The Real Estate Development and Management Act, 2010

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The Real Estate Development and Management Act, 2010

(Act No. XLVIII of 2010)

[October 5, 2010]

An Act to make provisions for the development and management of real estate and the matters ancillary thereto

WHEREAS it is expedient and necessary to make provisions for the development and management of real estate and the matters ancillary thereto;

Now, THEREFORE, it is hereby enacted as follows:—

CHAPTER I
Preliminary

1. **Short title and commencement**.— (1) This Act may be called the Real Estate Development and Management Act, 2010.

(2) Of this Act—

(a) the sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 shall come into force at once;

(b) other than the sections mentioned in clause (a) shall be deemed to have come into force from December 7, 2008 AD.

2. **Definitions**.— In this Act, unless there is anything repugnant in the subject or context,—

(1) **"approved design"** means the design approved by the appropriate authority in accordance with the provisions of the laws relating to building construction, land development and Bangladesh Building Code including other existing rules and regulations ancillary thereto;

(2) **"common space**" means the space supplementary to the real estate, for example, lift-lobby, staircase, lift machine room, generator sub-

station, caretaker room, guard room and space used for common facilities;

(3) "**Authority**" means the Authority declared or, as the case may be, referred to in section 4;

(4) "**buyer**" means a person entered into a contract with a real estate developer to buy the real estate;

(5) "**Town Improvement Authority**" means the 'Rajdhani Unnayan Kortipokkho' established under the Town Improvement Act, 1953 (Act No. XIII of 1953), the 'Chottogran Unnayan Kortipokkho' established under the Chittagong Development Authority Ordinance, 1959 (Ordinance No. LI of 1959), the 'Khulna Unnayan Kortipokkho' established under the Khulna Development Authority Ordinance, 1961 (Ordinance No. II of 1961) and the 'Rajshahi Unnayan Kortipokkho' established under the Rajshahi Town Development Authority Ordinance, 1976 (Ordinance No. LXXVIII of 1976);

(6) **"registration certificate"** means the registration certificate issued under section 5;

(7) "**prescribed**" means prescribed by rules made under this Act;

(8) "**plot**" means a piece of habitable land in which one or more residential or institutional or commercial flats may be constructed;

(9) "**floor space**" means the plinth-area of a habitable building including horizontal area of wall and other load-bearing structures;

(10) "**person**" includes a company, association or group of persons, whether incorporated or not;

(11) "**building services**" means the combination of circulation of light and air, electricity connection, air condition, heating, acoustics control, lift, garage, setting of escalator and moving walk, water supply, fire extinguishment, sewerage, drainage of water, gas supply, telephone connection and other ancillary services;

(12) "**real estate**" means residential or institutional or commercial plot or apartment or flat, institutional or immovable property like mixed floor space for development, management, sale and purchase;

(13) "**real estate development and management**" means the development, control of sale and purchase, allotment, construction and maintenance of real estate plot or apartment or flat, or industrial or commercial plot or flat, or institutional or immovable property like mixed floor space by private or public-private joint initiative or by foreign funding;

(14) "**real estate development project or project**" means—

(i) the development and allotment of private residential or institutional or commercial or industrial plot by a developer;

(ii) the project or projects adopted for construction, sale and purchase, allotment, etc. of real estate by a developer; and

(15) "**real estate developer or developer**" means a person registered under section 5 of this Act for operating real estate business.

3. **Application**.— (1) The provisions of this Act shall not apply to the development and management project of the real estate operated under the full management of the Government.

(2) If any Ministry or Division or any office or organization or authority sub-ordinate or attached thereto or any statutory authority or autonomous body operates the real estate development and management project jointly with any developer, it shall be deemed to be the real estate development and management project operated by public-private initiative and in such case this Act and rules made thereunder shall apply.

CHAPTER II

Establishment of the Authority, registration of real estate developer, responsibility, etc.

