required to be resettled.

Any person interest in the lands may raise his objections on :

- a) The area and suitability of land proposed for acquisition;
- b) Justification offered for public purpose;
- c) The findings of the Social Impact Assessment Report.

The decision of the appropriate government on the objections made under Rule 15(2) shall be final.

Duties of the Administrator for Rehabilitation and Resettlement:

Followed by the Preliminary Notification, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families which shall include :

- a) Particulars of lands and immovable properties being acquired of each family
- b) Livelihoods lost in respect of land losers and landless whose livelihoods are preliminarily dependent on the lands being acquired;
- c) A list of public utilities and government buildings which are affected or likely to be affected, where resettlement of affected families are involved;
- d) Details of the amenities and infrastructural facilities which are affected or likely to be affected,
- e) Details of any common property resources being acquired.

Based on the survey and census, he shall prepare a Draft Rehabilitation and Resettlement Schemes which include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired.

The Commissioner for Rehabilitation and Resettlement shall review the recommendations of the District Collector before implementation.

Upon reviewing the Scheme by the Commissioner for Rehabilitation and Resettlement, it shall be uploaded on the web site of the appropriate government. The Commissioner shall also provide a copy of the Scheme to the concerned Panchayat or Municipalities or Municipal Corporation as the case may be as well as to the Offices of the District Collector, the Sub divisional Magistrate and the Tehsil and made known in the affected areas.

Resettlement Area:

As per Section 19 of the Act, upon identifying an area for rehabilitation and resettlement of the affected families,

- a) the appropriate government shall declare it as a “resettlement area”
- b) such declarations shall be made severally in respect of different parcels of land;

- c) every declaration shall be accompanied by the summary of the rehabilitation and resettlement scheme.
- d) Such declaration shall be made only after the Requiring Body deposits a stated amount with the government towards costs of the land;
- e) The declaration shall be published in the Official Gazette, two news papers and in the Panchayat or Municipalities and uploaded in the official web site

As per Section 20 of the Act, the Collector shall thereupon cause the land to be marked out and measure and if no plan has been made thereof, a plan to be made of the same.

Where the government makes such declaration within twelve months of its preliminary notification, such notifications shall be considered as withdrawn, unless a stay or an injunction of a court is in operation. However, the government may extend time by itself.

NOTICES TO THE PERSIBS

After preparation of Plan, as per section 21 of the Act, the District Collector shall publish the public notice on his web site and cause public notice to be given at convenient place on or near the land to be taken and such notice shall state the particulars of the land so needed and require all persons interested in the land to appear personally or by the agent or by advocate before the District Collector at a time and place mentioned in the Public Notice not being less than 30 days and not more than 60 days after the date of publication. The persons who appear before the District collector has to state the nature of the respective interests in the land and the amount and the particulars of their claims to compensation for such interests, their claims to rehabilitation and settlement along with the objections and statement to be made in writing and signed by the person appeared before the collector (Party in person, or agent or advocate). The District Collector shall also service notice of the same to the occupier or person interested, if any. In case any person so interested resides elsewhere and has no such agent or advocate, the collector shall send the notice to him by post.

ENQUIRY AND AWARD:

Under section 23 of the Act, on the day so fixed, the Collector shall proceed to enquire into the objections which any person interested to the measurements made and the value of the land at the date of publication

of the notification and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award:

- a) True area of the land
- b) The compensation as determined along with rehabilitation and resettlement award;
- c) The apportionment of the said compensation among all the persons known or believed to be interested in the land, or who, or of whose claims, he has information, whether or not they have respectively appeared before him.

As per Section 25 of the Act, the District Collector shall make an award within twelve months from the date of publication of declaration and if no award is made within that period, the entire proceedings will be lapsed. However, the Government shall have the power to extend the period of twelve months, in its opinion, circumstances exist justifying the same and such decision to extend the period shall be recorded in writing and the same shall be notified and uploaded on the web site of the authority concerned.

DETERMINATION OF MARKET VALUE:

Under Section 26 of the Act, (1) the District Collector shall adopt the following criteria in assessing and determining the market value of the land:

- a) The market value, if any, for the registration of sale deeds or agreements to sell, as the case may be in the area, where the land is situated; or
- b) The average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- c) Consented amount of compensation as agreed upon in case of acquisition of lands for private companies or for public private partnership projects, which ever is higher.
- d) The date for determination of market value shall be the date on which the notification has been issued under Section 11.

As per section 27 of the Act, the Collector, after determination of the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner by including all assets attached to the land.

DETERMINATION OF AWARD:

Under section 28 of the Act, the District Collector shall take into consideration for determination of award for the land to be acquired:

Firstly, the market value determined and the award amount in accordance with Schedule-I

Secondly, the damage sustained by the person interest, for taking of any standing crops and

trees which may be on the land at the time of taking possession of the land

Thirdly, the damage sustained by the person interested for reason of severing of such land

from the other land;

Fourthly, the damage sustained by the person interested by reason of the acquisition

injuriously affecting his other property, moveable or immovable in any other manner

or his earnings.

Fifthly, in consequence of the acquisition of the land, the person interested is compelled to

change his residence or place of business, the reasonable expenses, if any, incidental

to such change;

Sixthly, the damages, bona fide resulting from diminution of the profits of the land between the

time of the publication of the declaration;

Sevently, any other ground which may be in the interest of equity, justice and beneficial to

the affected families.

DETERMINATION OF VALUE ATTACHED TO LAND OR BUILDINGS:

Section 29 of the Act deals with the determination of value of things attached to the land or building, to be acquired under the Notification.

- 1) The District Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired. For determination of value, the Collector may use the services of a competent engineer or any other specialists in the relevant field.
- 2) The Collector, for determination of value of trees and plants attached to the land acquired, use the services of experienced

persons in the field of agriculture, forestry, horticulture, sericulture or any other field;

- 3) The collector for the purpose of assessing the value of the standing crops damaged during the process of acquisition, may use the services of experienced persons in the field of agriculture, as considered by him necessary.

AWARD OF SOLATIUM:

Under Section the Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose "Solatium amount" equivalent to 100% of the compensation amount.

2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the Schedule.

- 3) In addition to the market value of the land provided, the Collector shall in every case, award an amount calculated at the rate of 12% on such market value for the period commencing on and from the date of the publication of the Notification of the Social Impact Assessment Study in respect of such land till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

REHABILITATION AND RESETTLEMENT AWARD AND PROCEDURES (RR AWARD) (SECTIONS 31 TO 37) :

The District Collector passes two types of awards, in case of land acquisition. They are :

- 1) Award for Land Acquisition :

An award made in respect of every affected family whose land is being acquired (this will include landless tenants as well) and containing details of land acquisition as listed in the Schedule-I.

- 2) Award for Rehabilitation and Resettlement Award:

An award made in respect of every affected family, regardless of whether they may be losing land or not, containing details of Rehabilitation and Resettlement entitlements in the Schedule-II.

(In simple, LA award and RR award)

The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the II Schedule which include the following :

- a) Rehabilitation and Resettlement (RR) amount payable to the family
- b) Bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred.
- c) Particulars of house site and house to be allotted, in the case of displaced families
- d) Particulars of land allotted to the displaced families;
- e) Particulars of one time subsistence allowance and transportation allowance in case of displaced families;
- f) Particulars of payment for cattle shed and petty shops;
- g) Particulars of one-time amount to artisans and small traders;
- h) Details of mandatory employment to be provided to the members of the affected families;
- i) Particulars of any fishing rights that may be involved;
- j) Particulars of annuity and other entitlements to be provided;
- k) Particulars of special provisions for the Scheduled Castes and Scheduled Tribes to be provided;

In every resettlement area, the District Collectors shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Schedule – III.

The District Collector may at any time, but within six months from the date of award or before making reference to the Authority under Section 64, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any persons interested or local authority.

Such correction shall be brought to the notice of all the persons interested. Where any excess amount is to be paid in the result of such corrections, the excess amount is liable to be refunded.

ENQUIRY:

The Collector may, for any cause, from time to time adjourn the enquiry to a day fixed by him. For the purpose of enquiry, the Collector shall have powers to summon and enforce the attendance of witnesses, including the parties interested of any of them, and to compel the

production of documents by the same means, and in the same manner as is provided under the CPC. The appropriate government may at any time before the award is made by the Collector, call for records of any proceedings for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such other or issue such direction in relation thereto as it think fit. Provided that the appropriate government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

The awards shall be filed in the office of the District Collector and shall be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before him or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested. The collector shall give immediate notice of his awards to such of the persons interested who are not present personally or through their agent or through their advocate. The collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual with details of land finally acquired.

TAKING POSSESSION OF LAND TO BE ACQUIRED:

As per Section 38 of the Act, the Collector shall take possession of the land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award. Provided:

- a) That the components of the Rehabilitation and Resettlement Package in the 2nd & 3rd Schedules that relate to infrastructural entitlements shall be provided within a period of 18 months from the date of award;
- b) That in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six
- c) months prior to submergence of the lands acquired.

The District Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

ADDITIONAL COMPENSATION:

Under Section 39 of the Act, the District collector shall not displace any family which has already been displaced by the appropriate government for the purpose of acquisition under the provisions of the Act and if so displaced, shall pay an additional compensation equivalent to that of the compensation determined under the Act for the 2nd or successive displacements.

UNIT - II

SYLLABUS:

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Utilisation, conversion : National Monitoring Committee, Acquisition, Rehabilitation and Resettlement Authority, apportionment of compensation and payment of compensation.

NATIONAL MONITORING COMMITTEE FOR REHABILITATION AND RESETTLEMENT

Under Section 48 of the Act, the Central Government for national or inter-state projects, constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans.

The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields. The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed. The Central government shall provide officers and other employees to the Committee necessary for its efficient functioning.

The State and Union Territories shall provide all the relevant information on the matters covered under this Act to the Committee in a regular and timely manner and also as and when required.

ESTABLISHMENT OF THE STATE MONITORING COMMITTEE (SEC.40) :

The State government shall constitute a State Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plants under this act.

The Committee may have representatives of the concerned Ministries and Departments of the State Government, associate with it eminent expert from the relevant fields. The procedures to be following by the Committee and the allowances payable to the experts shall be such as may be prescribed by the State. The State government shall also provide such officers and other employees to the Committee as may be necessary for its efficient functioning.

APPORTIONMENT OF COMPENSATION AMOUNT (SEC.75 & 76) :

When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment. Further, when amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof payable, the district collector may refer such dispute to the authority.

PAYMENT OF COMPENSATION (SEC. 77) :

On making award under Section 30 of the Act, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies.

If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Authority to which a reference under Section 64 would be submitted. Provided:

- a) That any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount;
- b) That no person who has received the amount otherwise than under protest shall be entitled to make any application;
- c) That nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

In the above circumstances, when the compensation money is in the custody of the Authority, it however transpires that the compensation awarded had no power to alienate the land, in that event, the Authority shall :

- a) Order to purchase of other lands to be held under the like title land conditions of ownership;
- b) Where such purchase cannot be made immediately, invest the amount in approved securities and pay interest earned thereon to the interested persons;

c) Order all related costs to be recovered from the Collector

When the compensation amount is in the custody of the Authority on the awardee's own motion, or for any reason other than as specified, on an application made by the awardee, the Authority may order that such amount be invested in Government or other approved securities. The Authority shall ensure that such investment would fetch the awardee the same return, as proximately as possible, that he might have earned from out of the acquired land.

Before taking possessions of the acquired land, the Collector shall deposit the compensation amount with the Authority or pay the awardee, as the case may be. Where the Collector fails to do either, he shall pay interest at the rate of 9% p.a. from the time of taking possession until making deposit or payment. Where such delay exceeds one year, the Collector shall pay interest at the rate of 15% p.a. for the period of such delay.

U N I T - III

SYLLABUS

The Karnataka Land Revenue Act, 1964 – Revenue Officers and their procedure, Revenue Appellate Tribunal, Appeal and Revision, Land and Land Revenue Record of rights, realisation of land revenue

KARNATAKA LAND REVENUE ACT, 1964

PROCEDURES OF REVENUE OFFICERS:

The Act may be called as Karnataka Land Revenue Act, 1964. It shall extend to the whole of the State of Karnataka. It shall come into force on the 1st day of April, 1964.

