

Compliance and Regulation of Group Housing Society/RWA.

By

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Compliance and Regulation of Group Housing Society/RWA.

The following topics will be covered.

1. Short Notes on Society/NGO/Non-Profit Organization /Trust /Section 8 Company.
2. Regulation & Compliance under the Income Tax Act 1961
3. GST Regulation & Compliance under the GST Act 2017
4. Compliance under the HRRS Act 2012.
5. Others Compliance under the Private Security Agencies Regulation Act 2005, PSARA Act 2005/Lift Act.
6. Recovery from Electricity Board / DHBVN

1. Short Notes on Society/NGO/Non-Profit Organization /Trust /Section 8 Company.

NGO/NPO can be registered as

1. **Trust:-**Registration Under the Indian Trust Act 1982
2. **Company:-** Registration Under Section 8 of the Company Act 2013
3. **Society:-**Registration Under Society Registration Act 1860/ State/Union Territory Act of Various State

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1. Short Notes on Society/NGO/Non-Profit Organization /Trust /Section 8 Company

Society:-Registration Under Society Registration Act 1860/ State/Union Territory Act of Various State

Sr. No.	State	Name of Act
1	Haryana State	<ol style="list-style-type: none">1. Society Registration Act 1860 (Central)2. Haryana Cooperative Society Act 19843. Haryana Registration and Regulation of Societies Act, 20124. Haryana Apartment Ownership Act 1983
2	Uttar Pradesh	<ol style="list-style-type: none">1. Society Registration Act 1860 (Central)2. Uttar Pradesh Apartment Act 20103. UP Co-operative Societies Act, 1965
3	Delhi	<ol style="list-style-type: none">1. Society Registration Act 1860 (Central)2. Delhi Cooperative Societies Act 1972
4	Madhya Pradesh	<ol style="list-style-type: none">1. Society Registration Act 1860 (Central)2. Madhya Cooperative Society Act 19603. Madhya Pradesh Society Registration Act 19734. Madhya Pradesh Apartment Act 2000

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2. Regulation & Compliance under Income Tax Act 1961

RWA must be registered as an Association of Person (AOP) in Income Tax

Income/Members Contribution/ Taxability

Member Contribution (Flat Owners Contribution)	Non Member Income (Taxable)
Common Area Maintenance Charges	Interest from Bank
Shifting in and out Charges	Advertisement Income/Canopy Charges
Interest on delay payment	Scrap Income
Common area Electricity	Rental Income
Any other contribution from Members...	Any other income from Non-Members

Crux: - Member Contribution: - Surplus will not be taxable and loss will not be carried forward

Non-Member Income: -Income will be taxable in income from other sources

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2. Regulation & Compliance under Income Tax Act 1961 Continue.....

Others Issue

- Electricity Contribution
 - Electricity Surplus / Deficit will not be taxable and loss will not be carried forward.
 - Common Area Electricity:-
- Depreciation:- 100% Deprecation
- Sinking Fund/Assets Replace Fund (DG Fund / Lift Fund/Painting Fund)
- Benefit of Slab rate of Income Tax will be applied on AOP.
- Income from Non-Members will be taxable under the head Income from Other sources.
- ITR Form no. 5
- Business Income (Section 28 to 44DB)/ Depreciation Section 32/ Tax Audit 44 AB)

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3. Regulation & Compliance under GST Act.

- GST Will be charged if Common Area Maintenance Charges is above Rs. 7500 Per Month Per Resident/Flat.
- Services provided by the Central Government, State Government, Union territory or local authority to a person other than a business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable. (F.No.332/04/2017-TRU)
 - Crux: -GST Will not Charged on Property Tax, Water Tax

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3.Regulation & Compliance under GST Act.

GST on Electricity Contribution from Electricity Board

- Similarly, GST is not leviable on Non-Agricultural Tax, **Electricity Charges** , which are collected under other statutes from individual flat owners. (F.No.332/04/2017-TRU)
 - **Crux:-GST Not leviable on Electricity Charges**
- However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST. F.No.332/04/2017-TRU)
 - **Crux:-GST is leviable on Generation of Power**

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Regulation & Compliance under GST Act.

Section 17-Appportionment of credit and blocked credits.

- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

- Crux:-

Particulars	Flat	Area	Amount	Ratio
GST Charged	300	4,50,000	54,00,000	60%
GST Not Charged	200	3,00,000	36,00,000	40%
Total	500	7,50,000	90,00,000	100%

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Regulation & Compliance under GST Act.

**Refund of GST to Resident/Flat
who has charged GST**

???

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Regulation & Compliance under GST Act.

Section 17(5)(d)-Apportionment of credit and blocked credits.

- (5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:--
 - (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- Explanation.--For the purposes of clauses (c) and (d), the expression construction includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;
- **M/s Jabalpur Hotels Pvt Ltd**
- This is to apprise about the recent decision of AAR of MP in the case of M/s Jabalpur Hotels Pvt Ltd. Dt: 08.06.2020 (Order No. 10/2020), where it was held that lift has become part of the building and ITC shall not be available in terms of Section 17(5)(d) of the CGST Act 2017
Crux:- The lift therefore becomes part of the building and is not a separate thing per se. A lift does not have an identity when removed from the building. Therefore the lift cannot be said to separate from a building

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4. Compliance under the Societies Act HRRS Act 2012

The quorum of Meeting Rule – 16 of The Haryana Registration and Regulation of Societies Rules 2012

Sub-section (3) of Section 29 of the Act provides for the quorum for meetings of the General Body to be not less than 40% of the total members of the Society. In case the minimum stipulated quorum is not present in the meeting of the General Body so convened, the meeting shall be adjourned to **another date**, of which a proper notice shall be issued. The quorum for a meeting adjourned on this account shall be not less than 25% of the members entitled to vote and present in person, subject to a minimum of four.

Further, in case such meeting is adjourned for the second time for want of the quorum of 25%, the quorum for such adjourned meeting shall be 15% of the members entitled to vote and present in person subject to a minimum of four.

Crux:-

1. **Quorum for First Meeting:** **40% of Total Members of Society**
2. **If not then adjourned to **another Date****
3. **Quorum for Second Meeting:** **25% of Total Members of Society**
4. **If not 25% then adjourned in the same time for 15 Minutis:15% of Total Members of Society subject to minimum of Four.**

4. Compliance under the Societies Act HRRS Act 2012

Filing of List of Members-form XV

Rule – 13 of The Haryana Registration and Regulation of Societies Rules 2012
Section- 18(3) of The Haryana Registration and Regulation of Societies Act 2012

Rule-13 Every Society shall file an updated list of members with the District Registrar, separately showing inclusions and deletions, if any, during the preceding financial year in Form-XV within sixty days of the close of the financial year in compliance of the provisions contained in sub-section (3) of section 18 of the Act, in physical or electronic mode.

Section 18 (3) The Society shall file an updated list of members, separately showing the inclusions and deletions, if any, every year within a period of sixty days of the close of the financial year in the office of the District Registrar in physical or electronic mode, as may be prescribed.

Crux:- List of Members should be filed in Form -XV within 60 Days from the Closing of the Financial Year

If not, then penalties under Schedule B of this Act

- | | | |
|--|---|--|
| 1. Within due date (30 th June) | : | Rs. 200/- |
| 2 Next 60 Days- (30 th August) | : | Rs. 200+100/- |
| 3. Next 120 Days- (30 th Nov) | : | Rs.300+Rs. 10/- per day per document |
| 4. Next 120 Days – (28 th Feb) | : | Amount Sr.No.3 Plus Rs. 20/- Per Day per Document+
Penalty U/s 72 of this Act |

4. Compliance under the Societies Act HRRS Act 2012

Annual & Others Returns & Penalties

Section- 50 & 72 of The Haryana Registration and Regulation of Societies Act 2012

1. Every Society shall file the following returns, in the prescribed form, with the District Registrar **within thirty days of holding the annual general meeting**, -
 - (1) a list of the members
 - (2) a list of the office-bearers
 - (3) a copy each of the balance-sheet, receipt expenditure statement and the auditor's report duly certified by the auditor; and
 - (4) a copy of the special resolution, as and when passed.
2. Non-filing of annual returns as mentioned above shall be punishable with fine in the extended period and thereafter with penalty as may be prescribed
3. Section 72 for If a Society fails to comply with any of the requirements of the Act or contravenes any of the provisions thereof, then the Society in default shall be punishable with fine, as may be prescribed, which may extend to two thousand rupees, and in case of a continuing default or contravention, with fine which may extend to one hundred rupees for every day during which the default or contravention continues.