4. **Establishment of the Authority**.— (1) For the purposes of this Act, the Government may establish one or more Authorities and in this behalf, may declare, by notification in the official Gazette, any public or statutory or autonomous body as the Authority for such area as may be specified in the notification.

(2) In particular and without prejudice to the generality of sub-section (1),—

(a) the concerned Town Development Authority and, in the absence of the Town Development Authority, the concerned City Corporation, for the local jurisdiction thereof;

(b) the concerned municipality, for the local jurisdiction thereof;

(c) the concerned Cantonment Board, for the local jurisdiction thereof; and

(d) the National Housing Authority for the area outside the jurisdiction of the Town Development Authority, municipality and Cantonment Board,—

shall be deemed to be the Authority under this Act.

5. **Registration of real estate developer**.— (1) Every real estate developer shall have to obtain the registration from the concerned Authority for carrying out real estate business in any particular area in accordance with the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), any developer who desires to carry out real estate business all over Bangladesh shall have to obtain registration from the Government.

(3) Every real estate developer shall have to apply to the Government or, as the case may be, to the Authority for registration in such form as may be prescribed by rules with copies of the following documents, namely:—

(a) trade licence;

(b) tax identification number (TIN) certificate;

(c) value added tax (VAT) registration number;

(d) (i) the experience of project formulation and implementation (if any);

(ii) the certificates of qualifications of technical persons (certificates of educational qualifications and the certificates of membership of the concerned professional institution of architectures, engineers and planners);

(e) in the case of company, the certificate of incorporation including memorandum of association and articles of association;

(f) a copy of the registration (if any) of membership of the Real Estate and Housing Association of Bangladesh (REHAB) or the 'Land Developers' Association'.

(4) Upon receiving the application under sub-section (1), if the Government or, as the case may be, the Authority, after examining the received information within 60 (sixty) days, is satisfied that—

(a) the applicant is competent to comply with the conditions prescribed for the implementation of real estate development project, it shall grant the application within such time and notify the applicant in writing thereof; or

(b) the applicant is not competent to comply with the conditions, it shall reject the application mentioning the cause and notify the applicant in writing thereof.

(5) If the application is accepted under sub-section (4) (a), the Government or, as the case may be, the Authority shall, within next 30 (thirty) days from the date of notifying in writing, issue a registration certificate to the applicant for 5 (five) years, subject to receiving the applicable fees, and such registration certificate may be renewed in every 5 (five) years.

(6) The concerned Authority shall maintain and publish a list of the registered developers in such manner as may be prescribed.

(7) The registration of developers may be renewed, cancelled and amended in such manner as may be prescribed.

6. **Responsibility of developers**.— (1) All developers registered under this Act shall have to specify the name, address of the real estate and the registration number thereof and the number of approval of the design approved by the proper authority including the issue number and date in the prospectus made by them.

(2) No developer shall, before approval of the real estate development project by the Authority and obtaining the power and right of executing the transfer certificate by the developer, circulate the advertisement of project for sale and purchase of the real estate.

(3) No developer shall, before approval of the project, sell or enter into an agreement to sell a real estate to the buyer.

(4) Every developer shall show the documents relating to approval of the Authority and the ownership of the land to the buyer.

(5) Other than the approved design, the supplementary building design, structural design including other building services design and documents shall be counter-signed by the developer.

(6) In the case of ownership of land and rehabilitation of the people affected under the project of residential plot by public or public-private joint initiative, the Land Development of Private Residential Project Rules, 2004 shall, subject to such modifications as may be necessary, be followed.

(7) Every developer shall have to take approval of the design of the real estate, make development, modification, take re-approval or make renewal of the design of the real estate development project from the proper Authority in accordance with the Land Development of Private Residential Project Rules, 2004, subject to such modifications as may be necessary, and the applicable building construction rules.

(8) The layout plan of the real estate development project made by public or public-private joint initiative shall have to be approved by the proper authority in such manner as may be prescribed.