REVENUE OFFICERS TO BE REVENUE COURTS:

A Revenue Officer, not below the rank of a Tahsildar while exercising power under this Act, or any other law for the time being in force, to inquire into or to decide any question arising, for determination between the State Government and any person or between parties to any proceedings shall be a Revenue Court.

The Revenue Court shall be deemed to limit or otherwise affect the inherent power to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Revenue Court.

Every Revenue Officer shall function only within his local jurisdiction, unless his headquarters lies outside the local limits of his jurisdiction.

The Tribunal can transfer any case arising under this Act, the Tribunal may transfer it from any Regional Commissioner to any other Regional Commissioner when it considers it necessary to do so. The Regional Commissioner may transfer any case arising under this Act from one Revenue Officer to another in the same district or another. The Deputy Commissioner may transfer a case from his own file or from the file of any Revenue Officer to the file of another Revenue Officers. He may also withdraw any case from any Revenue Officer and bring it before himself.

FUNCTIONS OF THE REVENUE OFFICER:

- 1) The Revenue Officer may take evidence, summon persons to give evidence, and call for documents.
- 2) The Revenue Officer shall issue summons only in writing and shall serve them under his seal in a manner as prescribed.

SERVICE OF NOTICES:

- 1) The postal acknowledgement purporting to contain the signature of the person summoned is sufficient proof of issue of summons. Where the postal cover containing the summons returned un-served, any noting made thereon to that effect by the postal department constitutes evidence of statements contained therein.
- 2) Serving of notices may be made also by affixing a copy of it to a conspicuous place on land. If the person to be notified resides in any other district, the notice may be sent to the Deputy Commissioner of that district. Any error in the name or designation of the person addressed shall not nullify the notice unless such error cause miscarriage of justice;
- 3) The attendance of witness shall be procured in the manner prescribed under CPC.
- 4) Where a witness is required in any case failed to comply summons, the summoning officer may issue a bailable warrant of arrest or order him to furnish security for appearance or impose upon him a fine. However, the summoning officer may exempt the witness from personal appearance due to sickness or infirmity or any other justifiable cause.

HEARING OF DISPUTES:

- 1) Enquiries are deemed to be judicial proceedings.
- 2) Every Revenue Court shall conduct hearing in public and parties shall be served its due notice. Where neither party is present at the time of pronouncement to me made in the open court on the appointed day, the decision shall be communicated by post to each party. If the parties are not present at the time of hearing, the court may dismiss the case for default.

- 3) Where an ex parte order is passed by the court, the aggrieved party may apply within 30 days thereafter for setting it aside by showing sufficient cause for non-appearance.
- 4) The Revenue Officer may conduct any enquiry, not being formal or summary, on any occasion according to the rules prescribed by the State Government.

ENTRY INTO THE LAND OR PREMISES:

- a) The Revenue Officer or his authorised representative may enter into any land or premises for administering revenue law. However, no person shall enter into land or premises unless the occupier is given due notice and after having regarded to his social and religious sentiments.
- b) The Deputy commissioner may or shall evict any person wrongfully holding possession of land by serving a notice or removing such person or by taking such forceful steps to remove him as become necessary.

EVICTION OF WRONGFUL POSSESSION (SEC.39)

When it is provided by this Act or any other law for the time being in force, the Deputy commissioner may or shall evict any person wrongfully in possession of land or where any order to deliver possession of land has been passed against any person under this Act, such eviction shall be made or such order shall be executed, as the case may be in the following manner:

- a) By serving a notice on the person in possession requiring him within such time as may reasonable after receipt of the said notice to vacate the land; and
- b) If such notice is not obeyed, by removing or deputing a subordinate officer to remove any person who may refuse to vacate the same; and
- c) If the Officer removing any such person in resisted or obstructed by any person, the Deputy Commissioner or the Revenue Officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction still continues, may, without prejudice to ;any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, such steps and

use or cause to be used in the opinion of such Officer, by reasonably necessary for securing compliance with the Order.

APPELLATE TRIBUNAL:

As per Section 40 of the Act, the State Government shall by notification constitute for the State of Karnataka, an Appellate Tribunal called the Karnataka Revenue Appellate Tribunal.

The Tribunal shall consist of the following six members appointed by the State Government :

- a) A Chairman – Shall be Officer of the rank of Regional Commissioner; and
- b) Five members – Of whom , 3 shall be persons who are District Judges; and the others shall be Officers having experience in administration of revenue matters not below the rank of a Deputy Commissioner.

If , by reason of any increase in the business of the Tribunal or by reason of arrears of work therein or otherwise, it appears to the State Government that the number of members of the Tribunal should be for the time being increased, the State Government, may by notification appoint persons having same qualification of members to be the Additional Members of the Tribunal for such period the State Government specify.

The Karnataka Revenue Appellate Tribunal constituted under the Karnataka Revenue Appellate Tribunal Act, 1957 and functioning as such immediately prior to the commencement of this Act shall continue to function as the Tribunal for the purposes of this Act, until a Tribunal duly constituted in accordance with the Provision of the Act.

BUSINESS OF THE TRIBUNAL:

The Tribunal shall have the powers of Civil court and a single member may exercise power to admit an appeal or a revision petition, issue stay orders or pass any interlocutory orders. Under Section 41 of the Act, the power of the Tribunal in all matters relating to appeals, revisions and other proceedings, shall be exercised by Bench of two members. Where a Bench comprising two or more members hears a matters its decision shall be that of the majority. Where a Bench of two members differs in its opinion on any point, in case, a third member shall hear that point only and the decision shall be of majority of members.

The headquarters of the Tribunal shall be at Bangalore. The Tribunal may have sittings at such places as the Chairman of the Tribunal may specify.

REVIEW POWERS:

The Tribunal may either on its own motion or on the application of any party affected, review any order passed by itself and pass such orders in reference thereto as it deems fit. Provided:

- 1) That no order shall be varied or reversed unless notice has been given to the other parties affected; and
- 2) That no order affecting any question of right between private persons shall be reviewed except on the application of the party affected.
- 3) That every application for a review of the order shall be made within a period of 90 days from the date of order.
- 4) That the provision in the Limitation Act, 1963 shall apply to an application for review.

Every division of the Tribunal shall be final and shall not be called in question in any court.

POWERS OF THE TRIBUNAL:

The Tribunal may do all or any of the following: namely,

- 1) Call for returns from the authorities subject to its jurisdiction;
- 2) Issue general directions and prescribe forms for regulating the practice and proceedings of such authorities.

APPEAL AND REVISION (SECTION 49):

An appeal shall lie from every original order passed under this Act or the rules made thereunder:

- a) If such an order is passed by the Revenue Officer subordinate to the Assistant Commissioner
- b) If such order is passed by Assistant Commissioner, to the Deputy Commissioner;
- c) If such an order is passed by the Deputy Commissioner, to the Tribunal;
- d) If such an order is passed by the Regional Commissioner to the Tribunal;

- e) If such an order passed by a Survey Officer below the rank of Assistant Director to the Assistant Director of Land Records or Assistant Director for Settlement;
- f) If such an order passed by a Survey Officer of the rank of Assistant Director to the Director of Land Records or Joint Director for Settlement;
- g) If such an order passed by the Joint Director of Land Records or Joint Director for Settlement, to the Director of Survey and Settlement and Land Records;
- h) If such an order passed by the Director of Survey, Settlement and Land Records, to the Tribunal.

SECOND APPEAL (Section 50)

Second appeal shall lie against any order passed in a first appeal:

- 1) If such an order is passed by the Assistant Commissioner to the Deputy Commissioner
- 2) If such an order is passed by the Deputy Commissioner to the Tribunal;
- 3) If such an order is passed by the Assistant Director or Settlement or Assistant Director of Land Records, to the Director of Survey, Settlement and Land Records.
- 4) If such an order passed by the Joint Director of Land Records or Joint Director of Settlement or by Director of Survey, to the Tribunal;

An order passed on Second Appeal shall be final.

LIMITATION OF APPEALS:

No appeal shall lie :

- a) In case of first appeal, after the expiry of 60 days from the date of the order appealed against; and
- b) In case of second appeal, after the expiry of 90 days from the date of order appealed against.

POWER OF THE APPELLATE AUTHORITY:

- 1) The appellate authority may, for reasons to be recorded in writing, either annul, reverse, modify or confirm the order appealed. Provided, unless :
 - a) The Revenue Officer from whose order the appeal is preferred has refused admit evidence which out to have been admitted.

- b. The Appellate Authority requires any document to be produced or any witness to be examined to enable it to pronounce orders, or
 - c. For any substantial cause the Appellate Authority allows such evidence or document to be produced or witness to be examined;
 - d. When an additional evidence is allowed to be produced, such authority shall record the reason for its admission.
- 2) The Revenue Officer who has passed an order or his successor in office , before the expiry of the period prescribed for appeal may say for such time
 - 3) The Appellate Authority direct that the execution of the order appealed from, be stayed for such time as it may think fit or till the decision of the appeal;
 - 4) No order directing the Stay of Execution of any order shall be passed except in accordance with the Provisions of this Section.

POWER OF REVISION (SECTION 56):

The Tribunal, any Revenue Officer not inferior in rank to an Assistant Commissioner, and any Survey Officer not inferior in rank to the Deputy Director of Land Records or an Assistant Settlement Officer in their respective Departments, may call for and examine the record of any inquiry or the proceedings of any Subordinate Officer under this Act for the purpose of satisfying itself or himself, as to the legality of propriety of the proceedings of such officer.

- 1) In any case, any decision or proceedings called for should be modified or reversed, the Tribunal or such Officer may pass such order as deems fit.
- 2) No application for revision under this section and no power of revision on such application shall be exercised against any order in respect of which an appeal has been preferred
- 3) No application for revision shall be entertained unless such application is presented within a period four months from the date of such order.
- 4) The Tribunal alone shall be competent to modify, annul or reverse any such order under the Provisions of the Act.

LAND AND LAND REVENUE

LAND (SEC. 67 TO 79)

The government is the lawful holder of all roads, bridges, ditches, harbours, sea beds, rivers, lakes and creeks below high water mark. High

water mark is the point which spring tides reach during any season. Where a claim to any such property is in dispute, the Deputy Commissioner shall be the deciding authority.

The State government may by notification declare that the rights of the public over any road, street, lane or path shall stand extinguished. Any objection of the public to such declaration may be submitted by the Deputy Commissioner to the State Government. Where necessary an affected person shall be paid compensation.

The State Government or the Revenue Officer, as the case may be, may apply its land or other property for the purpose of agriculture, industry or any other public utility. The State Government or the Authorized Officer may sell of any property belonging to the State Government by public auction and confirm such sale within 30 days thereof.

The right to mines, minerals and mineral products shall vest in the State Government absolutely. During survey operations, the Deputy Commissioner may set apart lands which are a property of the State Government and which are not in lawful occupation of any person for free grazing by the village cattle, for forest reserves or any other public purpose. No person shall occupy or trespass any land reserved by the Government for special purpose or remove any natural product which is part of its property.

Where the survey settlement has not been introduced, the occupant of the land for the time being shall have the right to all trees except those reserved by the Government or those, such as, sandalwood trees, which are the lawful property of the State Government.

All trees in any land, except those reserved by the Government, which were surveyed before the commencement of this Act stand conceded to the person in lawful possession of such land at the point of time. Survey after the passing of this Act shall make such trees, the property of the occupant of such land for the time being. Occupancy of the land granted after completion of survey shall entitle the occupant to the right to all trees growing on that land, provided they were kept in reserve at the time of grating permission for occupation.

The ownership of trees, brush-wood, jungle and natural products shall vest in the State Government. The holder of such land shall preserve or dispose of them in the manner that the State government may direct from time to time.

Trees standing by the road side belong to the State Government. However, where they had stood on a private land which was acquired for the making of the road, and were either cut down or died, the timber thereof would be the property of such land holder.

No person shall cut down or utilize any tree or any portion thereof when it remains the property of the government.

The privileges of the villagers or certain class of persons to cut fire-

Every piece of land, not being a fragment, whether used for agricultural or any other purpose, shall be liable to payment of land revenue to the State Government. However under any special contract with the Government payment of land revenue may be exempted.

An occupant of alluvial lands or abandoned river beds may be entitled for their temporary use, if such area is a fragment. Otherwise, such land or island or riverbed shall belong to the government. The individual holder is not liable to pay land revenue thereon.