Crux:- If Document was not filed within the time limit ,Penalty as per Schedule B + Rs. 2,000/- Plus Rs. 100 Per Day.

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4. Compliance under the Societies Act HRRS Act 2012

Section- 70- Appeals and review.

- (1) An appeal against any orders passed by the District Registrar shall lie with the Registrar and the appeal against the orders passed by the Registrar shall lie with the Registrar General. The orders passed by the Registrar General in any such appeal shall be final and no further appeal shall be competent against his orders.
- (2) Where an order originates from the Registrar General, an appeal against such order shall lie before the Government.
- (3) Any appeal shall be filed within a period of sixty days of the date of issue of the impugned orders. The appellate authority may entertain an appeal beyond this period up to a maximum of another sixty days on sufficient grounds for condonation of delay being shown.
- (4) Every appeal shall be accompanied with the fee as prescribed.
- (5) The District Registrar, Registrar or the Registrar General may suo motu or on an application received in this behalf from any party that any order has been passed which is based on some erroneous facts or carries some patent error or suffers from some inadvertent mistakes, may review its order within ninety days of its passing with the prior permission of the next higher authority during which the default or contravention continues.

Crux:-

1. **complaint to District Registrar**
2. **First Appeal: -State Registrar/Registrar against Order of No.1**
3. **Second Appeal:-Registrar General Mr. Shekhar Vidyarthi IAS against Order of No.2**
4. **Final Appeal:- Before the Government** DEPARTMENT OF INDUSTRIES & COMMERCE, HARYANA

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4. Compliance under the Societies Act HRRS Act 2012

SOME IMPORTANT PROVISIONS OF THE HRRS ACT 2012 TO BE FOLLOWED

1. One Flat one vote.
2. Terms of Governing Body not to be more than 3 years.
3. Member to be not less than 21 year age.
4. Office bearers of society (Three to twenty one).
5. General Body and other meeting should be conducted with quorum i.e. 1st meeting - 40%, 2nd meeting - 25% and 3rd meeting - 15% (see entire Provisions)
6. In the case of Joint Apartment owners, 1st owner will be eligible to contest the elections.
7. Proxy voting not allowed.
8. Condominium/ Association covered under Apartment Ownership Act 1983 is to be formed by owners only.
9. Election observer may be appointed by District Registrar or on request of Society

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5.Others Compliance

Private Security Agencies Regulation Act 2005

1. **As per Section 4 of PSARA License:-** No private security agency can provide security without obtaining permission from the controlling Authority.

1. As per Section 20 **Punishment for contravention of certain provisions**

(1) Any person who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may **extend to one year**, or with a fine which may extend to **twenty-five thousand rupees**, or with both.

5.Others Compliance

THE HARYANA LIFTS AND ESCALATORS ACT, 2008

1. Section – 17 Life Span.

A lift or escalator installed in the premises shall be replaced by the owner of the lift or escalator, after the period of **twenty years of its installation**. Such replacement shall be completed within **the twenty-first year of the installation of the lift or escalator**, and the owner shall apply for a fresh registration under section 4.

5.Others Compliance

THE HARYANA LIFTS AND ESCALATORS ACT, 2008

Section -20 Penalty

1. Whoever contravenes any of the provisions of this Act, or the rules made thereunder shall, on conviction be punishable with imprisonment for a term which may extend **to three months**, or with fine which may extend to **fifty thousand rupees, or with both**, and in the case of a continuing contravention with an additional fine which may extend to **one thousand rupees for every day** during which such contravention continues after conviction for the first such contravention.

Crux:- 3 Month Imprisonment or fine 25,000 and an additional fine
Rs. 1,000 Per day

Lift NOC is Required Every year as per the Rule 4 of **THE HARYANA LIFTS AND ESCALATORS Rule, 2009**

6.Recovery from DHBNV / Electricity Board

1. Interest on the Security Deposit to Electricity Department;
2. 4% Bulk Supply:-
3. Rate Difference :-

Thank you very much

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