(9) In the case of real estate development project, the public facilities shall be ensured in accordance with the Land Development of Private Residential Project Rules, 2004, as far as possible.

(10) Every developer shall have to implement the real estate development project in accordance with the concerned Act and rules and regulations in such manner that no damage may be caused to any type of infrastructure or plot or flat or road, electricity connection, water supply, sewerage, drainage of water, gas supply and telephone connection and other facilities concerned.

7. **Construction of real estate by the land-owner**.— (1) If any developer constructs real estate for sale on the land which he has purchased and become the owner thereof, all provisions of this Act shall also be applicable thereto.

(2) If any person, not being a real estate developer or commercial institution, individually or some persons jointly construct real estate on his or their own land for sale and purchase, the provisions of this Act shall, as far as possible, also apply to him or them.

CHPTER III

Sale and purchase of real estate, registration, transfer, etc.

8. Conditions for sale and purchase of real estate.— (1) The divisions of the area to be sold including proper explanation and analysis shall be mentioned in the prospectus and in the allotment letter.

(2) Detail conditions of development and sale and purchase of real estate shall be mentioned in the agreement entered into between the parties.

(3) Any developer may, with the consent of the buyer, change the allotted plot or flat.

(4) No developer shall take any money from the buyer in addition to the condition mentioned in the agreement:

Provided that this provision shall not come into force if any party entered into a supplementary agreement by a mutual consent proposing to set any high quality materials.

9. **Execution of the deed of transfer and registration**.— (1) The developer shall, on payment of the whole price of the real estate, deliver the possession of real estate to the buyer, execute the deed and complete the registration process thereof, within not more than 3 (three) months.

(2) If the area of the real estate is found more or less at the time of delivering the possession of the real estate, the price of it shall be adjusted within 3 (three) months according to the purchased rate.

(3) If a developer, obtaining land from, or on behalf of, the land owner by power of attorney, constructs real estate on such land and offers to sell the real estate possessed on his part to the buyers, the power shall have to be delegated by, or on behalf of, the land owner to the developer by a deed of power of attorney, subject to the provisions of sub-section (4), so that the developer may, by sale or any other means, transfer the real estate possessed on his part by executing a deed by himself.

(4) If the power to sell or transfer the real estate is not delegated in accordance with the provision of sub-section (3) to the developer by a deed of power of attorney by, or on behalf of, the land owner, the deed shall be executed by, or on behalf of, the land owner in favour of the buyer after the real state being salable or transferable within 15 (fifteen) days of being requested by the developer in writing.

(5) Notwithstanding anything contained contrary in any other law for the time being in force, if the deed is not executed by, or on behalf of, the land owner on being requested by the developer under sub-section (4), the developer himself may, by exercising the power under this section, execute deed in favour of the buyer as if the developer himself were the owner of the land and real estate.

CHAPER IV

Agreement, etc.

10. **Agreement between land owner and developer**.— (1) The land owner shall make a joint venture agreement with the developer.

(2) After mentioning the amount of the part of real estate possessed by the developer for development, the conditions of executing the deed of power of attorney for the purpose of conferring the power to execute deed and make registration of the part possessed by the developer in favour of the buyer nominated by the developer shall be mentioned in the agreement referred to in sub-section (1) including the date of starting and finishing the works of development or construction.

(3) The works of real estate development or construction shall be started and finished in conformity with the agreement referred to in sub-section (1).

11. **Facilities of real estate**.— (1) In the case of real estate development project, the civic facilities, in accordance with the Land Development of Private Residential Project Rules, 2004, as far as possible, shall be ensured.

(2) All types of real estate constructed by the developer shall—

(a) be convenient for light and ventilation;

(b) have the connection (where applicable) of all types of utility services like water, electricity, gas and sewerage, waste management, fire extinguishing system, etc. before transfer thereof; and

(c) be repaired on the expense of the developer up to at least 2 (two) years from the date of transfer if repair is required after transfer on account construction defect.