Where a holder loses a part of his land, being less than half an acre, by diluvion (ngUnts;sk; rkk;ge;jkhd) shall pay reduced land revenue. If a holder diverts his land from non-agricultural use to agricultural use, he shall pay land revenue as applicable for agricultural land. Land revenue, which was being paid before the commencement of this Act, shall continue to be payable at prescribed rates. The use of any land liable for land revenue may be prohibited for certain stated purposes. The holder may be evicted summarily, if he violates such prohibition.

The Deputy Commissioner shall fix the amount of revenue subject to the maximum prescribed rates and for maximum prescribed period. Assessment so made may be subject to special conditions or restrictions. The Deputy Commissioner may revise the period fixed for payment of land revenue within the prescribed period.

The Deputy Commissioner shall maintain a record for all lands alienated under any law. When a sannad is lost or destroyed, he may issue a certified extract from the register as a proof of title.

Liability to pay land revenue would create a charge on every part of the land and the rights of the occupant over all trees, crops, buildings and things attached to the land. The Tahsildar may recover the arrears of the

land revenue by sale of occupancy or of holdings or by disposing them otherwise.

The Thasildar shall take possession of forfeited holdings immediately and transfer them to persons who are entitled to hold them.

RECORD OF RIGHTS (SECTION 127 TO 136)

A record of rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars:

- a) The names of persons who are holders or owners, tenants of the land
- b) The nature and extent of the respective interest of such persons
- c) The rent or revenue, if any, payable by or to any such persons
- d) Such other particulars as may be prescribed.

The Record of Rights shall be maintained by such Officers in such areas as prescribed and different Officers may be prescribed for different areas. When the preparation of Record of Rights is completed, the fact of such completion shall be notified in the Official Gazette.

ACQUISITION OF RIGHTS TO BE REPORTED:

Where land devolves on any person through succession, survivorship, inheritance, partition or otherwise, he shall report the event to the Prescribed Officer of the village within three months thereof. The guardian of a minor shall report the event where applicable. Delay in reporting may attract a fine as penalty. The acquisition shall be registered and entered in the Record of Rights.

Whenever a person transfer his holdings to another, the event shall be entered in the Register of Mutations. Where the transfer is disputed, the fact shall be recorded in the Register of Disputed Cases. The Revenue Officer shall supply a copy of Record of Rights to every holder and tenant. Such copy is referred as the Patta Book. The patta book shall also show land revenue paid, crops grown on the land as contained in Record of Rights, Tenancy and crops.

The land owner shall furnish or produce for the inspection by any Revenue Officer such information or documents as may be within his

knowledge or possession. On default, the holder shall pay penalty as prescribed.

The Prescribed Officer is entitled to obtain information from any holder for preparing or revising any map or plan of the village. The Revenue Officer may assess and recover the cost of preparing such map from the holder, the interested person shall get a sketch of the property acquired by him through succession, survivorship, inheritance, partition or by any other lawful means.

A certified copy of the Record of Rights or Register of Mutations shall be attached to every plaint or application made to the Court.

UNIT - IV

The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and Rules 1979 – The Karnataka Land Reforms Act, 1961 – General provisions regarding tenancies, conferment of ownership on tenants, ceiling on land holdings, restrictions on holding or transfer of agricultural lands, co-operative farms, fragmentation and consolidation of holdings.

KARNATAKA SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF TRANSFER OF CERTAIN LANDS) ACT, 1978 :

The Act may be called as the Karnataka Scheduled Castes and Scheduled Tribes (Prevention of transfer of Certain Lands) Act, 1978. This Act are for giving effect to the policy of the State towards securing the principles laid down in Article 46 of the Constitution.

PROHIBITION OF TRANSFER OF GRANTED LANDS (SEC.4) :

This Act protects the members of the Schedule Caste and Scheduled Tribes from transfer of lands granted to them by the Government under any scheme. The Act forbids transfer of such land by way of gift, sale, exchange, lease, mortgage, etc. However, this Act does not forbid transfer of granted land, if such transfer is the result of an intestate succession or a partition among the members of the family.

Where a grantee desires to transfer a land granted by the government, he may do so only with the previous permission of the government. The prohibition contained in this Act, shall also extent to the sale of the granted land in execution of a decree or order of a Civil Court or an award or an order made by a statutory body.

RESUMPTION & RESTITUTION OF GRANTED LANDS :

Under Section 5 of this Act, the Assistant Commissioner is empowered to take possession of the granted land wrongfully transferred and restore it to the original grantee, as and reported to him as transferred in contravention of this Act. The Assistant Commissioner may do so after satisfying himself of the veracity of such information received by him or suo motu and declare its sale as null and void. He may make such order only after giving the informant a reasonable opportunity of presenting his case in person.

The Assistant Commissioner shall thereafter restore the granted land to the original grantee or his legal heirs, as the case may be. In case the heirs are either non-existent or untraceable, such land shall vest with the Government as unencumbered property. In such an event, the government may grant such land to any person belonging the Scheduled Caste or Scheduled Tribe under any of the rules framed by it. On the contrary, the Assistant Commissioner may, if he is so satisfied, declare the sale as legitimate.

Any order passed by the Assistant Commissioner under the Section becomes final, if the Deputy Commissioner also endorses it. In that event such order is not questionable in any court of law nor would qualify for any civil injunction. Where any person other than the original grantee or his legal heirs, under this Act is in possession of the granted land shall become invalid until such possession is successfully defended by him.

APPEAL TO THE DEPUTY COMMISSIONER (SECTION 5-A):

Where the Assistant Commissioner declares the sale of granted land as null and void, the purchaser of such land may appeal against such order before the Deputy Commissioner. He may admit such appeal, if it is made before him within a period 3 months from the date of order communicated to him, unless a Writ Petition has been preferred against such order in High Court. The Deputy Commissioner shall dispose of the appeal in the prescribed manner and the order passed by him shall be final.

PROHIBITION OF REGISTRATION OF GRANTED LAND (SEC.6):

After commencement of this Act, no registering Officer shall accept for registration any document relating to the transfer of , or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering officer except where such transfer is in accordance with this Act or the terms of the grant of such land or the law providing for such grant. However, the Assistant Commissioner may transfer granted land favour the State or Central Government, a Municipality or a bank either before or commencement of this Act. This section empowers the Assistant Commissioner to restore a granted to the government.

A person who acquires any granted land shall become liable to conviction and imprisonment or fine or both. This section treats transfer of granted land to a non-government body or to a bank without the

permission of the government, as an offence that may be taken up suo motu by the law enforcement authority.

PROTECTION OF ACTION TAKEN IN GOOD FAITH (SEC.9):

No suit, prosecution or other legal proceedings shall lie against any person or officer for anything which is, in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. No suit or other legal proceedings shall lie against the government for any damage caused or likely to be caused or for injury suffered any or likely to be suffered by virtue of any provision of this Act or for anything which is done or intended to be done in pursuance of this Act or any rules made thereunder.

THE KARNATAKA LAND REFORMS ACT, 1961

WHO ARE TENANTS:

As per Section 4 of the Karnataka Land Reforms Act, 1961, a person is deemed to be a tenant who is :

- i) Lawfully cultivating a land belonging to another person which the owner is not cultivating personally;
- ii) not a member of owner's family, or
- iii) a servant or hired labourer on wages payable in cash or kind but not on crop sharing basis and not cultivating under supervision of the owner or any member of his family; or
- iv) a lender in possession of the land as a mortgagee

PROHIBITION OF LEASES (SEC. 5) :

No tenancy or lease shall be created or continued on the land after commencement of this Act. However, this condition shall not apply to the tenancy or lease created or continued by a soldier or a seaman within three months of the commencement of this Act. This condition does not apply also to any land situated in Uttar Karnataka and Dakshina Kannada districts owned or occupied by persons for the purpose of agriculture for a period not exceeding 20 years. Every lease created shall be always in writing.

Under Section 6 of the Act, no tenancy shall be ended only for the reason of expiration of the period of tenancy.

RESTORATION OF POSSESSION TO TENANTS (SEC.7) :

A person who is or whose predecessor was dispossessed of the land either by termination of tenancy, or by eviction before the 10th day of September, 1957 may seek restoration of tenancy, unless the land used stood converted for non agricultural purpose. The Tribunal shall order restoration if the tenant had surrendered tenancy under fraud, misrepresentation or undue influence, or as a result of expiry of duration of tenancy, or any illegal act of the land lord without the approval of the court.

On receipt of an application, the Tribunal shall inquire into the circumstances in which and the procedure under which such dispossession took place and is satisfied that such dispossession took place as a result of :

- a) Surrender and the consent of the tenant was procured by fraud, misrepresentation, etc., or
- b) Expiry of the duration of tenancy, or
- c) Any act of the landlord or any person acting on his behalf without recourse to a court of law

The Tribunal shall order the restoration of possession of the land and the tenancy thereof to the tenant.

Provided : That the Tribunal shall not order restoration of possession of the land, if it is satisfied that the land on lease bona fide by a tenant who is not a member of the family of the land owner.

As per section 8 of the Act, the rent payable in respect of any land by the tenant shall be payable annually and such rent shall be the aggregate of gen time of the land revenue and ten times of the water rate, if any, payable in respect of such land.

Provided that where the rent payable by a tenant under any contract is less than the rent, such tenant shall not be liable to pay more than such rent and where under any contract made prior to the date of commencement of the Amendment Act, such lesser rent is payable in kind, the amount payable shall be calculated by converting rent in kind to its cash equivalent in the prescribed manner.

Any dispute between the landlord and tenant in rent shall be adjudicated by Tasildar. During the tenancy of the land, no cost of cultivation shall be fall the landlord. The land lord shall not be entitled to receive rent except in the form of money. All liabilities on account of land

revenue, water rate, cess or fee payable to the government or local authority shall be on the tenant's account.

Where a landlord recovers rent contrary to the provisions of this Act, he shall immediately return such excess amount to the tenant. He shall also pay the tenant any compensation that the Tasildar may decide. The Tasildar may also levy on the land lord a penalty not exceeding twice the amount so recovered.

The landlord shall not levy on the tenant any amount by whatever name called than the rent lawfully payable by him. When the government suspends or allows remission of the entire or part of land revenue payable, the land lord shall similarly suspend all rent payable by the tenant entirely or partly, as the case may be. The rent payable by the tenant during such period shall not be sued upon regardless of any suit or decree of a civil court or authority. The tenant may apply to the Tasildar for recovery of such amount. Where the value of the land deteriorates by flood or any natural cause or the crops have been lost due to them, the Tasildar may, after enquiry, reduce the rent payable on the land.

RESUMPTION OF LAND BY SOLDIER OR SEAMAN (SEC.15):

A soldier or a seaman may repossess his land after notice, if he requires it to cultivate it personally. If he is released from the Armed Forces and sent to reserve, he may repossess his land at any time but not later than one year from such release. Upon death of such soldier or seaman during service, his legal heirs may repossess his land. Where the tenant fails to return the land to the soldier or the seaman, the Tasildar may evict the tenant and deliver the land to the owner. However, where the soldier or seaman has failed to issue notice as required, the leased land shall be transferred to the government.

RESTRICTION ON TRANSFER OF RESUMED LAND (SECTION 19) :

The land lord shall not transfer the land repossessed from the tenant to another person by sale, gift, exchange or otherwise. However, the owner may sell the land to the tenant who under repossession had been evicted from it. The sale price shall be as determined by the Tasildar. Where the land had belonged to a soldier or a seaman and who had died during service, the dependant of such person may sell such land without intervention of the Tasildar.

Regardless of other restrictions, the land owner may create a mortgage, or charge on his land to raise a loan from the Government or a financial institution or a company majorly owned by the government or its corporation.

FAILURE TO CULTIVATION (SECTION 20) :

The land owner may evict a tenant in order to cultivate it himself or to use it for non agricultural purposes. If he fails to use the land either way within one year from repossession or ceases to so use it within three years thereafter, Tasildar may transfer it to the state government as unencumbered land. The tenant on his application made within 12 months of transfer of the land to the government shall be registered as “occupant” and not as a “tenant”.