(3) Every developer shall carry out, in conformity with the agreement entered into between the parties, the maintenance of the real estate up to at least 1 (year) after the transfer.

(4) No facility shall be deducted or a common place shall be changed in deviation of the approved design of the real estate.

(5) Every developer shall provide at the time of allotment of real estate in favour of the buyer a statement containing the information of the civic facilities specified in the construction design and layout.

CHPTER V

Payment of price, delivery of possession, etc.

12. **Rules of payment of the price of real estate**.— (1) The buyer shall pay the price of real estate through a bank in the manner mentioned in the prospectus or allotment letter.

(2) No interest shall be taken other than the money of installment until the real estate sold or allotted become suitable for transfer on making infrastructural development and supply of electricity, water, gas, etc.

13. **Ensuring the utility services of real estate**.— (1) The developer shall take effective steps before transfer of the real estate for providing the services, like: water, electricity, gas, etc. (where applicable) mentioned in the prospectus or allotment letter.

(2) Notwithstanding taking steps under sub-section (1), if the developer may not provide the connections on time for limitation of service providing institutions and he continues the initiative by making application to the institutions concerned, he shall not be made liable for failure.

14. **Failure of buyer to pay the price** in **one time or** in **installment**.— (1) The consequences of failure of buyer to pay the price of real estate in one time or in installment by the specified time shall be mentioned in detail in the prospectus or allotment letter.

(2) Notwithstanding anything contained contrary in the agreement or allotment letter, if the real estate buyer, for any reason, fails to pay the price in one

time or in installment, his allotment of real estate shall not be cancelled unless he is given a notice by a registered post before at least 60 (sixty) days.

(3) In the case of cancellation of allotment referred to in sub-section (2), the total money deposited by the buyer shall be refunded through an account payee check within 3 (three) months after issuing the order of cancellation of allotment.

(4) If a buyer desires to pay the installment money late, he may pay the installment with interest at rate of 10% on the installment for the time deferred.

(5) If the buyer pay the installment late according to the provisions referred to in sub-section (4) for 3 (three) times in agregate, the developer may cancel the allotment of the concerned buyer.

15. **Failure of developer to deliver the real estate**.— (1) If the developer fails to deliver the real estate within the time specified in the agreement, he shall have to refund the total money paid for the real estate, with the compensation specified in the agreement, through account payee check within 6 (six) months:

Provided that if the buyer and developer, by mutual consent, extend the time-limit of the delivery of the real estate by a supplementary agreement, the buyer shall be paid compensation in accordance with the provisions of sub-section (2).

(2) If the amount or rate of compensation is not specified in the agreement entered into between the parties, compensation at 15% rate on total paid money shall be specified and the developer shall pay the total money along with the compensation in not more than 3 (three) installments within 6 (six) months.

(3) In the case of calculating the time referred to in sub-section (1) and (2), the time of compensation shall be computed up to the date of payment of total money.

16. **Mortgage of real estate, etc**.— (1) No real estate mortgaged by the developer shall be sold to the buyer:

Provided that a real estate allotted to a buyer may be mortgaged by the developer with the consent of the buyer to any person, bank or any other financial institution.

(2) A real estate under construction or constructed by a developer may be mortgaged in whole or any part thereof by the developer with the consent of the land owner to any person, bank or any other financial institution:

Provided that the concerned real estate shall be redeemed from mortgage before execution of transfer deed.

17. **Rules of receiving returned money by the buyer**.— If the buyer, for any reason, desires, by making an application in writing, to take return of the money paid upon cancelling the allotment, the developer shall, after deducting 10% of money spent for necessary expenses, return the rest of the money to the buyer through an one time check or pay-order within 3 (three) months.

18. **Delivery of architectural design or letter of delivery of possession**.— (1) The specification of fittings, fixture, etc. to be used in the proposed building shall be written in the agreement or allotment letter for purchase or sale of the apartment or flat or floor space.