PROHIBITION OF SUB DIVISION, SUB LETTING AND ASSIGNMENT (SEC. 21):

A tenant shall not be entitled to sub divide or sublet it or make assignment of any interest therein. This condition does not apply to the surviving members of the family of a deceased tenant. Also, if a deceased tenant is not a member of a joint family, the prohibition does not apply to the legal heirs or successors. In these events, each share holder shall held his share as a separate tenant. The rent payable on a leased land shall be apportioned among the share holders. The area allotted to each share holders among the surviving members of successors as case may be shall not be less than the fragment, that is, one acre. If it is less than a fragment, the land shall not be divided by metes and bounds, but the fruits of the land shall be enjoyed by the shareholders jointly. The prohibition on the sub letting of the land shall not apply to a soldier or a seaman.

EVICTION OF TENANT FOR DEFAULT (SEC.22):

A tenant may be evicted by the landlord only in the following circumstances:

- a) He has defaulted in payment of rent for two years consecutively
- b) Landlord has issued notice of default every year within first three months;
- c) The tenant has committed permanent damage to the land;
- d) The tenant has sub-divided, sub-let or assigned the land unilaterally;

- e) The tenant has not cultivated the land personally for two consecutive years;
- f) The tenant has put the land for non-agricultural use.

In any event, the tenant is entitled to three months notice of eviction in writing. The tenancy of a soldier or a seaman shall not be cancelled on the ground of subletting.

EVICTON NOT TO BE ORDERED (SECION 23):

Where during the proceeding instituted for repossession, the tenant pays the arrears of rent for two consecutive years the land lord is not entitled to repossession.

RIGHTS AND LIABILITIES OF THE TENANTS:

- 1) Upon the death of the tenant, his legal heirs become entitled to the tenancy on the same terms.
- 2) Where the tenancy is held by a soldier or a seaman, he shall not surrender the land except to the state government under admission made before Tasildar.
- 3) Where the landlord mortgages the land to the tenant cultivating it, such tenancy is suspended for the period of mortgage. The tenancy may continue thereafter on the same terms and conditions.
- 4) Where during tenancy, the tenant would have planted trees on the land, he shall be entitled its fruits and the wood. On the tenancy ceasing, the landlord shall pay such compensation for the trees as the Tasildar determined.
- 5) It shall be the responsibility of the tenant to maintain the boundary marks of the land and pay the cost of their maintenance;
- 6) The tenant or the landowner shall, as determined by the Assistant Commissioner shall meet the cost of construction, maintenance or repairs of any bunds protecting the land, if such bunds are neglected owing to a dispute between them.
- 7) Where the tenant at his own cost construct, maintain or repairs in such bunds to protect the land, he may obtain an order from Tasildar to recover such costs from the land owner;
- 8) For effectively using the land, the tenant may set up a farm house on it for his occupation;
- 9) A permanent tenant shall be liable to pay any amount levied by the government as betterment contribution;

- 10) Any payment made by the tenant to the landlord shall be presumed to be the payment of rent due for the year, unless he clarifies that it should not be so treated;
- 11) No decree or order of a civil court shall attach to any land held by the tenant held under this Act.
- 12) Where a tenant has erected a dwelling house on the land at his own expense, he cannot be evicted from it by the land lord, unless the tenant has defaulted the payment of rent for three consecutive years. However, he may be evicted from that dwelling house if he has defaulted in any manner;
- 13) If the landlord desires to sell the land occupied by the tenant, and if the tenant has built a dwelling house at his own expense thereon, the landlord shall set it only to the tenant. The price of the land shall not exceed ten times the amount of land revenue assessed thereon. Any sale made breaching this conditions shall be annulled.
- 14) If the tenant who has set up a dwelling house on the tenanted land desires to buy it, shall notify the landlord accordingly. Where the landlord refuses or fails to accept the proposal within three months, the tenant shall deposit the purchase amount within three months with the Tasildar, who shall then grant him a certificate of ownership.
- 15) The rights of tenants shall not be curtailed by any custom or law, except as provided in this Act.

DWELLING HOUSE FOR AGRICULTURAL LABOURERS:

Where an agricultural labourer is ordinarily residing in a dwelling house on a land and not owned by him, such house shall vest with the State Government, subject to the following conditions:

- a) If the land owner genuinely requires the dwelling house for his own use, he shall require such occupant to shift over to another place, which also belongs to him;
- b) The owner land owner shall pay the labourer the price of the dwelling house so vacated, if it had been set up at his own cost, along with the cost of shifting;
- c) The new dwelling place shall not be far away than one kilometre;
- d) Where such labourer does not comply with the land owner's request, he may seek the order of the Tribunal to enforce compliance. If the labourer does not shift to the new site, the Tribunal shall order his eviction.

Where the dwelling house occupied by the labourer is on a land in an unrecorded habitation, it shall vest absolutely in the state government and the labourer shall be registered as its owner. However, where the labourer is residing in a portion of the house of the owner, or residing temporarily on the land, he shall not be entitled to the benefit.

TENANT'S FIRST OPTION TO PURCHASE LAND (SEC.39):

- 1) If a land lord at any time intends to sell the land by a tenant, he shall give notice in writing of the intention to such tenant and offer to sell the land to him. In case, the latter intends to purchase the land, he shall intimate in writing his readiness to do so within two months from the date of receipt of such notice.
- 2) If there is any dispute about the reasonable price payable for the land, either the land lord or the tenant may apply in writing to the Tasildar to determine the reasonable price.
- 3) The Tasildar after giving notice to the other party and to all other persons interested in the land and after making such inquiry as he thinks fit, shall fix the reasonable price of the land which shall be the average of the prices obtaining for similar lands in the locality during the ten years immediately preceding the date on which the application is made.
- 4) The tenant shall deposit with the Tasildar the amount of the price determined within the period prescribed;
- 5) On deposit of the entire amount of the reasonable price, the Tasildar shall issue a certificate in the prescribed form to the tenant declaring him to be the purchaser of the land. The Tasildar shall also direct that the reasonable price deposited shall be paid to the landlord.
- 6) If a tenant does not exercise the right of purchase in response to the notice given to him by the land lord or fails to deposit the amount of the price as required, such tenant shall forfeit his right of purchase, and the landlord shall be entitled to sell such land to any other person in accordance with the provision of this Act.
- 7) The forfeiture of the right to purchase any land under this section shall not affect the other rights of the tenant in such land.

COMPENSATION FOR IMPROVEMENT MADE BY TENANT (SEC.40):

- 1) A tenant who has made an improvement on the land held by him shall, if his tenancy is terminated is entitled to compensation for such improvement. For determining the amount of

compensation, the tenant shall apply to the Tasildar in the prescribed form.

- 2) The compensation to which a tenant shall be entitled, shall be estimated value of such improvement at the time of the termination of his tenancy. In estimating such value regard shall be had to :
 - a) The amount by which the value of the land is increased by the improvement;
 - b) e present conditions of the improvement and probable duration of its effects;
 - c) the labour and capital provided or spent by the tenant for the making of the improvement; and
 - d) any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration of the improvement including permanent fixtures.
- 3) If such land is subject to mortgage or other encumbrance created by the tenant, the amount of compensation shall be applied first for discharging such mortgage or other encumbrance and the balance shall be paid to the tenant.

PROCEDURE FOR TAKING POSSESSION (SEC.41):

Where tenant is aggrieved by possession of land or dwelling house, he may seek its remission within a period of two years from the Tasildar. He may be liable to forfeit of crops, if any.

PROCEDURE FOR RECOVERY OF RENT (SEC. 42):

Except for what this act provides no legal process shall lye for recovery of rent falling in arrears. The only course open for the land lord for claiming for arrears of rent would be to obtain order from the Tasildar.

CONFERMENT OF OWNERSHIP ON TENANTS:

VESTING OF LAND IN THE STATE GOVERNMENT (SEC.44):

The ownerships all the tenanted lands shall become vested in the state government on the date of commencement of this Act. All land revenues become payable to the state government and not to the land owner, land lord or any other person. No such land shall be liable for attachment by any court. All compensations are receivable by the land lord, landowner or interested person from state government as provided

in this Act. No action by permanent, protected or other tenants against the state government shall lie.

TENANTS TO BE REGISTERED AS OCCUPANTS (SEC. 45):

Every tenant including lawfully instituted sub-tenant, shall be entitled to the registered as occupant, if he had been such before the date of commencement of this Act and who had been cultivating land personally.

- a) A tenant would not be registered as an occupant, if he holds land partly as owner or partly as tenant and the latter part exceeds a ceiling area.
- b) Again, a owner who does not personally cultivate his land but holds land as tenant in excess of ceiling area, but which he cultivates personally, he shall be registered as occupant to the extent of the ceiling area;'
- c) Where a person holds and cultivates land personally as owner of any land less than the ceiling area, he shall be registered as an occupant to the extent that it will be sufficient to make his holding equal to the ceiling area;
- d) If a person is not entitled to be registered as occupant under this section, the Deputy Commissioner may grant such land to the persons under SC & ST subject to their being found eligible.
- e) A person eligible to be a registered occupant holding land from more than one land lord may choose the area and the location of the land to become occupant thereof;
- f) Persons whose interest in the land became extinguished shall be paid by the government an amount determined based on net annual income derivable from the land or all the lands as the case may be. In any case, the aggregate amount payable shall not exceed two lakhs.

CONSTITUTION OF TRIBUNALS:

For each Taluk, a Tribunal shall be formed comprising the Assistant Commissioner and four nominees of State Government. The Tasildar shall be Secretary to the Tribunal. The Tribunal shall receive grievances from registered occupants and adjudicate in the matter. The Tasildar shall determine the amount payable to the tenant registered as occupants of land. The Tribunal shall have powers to pass interim orders or in respect of the dwelling house, appoint receiver.

DETERMINATION OF ENCUMBRANCES:

The amount payable to the registered occupants under the order passed by the Tribunal shall duly exclude amount payable to the mortgagee, if any. Where the total amount payable to creditors exceeds the amount ordered to be paid by the Tribunal, the ordered amount shall be distributed among the creditors equitably. Where the encumbrance is under question, the Tasildar shall seek the decision of the court. Any advance paid for lease or purchase of land shall be considered as an encumbrance on the land.

Amount payable to any for extinguishing his rights over lands becoming vested in the Government shall be paid in cash up to Rs.2000/- and in bonds up to twenty years at five and half per cent. Minors, widows and persons aged above 65 years shall be paid by way of annuity, as applicable. Payment made to the land lord, land owner or other persons entitled thereto shall be in full discharge. No claim shall lie with the State government thereafter.

The tenant or sub-tenant shall pay premium on land at rates as specified. He may obtain assistance from the State Land Development Bank for paying premium; The state government shall create out of premia collected from the tenants or sub-tenants a fund called Karnataka Religious and Charitable Institutions Annuity Fund, which shall be first credited to the consolidated fund of the state and invested thereafter as directed by the government.

The premia payable by the tenant or sub-tenant shall be recoverable as land revenue and shall be deposited with the Tasildar. The Tasildar shall issue a certificate declaring tenant as occupant, which shall be registered by the Sub Registrar. A minor within one year of attainment of majority, a physically or mentally disabled person within one year of recovery, a soldier and a seaman within one year from discharge of service may exercise right as tenant. When a person leases land contrary to the provisions of this Act, such land shall vest in the State Government.

FAILURE OF PERSONAL CULTIVATION:

When a tenant registered as occupant fails to cultivate it personally for three consecutive years, ye may be evicted by the Tasildar. The government may grant it to unregistered occupants or to tenants displaced under Land Acquisition Act, or to landless agricultural labourers or released bonded labourers. Such grantees shall not transfer the grant for

a period of fifteen years except by mortgage in favour of a financial institution.

No registered occupant shall within 15 years transfer his interest by sale, gift, exchange, mortgage, lease or assignment. However such land may be partitioned among members of a joint family. Upon contravention, such land shall vest with the government.

Where the registered occupant or his successor has given up personal cultivation within six years, he shall surrender it to the state government which thereupon pay premium paid by him and depreciated value of improvements made by him;

CEILING ON LAND HOLDINGS (SEC.63 TO 83):

No person shall hold land in excess of the ceiling area. The ceiling area shall be ten units for a person who has no family and forty units for a tenant.

Where a person has no family of his own but is a member of a joint family, his undivided share therein and his separate properties shall be aggregated for determining his ceiling. In the case of a private, but revocable, the trust land is held by the author or his successor. Where irrevocable, trust lands are held by the beneficiaries.