(2) At the time of making architecture and structural design, the design shall be made and supervised by competent architects, engineers and concerned technical persons as mentioned in the Building Construction Act, 1952 (Act No. II of 1953).

(3) The architecture and structural design shall be made in conformity with the applicable building construction rules and Bangladesh National Building Construction Code.

(4) For any other technical matter other than the cases mentioned in sub-section (3), a code of international standard may be followed under the joint management of developer and engineer or architect.

(5) No changes may be made to the approved design without the approval of the appropriate authority.

(6) The architectural design of an apartment or flat or floor space approved by the appropriate authority and the copy of the structural design and building services (electrical, mechanical, plumbing, etc.) made by the approved technical

person and letter of the delivery of possession shall be provided to the buyer after being counter signed by the developer.

CHPTER VI

Offences, trial and penalties

19. **Penalty for doing real estate development work without registration**.— If any person carry on real estate business without obtaining registration under section 5, he shall be deemed to have committed an offence and for such offence he shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 10 (ten) lakh Taka, or with both.

20. **Penalty for starting the work of real estate development project without permission**.— If a developer, without obtaining the permission of the appropriate authority, start the work of real estate development project or circulate the advertisement of unauthorized real estate project or sell such real estate, he shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 10 (ten) lakh Taka, or with both.

21. **Penalty for not making the connection of utility services**.— For contravening the provisions of section 13, the developer shall be punished with fine which may extend to 5 (five) lakh Taka, and in default with simple imprisonment for a term which may extend to 1 (one) year.

22. **Penalty for cancelling or postponing the allotment without notice**.— If any developer cancel the allotment of real estate in contravention of the provisions of section 14, he shall be punished with imprisonment for a term which may extend to 1 (one) year, or with fine which may extend to 5 (five) lakh Taka, or with both.

23. **Penalty for mortgaging real estate**.— If any developer mortgaged the real estate in contravention of the provisions of section 16, he shall be punished with imprisonment for a term which may extend to 1 (one) year, or with fine which may extend to 5 (five) lakh Taka, or with both.

24. **Penalty for changing real estate agreement**.— If any developer, for making illegal gain, sells the real estate agreed in the agreement, without the knowledge of the buyer, to any person other than the buyer, he shall be punished with imprisonment for a term which may extend to 3 (three) years, or with fine which may extend to 20 (twenty) lakh Taka, or with both.

25. **Penalty for not using the building materials promised to be used**.— If any developer, for making illegal gain, uses materials of lower-grade other than the materials promised to be used or does not use accurate quantity of such materials, he shall be punished with imprisonment for a term which may extend to 3 (three) years, or with fine which may extend to 20 (twenty) lakh Taka, or with both.

26. **Penalty for construction in deviation of the approved design**.— If a developer constructs real estate in deviation of the approved design, he shall be punished with imprisonment for a term which may extend to 3 (three) years, or with fine which may extend to 20 (twenty) lakh Taka, or with both.

27. **Penalty for offence of fraud by a developer**.— If any developer, after entering into an agreement with the land owner in respect of a real estate development or executing the letter of allotment with the buyer, does not take any initiative according to the agreement or takes initiative but leaves the work incomplete and does not provide any financial facility to the land owner or, as the case may be, to the buyer, it shall be deemed to be an offence of fraud under this Act and for such offence the developer shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 20 (twenty) lakh Taka, or with both.

28. **Penalty for not delivering the possession of land by the land owner on the specified time**.— If any land owner, after entering into agreement with a developer for development and management of a real estate, does not deliver the possession of land to the developer at the time specified in the agreement, he shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 10 (ten) lakh Taka, or with both.

29. **Penalty for cancelling the power of attorney made by the land owner**.— If any land owner, after entering into agreement with a developer for

development and management of a real estate, cancels the registered power of attorney made in favour of the developer without giving a notice before not less than 30 (thirty) days, he shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 10 (ten) lakh Taka, or with both.