Where a person with no family or is not a member of a family, his share in a co-operative form, if any, shall be considered for determining the ceiling. A public charitable institution cannot hold land exceeding twenty units, unless its income is applied only for its objectives. Otherwise, such land shall vest with the government. No sugar factory shall hold land exceeding fifty units, unless it is applied solely for research.

Where a person hold land acquired through any legal means in excess of the ceiling limit such excess shall vest with the government as excess land. Excess land, called surplus land, shall vest with the State Government. Where land held by a person falls under any other class as a result of irrigation facility developed by the State Government and consequently he land exceeds the ceiling area, such excess shall vest with the state government.

Every land holder shall furnish to the Tasildar the extent of his holdings and particulars of the members of his family, if he holds lands exceeding the stipulated limits. Any person who fails to furnish the

declaration of his holdings or furnishes false declaration knowingly, may invite a penalty from the Tasildar. The excess land shall vest with the state government, if the defaulter does not comply with the order of penalty.

On detailed enquiry, the Tasildar shall determine the total holdings of the person has exceeded the ceiling area and shall order demanding its surrender to the government. For such period of time the person who was in possession and use of excess land, such person shall pay the state government pay compensation as determined by the Tribunal as arrears of land revenue.

The excess land owned by a person other than a limited owner shall vest with the state government free from all encumbrances. Land surrendered by the limited owner shall vest in presumptive reversionary under a declaration made by such owner to that effect. The reversionary shall pay the owner an amount of 4 1/2% per annum of the value of such land.

The mortgager surrenders excess land to a usufructuary mortgagee. Such land shall revert to the mortgagee. Such owner shall pay the mortgage money to such lender. Where the tenant of a soldier or a seaman surrenders excess land, the possession reverts to the owner when the owner himself is not liable to surrender. However, he shall pay the tenant an amount equal to one year's net income of the land as reparation.

The amount payable by the government for taking over excess land shall be based on net annual income yielded by such land. The Tasildar shall notify and determine the amount payable to the owner for taking over his excess land. The amount so payable shall be by way of non transferable and non-negotiable interest carrying bonds. The owner of excess land shall not transfer it in any manner contained in the Transfer of Property Act before declaring the extent of such land.

Where a person or family holds land becoming excess owing to any change in the land classification, or by the size of the family becoming decimated such excess land is not required to be surrendered. Tasildar may take possession of excess land after removing objections by the owners, if any.

Where a person was in possession and actual cultivation of any land below one unit, the Deputy Commissioner may grant land to such person

in the prescribed manner. The grantee of surplus land may deposit the purchase price with the Tribunal in one sum or in instalments annually. The purchase price shall be determined by the Tasildar for different classes of land at rates based on annual income derived from the grant land. The grantee may obtain loan from State Land Development Bank. The Tasildar shall monitor surplus land until they are disposed off for cultivation.

RESTRICTIONS ON TRANSFER OF LAND (SEC. 79 TO 88):

No person shall be entitled to acquire any land if he or his own or joint family as annual income of over Rs.25.0 lakhs from sources other than agricultural as a owner, landlord, tenant or mortgage. His acquisition of land exceeding this ceiling shall be null and void, except when it occurs by inheritance or bequest.

The owner of the land shall be one who cultivates it personally. A charitable, religious or educational institution or public society or trust, a registered company or a co-operative society, other than a co-operative form will not be capable of holding any land. Any person failing to abide by the prohibition shall forfeit such land in favour of the state government.

Sale under a court decree or for recovery of land revenue, or gift, exchange, lease, or mortgage shall be null and void, if the holder is not an agriculturist, or not an agricultural labour, one who holds land exceeding the ceiling area. However, the Deputy Commissioner may waive this condition in favour of a transferee who takes up agriculture within one year of acquiring land. If the transferee discontinues cultivation within five years, the land shall vest in the State Government. In that event, the owner shall be paid an amount equal to eight time the net annual income of the land.

The expression, 'agricultural purposes' would include equipping land fit for cultivation, growing crops, harvesting, improvement of land, developing sources of irrigation, plantation, animal husbandry, dairy farming and other types of farming.

Every form of transfer of property under this Act shall be registered under the Indian Registration Act, 1908 along with a declaration of the total extent of land held by he owner as also his assured income. Village and Revenue Officer shall report any transfer occurring in contravention of any provisions of this Act coming to his notice. The prescribed authority shall declare any transaction with regard to land as void, if after inquiry it appears to have contravened any of the provisions of the Act.

CO-OPERATIVE FARMS (SECTION 89 TO 102):

A co-operative farm may be promoted as a Society by any ten or more persons belonging to one or more village, if such villages are adjoining one another. The promoters should be landowners or tenants and together possessing over 50 acres of land. The Registrar of Co-operative Societies shall be registration authority.

The promoters shall submit extracts from record of rights showing total area long with survey numbers of lands held by each promoter. After being satisfied that the intended Farm serves best interest, would be in the interests of all the Registrar may grant its registration under Karnataka Co-operative Societies Act, 1959.

Upon registration of the farm, the possession of the lands of the members shall be transferred to it for intended purposes. The possession of the lands shall be restored to each member, if the co-operative farm is cancelled. Where a person is admitted as a new member, the possession of the lands held by him shall stand transferred to the farm. After its formation, no member shall resign from its membership except on prescribed conditions. The land held by such member shall be then restored to him.

Upon registration, the provisions of Karnataka Co-operative Societies Act, 1959 that do not contravene this Act and its rules shall apply. The application made for registration of the farm shall carry with it a draft of the bye-laws. A majority of the members by resolution or the Registrar acting on his own, may amend the bye-laws. A right of ownership of the member over his land would continue to vest in him after the Farm coming to effect. Every member shall be entitled for the rights, privileges, obligations and liabilities in respect of the Farm in accordance with this Act and the aforesaid Act.

Every member shall contribute to the farm by way of money, labour, agricultural implements and agricultural produce. The Farm is liable to pay the land owner, land revenue, cess, water rate, betterment charges and local rates. On the death of a member, his heirs would become the members of the co-operative Farm.

The members of the Co-operative Farm may enjoy concession from the state government in land revenue, agricultural income tax, free technical advice, financial aid and priority in irrigation.

**THE KARNATAKA PREVENTION OF FRAGMENTATION AND
CONSOLIDATION OF HOLDINGS ACT, 1966**

**DETERMINATION OF STANDARD AREA AND TREATMENT OF
FRAGMENTS (SECTION 3 TO 9)**

Land extending between one-half (1/2) acre and two and seven tenth ($2\frac{7}{10}$) acres (Viz. between 50 cents to 270 cents of land) under A, B, C & D classes (A Class – $\frac{1}{2}$ acre, B Class – $\frac{3}{4}$ acre, C Class – $1\frac{1}{4}$ acre and D Class – $2\frac{7}{10}$ acre) of land are called 'Standard Area'. Any area less than the Standard Area shall be referred as "Fragment".

All fragments in a village shall be shown in the Record of Rights or in similar records. Fragments shall neither be sold or leased by its owner except to the owners of contiguous survey number or recognised sub-division of a survey number. Such holder is referred as "Contiguous Owner". The seller shall then support the sale or lease with an affidavit filed before the Tasildar. Fragment shall be sold or leased only to a person cultivating land.

- a) No land shall be sold, leased, partitioned or sub-divided, if it results in creating in fragment.
- b) Sale of fragment, if required to be made under a Court Order , may be made only after notice to the contiguous owners. Also, no land shall be sold in such a manner that it may create a fragment.

Where several persons hold undivided share in an agricultural land, which requires to be partitioned, under a Court Decree or Succession, such partition shall not result in fragment. If partition entitles a specific share to co-sharer, which causes a fragment, he shall be compensated in money for that share. In making partition, the co-shares may decide which among them should get his share in the form of land or money. Where common consent does not emerge, the receiver of compensation shall be chosen by lot. Where a co-sharer receives a proportion in excess of his share, he shall deposit equivalent money in the prescribed manner. If he fails to do so, his share shall be allotted to any other co-sharer by lot. If he fails to do so, his share shall be allotted to any other co-sharer by lot. Such co-sharer shall pay compensation to the other members of the partition.

If no allottees receiving excess land pays compensation, his share will be sold in public auction and money so received shall be paid to co-shares who might have received less than their shares. The parties may hit upon any other method of partition by common consent, if it does not cause a fragment.

Prohibition fragmentation does not apply, however, to transfer land made for public purpose.

PROCEDURE FOR CONSOLIDATION (SECTION 10 TO 22) :

The state government may declare consolidation of holdings for the purpose of better cultivation of lands. It can cause a scheme for consolidation after a notification. After notifying consolidation, the government shall invite objections to the scheme, if any, and give a fair hearing to the land holders. Thereafter, the Assistant Consolidation Officer shall draft a scheme based on the estimated market value of all holdings of land by inviting the owners as well as the Panchayat for their opinion. The decision of Assistant Consolidation Officer shall be final.

The Assistant Consolidation Officer may order partition of any holding included in the scheme, if he finds it necessary to do so. He may also order amalgamation of a fragment with any contiguous holding, or consolidate holdings with mutual consent of the owners.

The Assistant Consolidation Officer shall pay compensation to the owner or recover it from him, as the case may be under the scheme of consolidation to assist recovery, the State Government may provide loan assistance. The scheme may amalgamate any road with any land held by the owners and make such roads accessible for public use, after consideration of objections received, if any. The Assistant Consolidation Officer shall submit his recommendations under the scheme for the decision of the Commissioner.

The Assistant Consolidation Officer may direct provision of adequate land under the scheme for any public purpose, if the state government agrees to pay compensation to such land holders and provide within 30 days of the publication of the draft scheme, the Consolidation Officer shall invite amendments therein from any person affected by the scheme. The amended scheme so proposed shall be forwarded to the Commissioner for confirmation.

After duly scrutinizing the scheme submitted by the Consolidation Officer and after inviting any further objection, if any, the Commissioner shall confirm.

The Commissioner shall publish the scheme in the Official Gazette after his confirmation. Within one year thereafter, the Assistant Consolidation Officer shall put the owners in possession of the holdings to which they are entitled and who shall pay the deposit amount of compensation. For doing so, the Assistant Consolidation Officer shall evict any person from any land which he is not entitled to occupy under the Scheme.

Where under the Scheme of allotment, a holder of land has to receive additional land, the compensation payable by him shall be suitably reduced. Where an allottee refuses allotment, the Assistant Consolidation Officer may allot the land to any other person who pay the value. If no person accepts the offer, the state government may recover compensation from the owner as arrears of land revenue or the state government itself may purchase the land by paying its net value to the owner.

The scheme is considered to have come into effect as soon as the beneficiaries have been put into possession of their holdings. Upon a certificate of transfer issued by the Assistant Consolidation Officer, he can amend the Record of Rights of the holder accordingly. No stamp duty or registration fees is payable for such transfer. Persons whose holdings are affected shall bear the cost of carrying out scheme proportionately.

Compensation and other obligation payable by the affected persons shall be recovered as arrears of land revenue together with interest.

EFFECT OF CONSOLIDATION PROCEEDINGS AND CONSOLIDATION OF HOLDINGS (SEC. 23 & 30):

Upon the scheme coming into effect, the Consolidation Officer and Assistant Consolidation Officer shall exercise the powers of the Assistant Commissioner and Tasildar respectively under the Karnataka Land Revenue Act, 1964. The Assistant Consolidation Officer shall invite all claimants of possession under the said Act to apply for possession. He shall place any order made by him before the Deputy commissioner for confirmation.

No person may transfer any holding unless approved by Assistant Consolidation Officer. Appeal against any order made by him may lie before the Consolidation Officer whose order thereon shall be final. The rights of every owner under the scheme shall be the same as had remained in his original holding.

Where any holding included in the scheme carried a mortgage debit or any charge other than a lease, such encumbrance shall be attached to the holding allotted to a person under the scheme. Where there arise dispute as regards the amount of compensation or additional compensation, the Assistant Consolidation Officer shall refer to the Munsif's Court.

Where subsequent to the introduction of the scheme any clerical or arithmetical error or omission surfaces, the Commissioner can rectify it and publish such correction. For the purpose of this section, a mistake relates to a clerical act and error related to a miscalculation.

If any defect in the scheme, other than clerical or arithmetical nature, subsequently comes to the notice of the Commissioner, which requires variation, the Commissioner shall publish a draft of such variation. Any person affected thereby may file his objection thereto within a month thereafter. Any scheme of consolidation of holdings may be subsequently varied or revoked by the Commissioner by following the provisions contained in this Act.

OTHER POWERS OF CONSOLIDATION OFFICER (SEC.31 TO35):

- 1) The Consolidation Officer or his Assistant shall be entitled to enter upon, conduct survey, erect survey marks, demarcated boundaries and do all other necessary act for giving effect to the scheme.
- 2) No person shall destroy, remove or injure any survey mark lawfully erected shall be punished with fine and be required to restore them at his cost.
- 3) It shall be the duty of the Village Officer to preserve every survey mark lawfully erected in the village.
- 4) The Consolidation Officer or his Assistant is empowered to require attendance of any person and submission of any paper.
- 5) The Commissioner, the Consolidation Officer and Assistant Consolidation Officer shall perform their duties under the control of State Government.

UNIT - V

The Real Estate (Regulation and Development) Act, 2016 – Registration of real estate project and registration of real estate agents, functions and duties of promoter, rights and duties of allottees, the real estate regulatory authority, the real estate appellate tribunal, offences, penalties and adjudication.

The Karnataka Real Estate (Regulation and Development) Rules, 2017

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

REGISTRATION OF REAL ESTATE PROJECT (SEC. 4 TO 8)

JOINT LIABILITY OF PROMOTER AND BUILDER:

Prior to the passing of the Act, a person was generally recognised by the public as a 'promoter', if he engaged himself in :

- a) Constructing or causing construction of an independent building or a building consisting of apartments or converting or causing conversion of an existing building or a part thereof into apartments, for the purpose of selling all or some of them; or
- b) Developing land into plots, whether or not constructing structures thereon for the purpose of selling them.

Where the developer and the builder were different persons, it was only the developer who was called as the promoter and not the builder. The builder, or the 'contractor', as he was called, was only the service provider appointed by the promoter for a fee. The role of the promoter included selling the plots or the apartments, as the case might be, but the builder's responsibility had remained confined to delivering the products to the promoter under a contract and according to agreed specifications.

Under the new Act, 'promoter' means, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the Rules and regulations made thereunder. In other words,

- 1) The builder may contract to construct structures, meant for sale to be made by the promoter or the land owner or an intermediary;
or
- 2) The builder may construct structures, which he intends to sell by himself.

GROUPING OF PROJECTS FOR REGISTRATION :

Groups of projects for the purposes of registration as hereunder:

- a) Those proposed for implementation in planning area;
- b) Projects already on stream; and
- c) Projects falling outside planning area.

APPLICATION FOR REGISTRATION OF REAL ESTATE PROJECTS (SEC. 4)

Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner within such time and accompanied by such fee as may be prescribed. The promoter shall enclose the following documents along with the application referred to – namely :

- a) A brief details of his enterprise, including its name, registered address, type of enterprise viz. whether proprietorship, society, partnership, company, competent authority, and the particulars of registration and the names and photos of the promoter;
- b) A brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- c) An authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

- d) The sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- e) The plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- f) The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- g) Proforma of the allotment letter, agreement for sale and the conveyance deed proposed to be signed with the allottees;
- h) The number, type and the carpet area of apartment for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;
- i) The number and areas of garage for sale in the project;
- j) The names and addresses of his real estate agents, if any, for the proposed project;
- k) The names and addresses of the contractors, architect, structural engineer, if any, and other person concerned with the development of the proposed project;
- l) A declaration , supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter stating:
 - 1) That he has a legal title to the land on which development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

- 2) That the land is free from all encumbrances, or as the case may be – details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- 3) The time period within which he undertakes to complete the project or phase thereof, as the case may be;
- 4) That 70% of the amount realised for the real estate project from the allottees from time to time shall be deposited in a separate account to be maintained in a Scheduled Bank to cover the cost of construction and the land cost and shall be used only for the purpose;

GRANT OF REGISTRATION (SEC. 5) :

- 1) On receipt of the application, the authority shall within a period of 30 days of receipt of the application,
 - a) Grant registration subject to the provisions of this Act and the Rules and Regulations made thereunder and provide
 - 1) Registration number
 - 2) Login ID
 - 3) Password for accessing the website of the Authority
 - b) Reject the application for reasons to be recorded in writing.
No application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.
- 2) If the authority fails to grant the registration or reject the application as the case may be, the project shall be deemed to have been registered and the Authority shall within a period of 7 days of the expiry of the period of 30 days and provide Registration Number, Login ID and Password to this Promoter for accessing the Website of the Authority;
- 3) The Registration granted shall be valid for a period declared by the Promoter in the application for registration.

EXTENSION OF REGISTRATION (SEC.6) :

The registration granted may be extended by the Authority on an application made by the Promoter due to “force majeure” (Act of God) in such form and on payment of such fee as may be prescribed. No application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

REVOCAION OF REGISTRATION (SECTION 7):

The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the Competent Authority, revoke the registration granted to the Promoter for undertaking his project by giving a notice of 30 days and after being satisfied, that

- a) The promoter defaults in his duties and obligations doing anything required by or under this Act or the Rules or the Regulations thereunder;
- b) The promoter violates any of the terms of approval given by the Competent Authority;
- c) The promoter is involved in any kind of the following unfair practice or irregularities. Unfair practice means any unjust, inequitable or deceptive method or practice which the promoter adopts to promote his project which may include the following :
 - 1) Falsely stating that the building or facilities provided are of a particular standard or grade;
 - 2) Falsely holding out that the promoter has all necessary approvals for the project;
 - 3) Making false or misleading representation concerning his services under the contract;
 - 4) Permitting publication through print, digital or visual media or in person, of any service that the promoter does not intend to offer;
 - 5) Indulges in any deceitful practice.

In simple, unfair trade practices may be categorised as under:

- a) False representation'
- b) False offer of bargain price
- c) Gift offers and prize schemes
- d) Non-compliance of prescribed standards.

The authority may at its own discretion permit registration of a defaulting promoter to continue until completion of the project by imposing certain terms and conditions thereon.

OBLIGATION OF AUTHORITY CONSEQUENT ON REVOCATION OF REGISTRATION (SECTION 8):

The Authority is to arrange for completion of the project in the event of non-extension of registration after its expiration, or its revocation before expiration, as the case may be. The Authority shall consult the appropriate government to take such action as it may deem fit for

completing the remaining development works. For that purpose, the government may engage competent authority or the association of allottees. The Authority may determine to adopt any other means for completing the remaining development works.

REGISTRATION OF REAL ESTATE AGENTS (SECTION 9)

No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project being sold by the promoter in any planning area, without obtaining registration under this section.

Every real estate agent shall make an application to the Authority for registration in such form, manner, within which such time and accompanied such fee and documents as prescribed.

The Authority shall, within such period, in such manner and upon satisfying itself of the fulfilment of such conditions, as may be prescribed:

- a) Grant a single registration to the real estate agent for the entire State or Union Territory, as the case may be;
- b) Reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the Rules or Regulations made thereunder.
- c) No application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Whereon on completion of the period specified, if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

Every real estate agent who is registered as per the provisions of this Act or the Rules and Regulations made thereunder, shall be granted a Registration Number by the Authority, which shall be quoted by the Real Estate Agent in every sale facilitated by him under the Act.

Every registration shall be valid for such period as may be prescribed and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any Rules and

Regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation of fraud, the Authority, may without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit. No such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

FUNCTIONS OF REAL ESTATE AGENT (SEC. 10) :

Every real estate agent registered under Section 9 of the Act, shall-

- a) Not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;
- b) Maintain and preserve such books of account, records and documents as may be prescribed;
- c) Not involve himself in any unfair trade practices, namely –
 - 1) Falsely represents that the services are of a particular standard or grade;
 - 2) Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - 3) Makes a false or misleading representation concerning the services;
 - 4) Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- d) Facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building as the case may be;
- e) Discharge such other functions as may be prescribed.

FUNCTIONS AND DUTIES OF PROMOTER (SEC. 11):

Every promoter shall, upon receiving his Login Id and password, create his web page on the website of the Authority and enter all details of the proposed project as per section 4(2) in all the fields as provided for public viewing, including :

- a) Details of the registration granted by the Authority;
- b) Quarterly up-to-date the list of number and types of apartments or plots as the case may be, booked;
- c) Quarterly up-to-date the list of number of garages booked;

- d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- e) Quarterly up-to-date status of the project; and
- f) Such other information and documents as may be specified by the regulations made by the Authority.

The promoter has to disclose to the allottee all information on :

- a) Sanctioned plans, layout plans along with specifications approved by the Authority;
- b) The stage wise time schedule of completion of the project including the provisions for civic infrastructure like water, sanitation and electricity.

Duties and liabilities of the Promoter are as follows:

- 1) The promoter shall be obliged to perform all the promises made by him the sale agreement made by him with the allottees;
- 2) The promoter shall continue to be responsible for structural defect or any other defect for a period of five years from the date of handing over possession of the apartment or plot of buildings
- 3) The promoter shall within the prescribed period submit an application to the Registrar for registration of the body of persons who take the flats as co-operative society
- 4) The promoter shall join as an applicant for membership of such proposed society;
- 5) The promoter may obtain the Association of Allottees registered as Co-operative Society under the State Cooperatives societies Act;
- 6) No promoter shall, after he executes the sale agreement with the allottee, sell, mortgage or create a charge on the land, building or part thereof related to the project;
- 7) The promoter is liable for a period of five years from the date of handing over of possession for any structural defect or other defects in workmanship, quality or provision of services or any other obligations;
- 8) The promoter is also liable to pay compensation to the allottees if any loss is caused to them due to defective title of the land;
- 9) The promoter shall take all necessary steps to complete his title and convey to the body corporate of persons, who take apartment;
- 10) When the price is paid in advance to the promoter, he cannot diver or forfeit such amount for other

purposes, including for setting it off against an alleged breach of contract by the buyer.

- 11) The promoter shall obtain the completion certificate or the occupancy certificate or both, as applicable from the Competent authority for the allottees individually or to the association of allottees
- 12) In case, the project is developed on a leasehold land, the promoter shall obtain for the association of allottees the lease certificate specifying the period of lease and certifying that no dues or charges subsist on the date of delivery of possession of the project;
- 13) Until the taking over of the project by the association of allottees, the promoter shall be responsible for the maintenance of the project.

Where an investor responds to a notice, advertisement or prospectus issued by the promoter by making an advance or a deposit believing the information contained therein, or going by the basis of any model apartment, plot or building, and owing to any statement included in the statement proving to be incorrect or false suffers thereby a loss or damage, the promoter shall be recompense such person in the manner as provided in the Act. If, however, such investor desires to withdraw from the proposed project, the promoter shall return to him his entire investment along with interest at rate as may be prescribed and the compensation in the manner provided under this Act.

Before accepting any sum exceeding 10% of the cost of the apartment, plot or building, as the case may be, as an advance payment or an application fee from an investor, the promoter shall :

- a) Make a written sale agreement with such person, and
- b) Register the said agreement with the Sub Registrar

The Sale agreement shall be in such form as may be prescribed and shall specify all the particulars of the project including internal and external development works. The agreement shall also specify the manner of payment of cost of the apartment, the date on which the possession to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default and such other required particulars.

The promoter shall develop and complete the proposed project in accordance with the building plans, layout plans and specifications as approved by the competent authorities. Section makes the promoter

obligated to disclose or furnished the approved plans to the allottee. The promoter shall not carry out any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment without the previous consent of the allottee.

However, where the allottee himself desires minor additions or alterations, the promoter may carry them out. The expression 'minor additions or alterations' has been explained under the Proviso as changes affecting the structure of the building as a whole. The promoter may make minor changes in the sanctioned plan on his own volition, if he considers them as necessary for architectural and structural reasons. In that event, he may make them only if they are recommended and verified by an authorised Architect or Engineer and after the allottees are duly intimated.

Any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project will require previous written consent of at least 2/3 of the allottees, other than the promoter, who have agreed to take apartment.

As registration granted to the promoter is based on his personal profile and capability, it is expected that the project approved by the Authority is completed only by him. If he desires to transfer or assign his majority rights and liabilities in respect of a real estate project to a third party, he may not do so without obtaining prior written consent from 2/3 allottees, excluding himself, and the approval of the Authority.