30. **Penalty for not delivering the part of the land owner by the developer**.— If any developer, after entering into agreement with a land owner for development and management of a real estate, on completing the real estate development properly in according to the conditions of the agreement, does not deliver the part of the land owner to him or, as the case may be, the possession thereof at the specified time, he shall be punished with imprisonment for a term which may extend to 2 (two) years, or with fine which may extend to 20 (twenty) lakh Taka, or with both.

31. **Offences committed by a company**.— If any developer under this Act is an incorporated company, the owner, director or any other officer of the company within whose knowledge or participation the offence is committed under this Act, shall be personally liable for such offence.

32. **Cognizance of offence, etc**.— Notwithstanding anything contained in any other law, the offences punishable under this Act shall be compoundable, bailable, and non-cognizable.

33. **Trial**.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, the offences under this Act shall be triable by a Magistrate of first class or a Metropolitan Magistrate.

(2) Unless otherwise provided anything in this Act, the offences committed under this Act shall be tried summarily and in this behalf, the procedure specified in Chapter XXII of the Code of Criminal Procedure shall, in so far as possible, be applicable.

34. **Special powers of the Magistrate to impose fine**.— Notwithstanding anything contained in the Code of Criminal Procedure, a Magistrate of first class or a Metropolitan Magistrate may impose any penalty authorized by this Act on the person convicted for an offence under this Act.

35. **Distribution of the realized money**.— (1) If any money is realized as fine from the developer convicted and sentenced under this chapter, the Court may issue order to give not exceeding 50% of the realized money to the affected land owner or, as the case may be, to the buyer, and the rest of the amount to the State.

(2) If the Court does not issue any order of distribution under sub-section (1), the entire money shall be credited to the State.

CHAPTER VII

Miscellaneous

36. **Dispute resolution**.— (1) If any dispute arises between the buyer and the developer, or the land owner at any stage of the implementation of real estate project on account of any offence referred to in section 21, 22, 23, 24, 25, 27, 28, 29 and 30 of this Act or contravening any provision of the agreement entered into between them, at first the parties shall try to compound it between them.

(2) If the initiative taken in accordance with sub-section (1) fails due to non-cooperation from any party, the other party shall give notice to him expressing the intention of proceeding to the Arbitration Tribunal in accordance with the Arbitration Act, 2001 to resolve the matter.

(3) The party received notice under sub-section (2) shall, within 30 (thirty) days from the date of receiving the notice, form the Arbitration Tribunal jointly with the party giving notice.

(4) Notwithstanding anything contained in the Arbitration Act, 2001, the award of the Arbitration Tribunal formed by the parties shall be binding upon the parties and any person claiming by or under them, and no party shall have the right to raise objection against it in any Court.

(5) If the parties fail to form the Arbitration Tribunal under sub-section (3), any party may file a suit in any competent Court under this Act to resolve the matter under dispute.

37. **Application of this Act to** any **running project**.— The provisions of this Act, as far as possible, shall be applicable to the projects running immediately before the commencement of this Act without prejudice to the provisions of

agreements entered into by the land owner, developer and buyer among themselves.

38. **Power to make rules**.— (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of sub-section (1), the Government may make rules for any of the following matters, namely:—

(a) process and conditions of issue, renewal, cancel and amendment of registration;

(b) process and conditions of approval, amendment and renewal of real estate development project;

(c) process of preservation and publication of the list of the registered developers; and

(d) process and conditions of making the layout plan of real estate development project.

39. **Special provisions relating to savings**.— (1) All acts done or action taken under the Real Estate Development and Management Ordinance, 2008 (Act No. LVI of 2008), hereinafter referred to as the said Ordinance, shall be deemed to have been done or taken under this Act.

(2) Notwithstanding ceasing to have effect of the said Ordinance in accordance with the provisions of clause (2) of article 93 of the Constitution of the People's Republic of Bangladesh, if any act done or action taken after such cessation in continuation or purported continuation thereof, it shall also be deemed to have been done or taken under this Act.