Even so, such transfer shall not affect the allotment or sale of the apartments, made by the transferor-promoter. For the purpose determining such number, allottee taking up more units than one, either in his own name or in the names of the members of his family or associates shall be counted as single.

Upon transfer, the transferee-promoter shall independently comply with all the pending obligations under this Act and its rules and regulations and the obligations pending under the sale agreement made by the transferor-promoter with the allottees. The transfer shall not cause the project to be delayed for the reason by the transferee-promoter. In that event, the transferee-promoter shall be liable for the consequences of the breach or delay, as the case may be.

The promoter shall make arrangements for the insurance of the title of the land and building comprising the project and the constructions

thereof. He shall pay the premium and charges in respect of such insurance before transferring it to the association of the allottees. The sale agreement made by the promoter within the allottees shall provide for the allottees to be named as beneficiaries in the Policy, which , upon completion of the project, shall stand transferred to the benefit of the association of allottees to whom the promoter shall deliver the Insurance Policy.

Upon completion of the project, the promoter shall deliver possession and title of the plot or apartment or building as the case may be, to the allottees and the undivided proportion common areas to the association of the allottees, the Competent Authority, as the case may be. In both cases, the promoter shall execute and deliver a registered conveyance deed to the allottees or the association of the allottees or the Competent Authority, as the case may be. He shall deliver the other title documents pertaining to the sanctioned plan to the association of allottees or the Competent Authority as the case may be, within the time prescribed under the local laws or, in the absence of local laws in this regard, within three months from the date of issue of occupancy certificate.

IMPORTANT DOCUMENTS TO BE DELIVERED BY THE PROMOTER TO THE ALLOTTEE :

1. Title deed
2. Khata/Patta Certificate or extract
3. Mutation Register extract
4. Power of Attorney
5. Conversion Certificate (from Agricultural to non-agricultural land)
6. Tax paid and Betterment Charges Receipt
7. Copy of Building Plan
8. Layout/Building approval, No objection Certificate or Intimation of disapproval
9. Sale agreement (also called as Purchase Agreement)
10. Allotment letter
11. Commencement Certificate
12. Completion Certificate
13. Sale Deed (Purchase Deed)
14. Possession letter
15. Occupancy Certificate.

Where the promoter fails or defaults in delivering to the allottee the land, building or apartment, according to the terms stated in the sale agreement due to :

- a) Discontinuance of his business as a developer, or
- b) Suspension or revocation of the registration, or
- c) Any other reason,

he shall return to such allottee on his demand the amount received from him in respect of the said property. The allottee's demand for return of money shall be without prejudice to any other remedy available to him. The promoter shall also be liable to pay him interest on the amount at the State Bank of India's highest Marginal Cost of Lending rate plus 2% for the period of delay or default on his part in delivery. However, it is open for the allottee to continue his application notwithstanding.

Where the title to the land, on which the project is being developed or has been developed, is found to be defective, the promoter shall pay the allottee compensation as stipulated under the Act and Rules framed thereunder. Such right of the allottee to receive compensation is not barred by limitation under any law being in force. The obligation of the promoter shall be without prejudice to any other remedy available that may be lawfully available to the allottee so aggrieved.

RIGHTS AND DUTIES OF ALLOTTEES (SEC.19):

This section stands as the backbone of the entire Act and highlights the objective of the law, which is to protect the allottee against the machinations of spurious promoters of real estates, of whom, no doubt, there has been plenty. Under this Section, the rights of allottees are:

- a) Information concerning the project
- b) Know the schedule of its completion
- c) Claim possession of property, together with related documents, after completion of the project; and
- d) Refund of money paid, along with interest and compensation, in the event of default, delay or failure on the part of the Promoter to deliver property in the terms of the sale agreement.

Equally, every allottee shall make all payments in the manner and within the time as specified in the sale agreement participate in the formation of an association or society or cooperative society or a federation of the allottees take possession of the property within two

months of issue of occupancy certificate and participate towards registration of the conveyance.

The allottees are entitled to obtain information relating to sanctioned plans, layout plans along with the specifications, as approved by the competent authority and other information as provided in the Act or the Rules and Regulations made thereunder or the agreement for sale signed with the Promoter. The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the amenities that make the unit habitable that conform to the terms and conditions of the sale agreement. The allottee and the association of allottees shall be entitled to claim possession of their properties.

Where the promoter fails to comply or is unable to give possession of the apartment in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration, the allottee may claim from the promoter the refund of the amount, along with interest at SBI's highest marginal cost of lending plus 2% under Rule 16 of the Central Rules, 2017 of the Act, besides compensation in the manner as provided under this Act.

The allottee is entitled to have necessary documents and plans of the project and shall be liable to pay necessary payments relating to registration of his allotted property in the project and periodic charges associated with it. Any delay in such payment shall attract interest at rate as stated in Rule 16 referred above, unless reduced by the mutual agreement of the parties.

Every allottee shall participate towards the formation of an association or society or cooperative society of the allottees or a federation of the same and take physical possession of his allotted property within two months of the occupancy certificate issued for it and participate towards registration of the conveyance deed thereof.

**ESTABLISHMENT AND INCORPORATION OF REAL ESTATE
REGULATORY AUTHORITY (SECTION 20 TO 40):**

ESTABLISHMENT OF AUTHORITY(SEC.20):

The appropriate government shall by Gazette Notification establish an authority to be called “The Real Estate Regulatory Authority” to perform the duties of enforcing and regulating the provisions of the Act by exercising powers conferred under the Act. The appropriate government of two or more State or Union Territories may establish a single such Authority, or more than one such Authority in a State or Union Territory. The authority shall be :

- a) Corporate body
- b) Perpetual succession
- c) Common seal
- d) Powers to acquire, hold and dispose of property
- e) Powers to contract
- f) Powers to sue or to be sued by the said name

COMPOSITION OF AUTHORITY (SEC. 21):

The authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate government.

QUALIFICATIONS OF CHAIRPERSON AND MEMBERS (SEC.22):

The Chairperson and other Members of the Authority shall be appointed by the appropriate government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary from amongst persons having adequate knowledge and professional experience of least 20 years in case of the Chairperson and 15 years in case of the Members in Urban Development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration

A person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central/State government.

A person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post

of Secretary to the State Government or any equivalent post in the State/Central government.

TERM OF OFFICE (SEC. 23):

- 1) The term of office of both the Chairman and the Members shall be five years or the age of 65 years whichever is earlier;
- 2) They shall not be eligible for appointment for any further term thereafter;
- 3) Both of them shall not have any financial or other interest in any field of activity;
- 4) The appropriate government shall satisfy itself that they do not have any financial or other interest that may prejudice his functions.

SALARY AND ALLOWANCES (SEC.24):

The appropriate government shall prescribe the salary, allowances and benefits for the Chairperson and the Members in the Authority. They shall not be varied to their disadvantage during their tenure of service.

The Chairperson or a Member may relinquish his office by giving in writing to the appropriate government, notice of not less than 3 months, or may be removed from his office in accordance with the provisions of this Act. The vacancy occurring in the office of the Chairperson or Member shall be filled within 3 months through the process prescribed under Rule 17 of the Central Rules, 2017 of the Act.

ADMINISTRATIVE POWERS (Sec. 25 & Rule 19 of Central Rules, 2017):

Besides presiding over the meeting of the Authority held from time to time, the Chairperson shall direct, supervise and steer the functions of the Authority, and shall be vested with superintending and administrative powers necessary therefor.

Under Rule 19 of the Central Rules 2017, the administrative powers of the Chairperson is prescribed as follows:

- a) All matters pertaining to staff strength, wages and salaries and personal policies with prior approval from the state government;
- b) All matters pertaining to creation and abolition of posts with prior approval of the state government.
- c) All matters pertaining to appointments, promotions and confirmation for all posts with prior approval of the State government;

- d) Acceptance of resignation by any Member, Officer or employee
- e) Officiating against sanctioned posts;
- f) Authorisation of tours to be undertaken by any Member, Officer or employee within and outside India and allowances to be granted for the same;
- g) All matters in relation to reimbursement of medical claims;
- h) All matter in relation to grant or rejection of leaves;
- i) Permission of hiring of vehicles for official use;
- j) Nominations for attending seminars, conferences and training;
- k) Permission for invitation of guests to carry out training courses;
- l) All matters pertaining to staff welfare expenses;
- m) Sanction for write-off of capital assets which due to normal wear and tear have become unserviceable
- n) All matters relating to disciplinary action against any Member, Officer or employee;
- o) Such other powers that may be required for the efficient functioning of the Authority and enforcement of the provisions of the Act.

REMOVAL OF CHAIRPERSON AND MEMBERS FROM OFFICE (SEC.26)

The appropriate government shall be empowered to remove the Chairperson or a Member from his office when he is adjudged insolvent or convicted for moral turpitude or has become physically or mentally incapable of functioning in his assigned role. Where the Chairperson or a Member has acquired such financial or other interest as is likely be affect prejudicially his functions or has so abused his position as to render his continuance in office prejudicial to the public interest, he may be removed by the appropriate government only based on an enquiry conducted by a Judge of the High Court and after being given a reasonable opportunity of being heard in respect of those charged.

RESTRICTIONS ON CHAIRPERSON OR MEMBER ON POST EMPLOYMENT (SEC. 27) :

After his term of office or removal therefrom, the Chairperson or a Member shall not enter into any employment in, or connected with the management or administration of any person or organisation which has been associated with any work with the Authority. However, he may not be barred from employment under the Government or a Statutory Authority, which is not a promoter under this Act. He shall not act for or on behalf of any person or organisation or a case to which the Authority is

a party and with respect of which the Chairperson or such Member had, before cessation office, acted for or proved advice to, the Authority. He shall also not reveal information that he might have obtained in the capacity of having held such office or use it to give advice to any person or organisation, nor shall he serve as a director on the board of any company, which had dealings with the Authority during his tenure.

OFFICERS AND OTHER EMPLOYEES (SEC. 28):

The appropriate government may, in consultation with the Authority appoint officers and employees as it considers necessary for the efficient functioning of the Authority, and prescribe their salaries, allowances and terms of service.

FUNCTIONS OF THE AUTHORITY:

MEETINGS OF THE AUTHORITY (SEC. 29):

The Authority shall hold hits meetings such place and such ties as it considers necessary and shall lay down the quorum and procedures therefor. All decisions at such meetings shall be based on majority votes of Members present and voting. In the event of a tie, the Chairman, or his absence the Presiding Member shall exercise his second or casting vote. The Authority shall dispose of all questions referred to it within a period of sixty days from the date of its receipt and in the event of not being able to do so, shall record in writing its reasons therefor.

The proceedings of the Authority shall not be affected by a vacancy of the office of the Chairperson or a Member caused in its constitution or the occurrence of a procedural irregularity.

FILING OF COMPLAINTS WITH THE AUTHORITY (SEC. 31):

The aggrieved person may file before the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of this Act or its Rules or the Regulations made thereunder. The complaint may be against any promoter, allottee or real estate agent, as the case may be. The aggrieved person may include an association of allottees or any voluntary association registered as such with the objective of protecting consumers' interest.

The essential requirements for making a complaint before the Authority or the Adjudicating Officer are :

- 1) The project should have been registered under the Act;
- 2) The alleged violations are continuing till date;
- 3) The alleged violations contravene provisions of RERA;
- 4) The issue should have neither been decided nor pending in any other court/forum.

Section 32 of the Act enumerates the advisory functions of the Authority in its role to facilitate the growth and promotion of a healthy, transparent, resourceful and competitive real estate sector.

ADVOCACY AND AWARENESS MEASURES (SEC. 33):

The appropriate government may seek opinion of the Authority on the possible effect that any of its policies may have on the real estate sector. The Authority shall give its opinions to the government within 60 days of receiving such reference.

However, it shall not be incumbent on the appropriate government to implement such an opinion given by the Authority. The Authority shall also take suitable steps to promote awareness and training in the laws and the policies of the appropriate government concerning the real estate sector.

POWERS OF AUTHORITY (SEC. 35):

The authority is vested with power to initiate action against any promoter or allottee or real estate agent at any time by its own volition, without any trigger by a complainant, to furnish in writing such information or explanation relating to the project as it may require. Such demand shall be made in writing and shall record the reasons therefor. The Authority may appoint one or more persons to make an inquiry in relation to the business and activities of any promoter or allottee or the real estate agent.

The Authority shall have the same powers as are vested in a Civil Court under CPC while trying a suit, in respect of the matters including:

- a) examining book of accounts and other documents;
- b) summoning and enforcing the attendance of person and examining them on oath; and
- c) conducting examination of witnesses or documents.

POWERS TO PASS INTERIM ORDERS (SEC. 36):

In the course of an enquiry, if the Authority is where the Authority has reasons to believe, prima facie, that a contravention of the

Act/Rules/Regulations thereunder has occurred, or continues to occur, or is about to occur, the Authority may intervene and issue pro term order restraining either party from carrying on with such contravention until the conclusion of the inquiry or until further orders.

Section 37 of the Act empowers the Authority for effectively performing its duties to issue directions from time to time to the Promoters or Allottees or Real Estate Agents, as the case may be. Such directions shall be binding on all concerned parties.

POWERS OF AUTHORITY (SEC.38):

The Authority shall have powers to :

- a) impose penalty or interest to any contravention or obligations cast upon the promoters/allottees/real estate agents;
- b) shall be guided by the principles of natural justice and provisions of the Act and shall have powers to regulate its own procedure
- c) where an issue is raised relating to agreement, action, omission, practice, procedure, that:
 - 1) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project;
 - 2) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely;
- d) Suo motu make reference in respect of such issue to the Competition Commission of India.

Under Section 39 of the Act, the Authority, within a period of two years from the date of order made under the Act with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendment, if the mistake is brought to the notice of the parties. No such amendment shall be made in respect of any order against which appeal has been preferred under this Act. The Authority shall not amend substantive part of its order passed under the Provisions of this Act.

As per Section 40 of the Act, if a promoter or an allottee or a real estate agent fails to pay any interest or penalty or compensation imposed on him by the adjudicating officer or the Regulatory Authority or the Appellate Authority, under this Act, it shall be recoverable from such promoter or allottee or promoter or real estate agent in such a manner as prescribed as an arrears of land revenue.

If any adjudicating officer or the Regulatory Authority or the Appellate Authority issues any order or directs any person to do any act or refrain from doing any act, which it is empowered to do under this Act, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such a manner as prescribed.

THE REAL ESTATE APPELLATE TRIBUNAL

ESTABLISHMENT OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 43):

The appropriate government shall within a period one year from the date of coming into force of this Act, by a Notification establish an Appellate Tribunal. The appropriate government, if it deems necessary, establish one or more benches of the Tribunal for various jurisdictions in the State or UT. Every Bench of Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member. The appropriate government of two or more states or UT, if it deems fit, establish one single Appellate Tribunal.

Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

A) Where a promoter files an appeal with the Appellate Tribunal it shall not be entertained, unless the Promoter deposits atleast 30% of the penalty as may be determined by the Tribunal;

B) Where an allottee files an appeal with the appellate Tribunal, it shall be entertained on payment of entire amount including interest and compensation imposed on him if any, or with both, as the case may be before the appeal is heard.

APPLICATION FOR SETTLEMENT OF DISPUTES BEFORE TRIBUNAL (SECTION 44):

- a) The appropriate government or the competent authority or any person aggrieved by any direction or order or decision of the Authority of the Adjudicating Officer may prefer an appeal;
- b) Every appeal shall be preferred within a period of 60 days from the date on which a copy of order or decision or directions made by the authority or by the Adjudicating Officer is received;

- c) Every appeal shall be accompanied by such fees as may be prescribed;
- d) The appellate tribunal may entertain any appeal after the expiry of 60 days, if it is satisfied that there was sufficient cause for not filing it within the period;
- e) On receipt of any appeal, the Tribunal may after giving the parties an opportunity of being heard pass such orders including interim orders, as it thinks fit;
- f) The Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer ;
- g) The appeal shall be dealt with by it as expeditiously as possible and shall dispose of the appeal within a period of 60 days from the date of receipt of appeal;
- h) Where any such appeal could not be disposed of within 60 days, the Tribunal shall record the reasons in writing for not disposing the appeal within that period;
- i) The Tribunal for the purpose of examining the legality or propriety or correctness of any
- j) order or decision of the Authority or the adjudicating officer, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

COMPOSITION OF TRIBUNAL (SEC. 45):

The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate government.

QUALIFICATIONS FOR APPOINTMENT (SECTION 46):

A person shall not be qualified for appointment of the Chairperson or a Member of the Tribunal, unless he :

- a) In case of the Chairperson, is or has been a judge of High Court;
- b) In case of a Judicial member,
 - 1) he has held a judicial Office for at least 15 years, or
 - 2) Has been a member of the Indian Legal Service in the post of Additional Secretary, or
 - 3) An advocate for at least twenty years with experience in dealing with real estate matters ;
- c) In case of a Technical or Administrative Member,

- 1) He is a person who is well-versed in the field of Urban Development, housing, real estate development, infrastructure, etc. and possess experience of at least 20 years; or
 - 2) A person who has held the post in the State/Central government equivalent to the post of Additional Secretary to the Government of India or an equivalent post.
- d) The Chairperson shall be appointed by the appropriate government in consultation with the Chief Justice of High Court or his nominee;
- e) The Judicial Member and Technical or Administrative member of the Tribunal shall appointed by the appropriate government on the recommendation of Selection Committee consisting of:
- 1) The Chief justice of High Court or his nominee
 - 2) The Secretary of the Department handling Housing;
 - 3) The Law Secretary
- and in such manner as may be prescribed.

TERM OF OFFICE (SECTION 47):

The Members and the Chairperson shall hold office for a term not exceeding 5 years from the date on which he enters upon his office. He shall not be eligible for re-appointment. However, no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of 65 years.

SALARY AND ALLOWANCES (SEC.48):

The salary and allowances and the terms of office of Chairperson or Member shall be prescribed by the appropriate government by means of Rules enacted by it. Is section also prescribes the method of relinquishment of office by the Chairperson or the Members. The appropriate government shall fill up the vacancies within a period of 3 months from the date of vacancy.

POWERS OF TRIBUNAL (SEC. 53):

- 1) The appellate tribunal shall be bound to follow the principles of Natural Justice and not the provisions of Civil Procedure Code, 1908.
- 2) The appellate tribunal shall have power to regulate its own procedures.

- 3) The Tribunal need not follow the provisions of the Indian Evidence Act, 1872
- 4) The Tribunal shall have the same powers as are vided in CPC in respect of the following matters:
 - a) Summoning and enforcing the attendance of any person and examining him on oath;
 - b) Requiring the discovery and production of docu`ments;
 - c) Receiving evidence on affidavits;
 - d) Issuing Commissions for the examinations of witnesses or documents;
 - e) Reviewing its decisions;
 - f) Dismissing an application for default or directing it ex-parte
 - g) Any other matter which may be prescribed.
- 5) All proceedings before the Tribunal shall be deemed to be judicial proceedings and the appellate tribunal shall be deemed to be a civil court for the purpose.

As per section 54 of the Act, the Chairperson shall have powers of general superintendence and direction on the conduct of the affairs of the Tribunal and shall presiding over the meeting of the Tribunal exercise and discharge such administrative powers and functions of the Tribunal.

Under Section 57 of the Act, every order made by the appellate tribunal shall be executable by the appellate tribunal as a decree of a civil court and for this purpose, appellate tribunal shall have all the powers of a Civil Court.

OFFENCES, PENALTIES AND ADJUDICATION:

PUNISHMENTS/PENALTIES (SEC. 59 to 68) :

- a) If any promoter contravenes the provisions of Sec.3 of the Act (prior registration of project) is liable for penalty which may extent upto 10% of the estimated costs of the project;
- b) If any promoter does not comply with the orders, decisions or directions issued or continues to violate the provisions of Sec.3 shall be punishable with imprisonment for a term which may extend upto 3 years or with fine which may extend to further 10% (i.e. 10% + 10%) of the estimated cost of the project.

- c) If any promoter provides false information or contravenes the provisions of Sec.4 (in application for prior registration) is liable to a penalty which may extend upto 5% of the estimated cost of the project;
- d) If any promoter contravenes any other provisions of this Act or the Rules or Regulations made thereunder shall be liable to a penalty which may extent upto 5% of the estimated cost of the project;
- e) If any real estate agent fails to comply with or contravenes the provisions of Sec. 9 & 10 (Registration and Functions of Real Estate Agents) shall be liable to a penalty of Rs.10,000/- for every day during which such default continue which may cumulatively extend upto 5% of the cost of plat or apartment to which the sale or purchase has been facilitated;
- f) If any promoter who fails to comply with or contravenes any of the orders or directions of the authority, he shall be liable to a penalty for every day during which such default continues which may cumulatively extent upto 5% of the estimated costs of the project;
- g) If any promoter who fails to comply with or contravenes of the orders or decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend upto 3 years or with fine for every day during which such default continues, which may cumulatively extend upto 10% of the estimated costs of the project;
- h) If any real estate who fails to comply with or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues which may cumulatively extend upto 5% of the estimated cost of the project for which the sale or purchase has been facilitated;
- i) If any real estate agent who fails to comply with or contravenes any orders, decisions or directions of the Tribunal shall be punishable with imprisonment for a term which may extend upto one year with fine for every day during which such default continues which may cumulatively extend upto 1-% of the estimated cost of the project for which sale or purchase has been facilitated;
- j) If any allottee who fails to comply with or contravenes any of the orders, decisions or directions of the Authority, he shall be liable to a penalty for the period during which such default continues

which may cumulatively extend upto 5% of the plot as determined by the Authority;

- k) If any allottee, who fails to comply with or contravenes any of the directions or orders of the Tribunal, he shall be punishable with imprisonment for a term which may extend upto one year or with fine for every day during which the default continues which may cumulatively extended upto 10% of the project;

ABSTRACT:

Sl.No.	Section	Defaulter	Violations	Penalty
1.	59	Promoter	Contravenes Sec.3	10% of the cost
2.	59	Promoter	Continues violation of Sec.3	Imprisonment upto 3 years or with fine extend upto 10%
3.	60	Promoter	False information	5% of the cost
4.	61	Promoter	Continues contravenes	5% of the cost
5.	62	Real Estate Agent	Violation of Prov.9 & 10	5% of the cost
6.	63	Promoter	Not complying the orders of the Authority	Penalty for every day, extend upto 5%
7.	64	Promoter	Not complying the orders of the Tribunal	Imprisonment upto 3 years or fine for every day upto 10%
8.	65	Real Estate Agent	Non-compliance of orders of the Authority	5% of the cost
9.	66	Real Estate Agent	Non-compliance of the orders of the Tribunal	Imprisonment upto 1 year with fine for everyday extended upto 10%

10	67	Allottee	Non-compliance of the orders of the Authority	5% of the cost
11.	68	Allottee	Non-compliance of the orders of the Tribunal	Imprisonment upto 1 year with fine for everyday extended upto 10%

OFFENCES (SEC. 69 & 70):

Both the company and its officers on an equal footing for awarding penalties for offences committed by the company under the Act. The Officer shall be exonerated, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Any director, manager, secretary or other officer of the company is punishable, if it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of such person.

The Court or Authority or Tribunal shall, for the purposes of compounding any offence punishable with imprisonment under the Act, accept the amount as specified.

ADJUDICATIONS (SECTIONS 71 AND 72):

Section 71 of the Act provides for appointing a person who is or has been a District Judge as Adjudicating Officer for adjudging compensation under Sections 12, 14, 18 & 19 of the Act pending before the Consumer Disputes Redressal Forum or the State Commission or the National Commission established under the Consumer Protection Act, 1986. The aggrieved party may with the permission of such Forum or Commission, withdraw the complaint pending before such body and file an application before the Adjudicating Officer under this Act.

The Adjudicating Officer shall dispose of the same within a period of 60 days from the date of receipt of the application. For the purpose of conducting inquiry, the Adjudicating Officer shall have powers to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which he considers necessary for the adjudication.

The Adjudicating Officer (AO) may direct the defaulting party to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

The Adjudicating Officer shall not determine the amount of compensation or interest flowing from the default on the part of the Promoter in an arbitrary manner. For determining them, he shall consider, inter alia, disproportionate gain or unfair advantage, if any, that may accrue to the allottee, whether the promoter is a compulsive defaulter and the circumstance surrounding the default alleged.
