

RERA TIMES

REAL ESTATE
(Regulation and Development) Act, 2016

(A Journal on Real Estate Bye Laws)

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Part-III

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FCA, DISA, CCCA

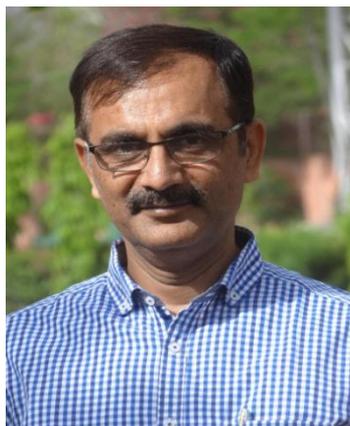
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PART-I: Article

OFFENCES AND PENALTIES

RERA has attained success in grasping the attention of the stakeholders in the real estate sector not just because of the wide coverage of its provisions; designed in a way as to regulate the actions of every interested party but also for the proposed penalties in case of its contravention. The massive amount of penalty provisions hanging as a sword over the heads of the promoters, developers and agents have been notified to make sure that infringement of the Real Estate (Regulation and Development) Act, 2016 effect the law breakers not just morally, but financially as well and to ensure the consumers that violators of the law will not be forgiven without proper repercussions.

- A. The offences along with the respective penalties to be imposed **in case of promoters** have been given as follows:

| <u>OFFENCE</u> | <u>PENALTY</u> |
|---|---|
| Section 59 | |
| 1. NON-REGISTRATION OF A PROJECT | 10% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |
| 2. NOT OBEYING ORDERS OR DIRECTIONS IN CONNECTION WITH THE ABOVE OFFENCE | IMPRISONMENT FOR TERM WHICH MAY EXTEND UPTO 3 YEARS WITH OR WITHOUT FINE BEING 10% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |
| Section 60 | |
| 3. PROVIDING FALSE INFORMATION ETC. | 5% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |

| | |
|---|--|
| Section 61 | |
| 4. OTHER CONTRAVENTIONS | 5% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |
| Section 63 | |
| 5. CONTRAVENTION OF ANY ORDER OF RERA | PENALTY FOR EVERY DAY OF DEFAULT WHICH MAY CUMULATIVELY EXTEND UPTO 5% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |
| Section 64 | |
| 6. CONTRAVENTION OF THE ORDERS OR DIRECTIONS OF THE APPELLATE TRIBUNAL | IMPRISONMENT FOR TERM WHICH MAY EXTEND UPTO 3 YEARS WITH OR WITHOUT FINE WHICH MAY CUMULATIVELY EXTEND UPTO 10% OF THE ESTIMATED COST OF REAL ESTATE PROJECT. |

B. Defaults committed by the allottees

(i) Failure to comply with the order of the RERA (Section 67):

Liable for penalty as may be determined by the Authority. The total penalty so imposable can be up to an amount equal to 5% of the cost of building, apartment or plot as the case may be, as determined by the authority.

(ii) Failure to comply with the orders of the Real Estate Appellate Tribunal (Section 68):

Can be made punishable with imprisonment for a term up to one year or with fine so determined but can be up to an amount equal to 10% of the cost of building, apartment or plot in respect of which the defaulter is an allottee.

C. Offences and Penalties for Agents

| <u>OFFENCE</u> | <u>PENALTY</u> |
|--|---|
| <p>1. CONTRAVENTION OF THE APPLICABLE PROVISION OF THE ACT. (Section 62)</p> | <p>Rs.10000/- PER DAY OF DEFAULT WHICH MAY EXTEND UPTO 5% OF THE COST OF THE PROPERTY WHOSE SALE OR PURCHASE WAS FACILITATED BY HIM.</p> |
| <p>2. CONTRAVENTION OF THE ORDERS OR DIRECTIONS OF RERA. (Section 65)</p> | <p>PENALTY ON A DAILY BASIS WHICH MAY CUMULATIVELY EXTEND UPTO 5% OF ESTIMATED COST OF THE PROPERTY WHOSE SALE OR PURCHASE WAS FACILITATED BY THE AGENT.</p> |
| <p>3. CONTRAVENTION OF THE ORDERS OR DIRECTIONS OF THE APPELLATE TRIBUNAL. (Section 66)</p> | <p>IMPRISONMENT FOR A TERM WHICH MAY EXTEND TO ONE YEAR WITH OR WITHOUT FINE WHICH MAY EXTEND UPTO 10% OF ESTIMATED COST OF THE PROPERTY WHOSE SALE OR PURCHASE WAS FACILITATED BY THE AGENT.</p> |

D. OFFENCES BY COMPANIES

- Every person who at the time an offence was committed, in charge of the conduct of the company, as well as the company, shall be guilty of the offence and shall be proceeded against and punished accordingly. Such person shall not be liable for punishment 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.

- Where an offence is committed by a company, and it is proved that the offence has been committed with the consent, connivance, or any neglect on the part of any director, manager, secretary or other officer of the company, then such persons shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- For the purpose of aforesaid offence “Company” means any body corporate and includes a firm, or other association of individuals and “Director” in relation to a firm, means a partner in the firm.

E. COMPOUNDING OF OFFENCE:

The concept of compounding of offences is incorporated as a measure to avoid the long drawn process of prosecution to save both cost and time in exchange of payment of penalty. If any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed.

However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

PART-II: Reporting of Case Laws

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

ABHIGNA ENTERPRISE V/S INCLINE REALTY PVT. LTD.

ORDER DATE: 14.09.2017

Certain plots shown in the layout as proposed adjoining land by the promoter in the disclosure. But proposed adjoining land has not been sanctioned till date therefore, objection raised by the complainant in this regard is an utter non application of mind. The promoter is directed to upload amended disclosure on MahaRERA website stating the correct and factual information pertaining to the same, within a period of two days.

MR. ISTEKHAR YUSUF SHAIKH V/S DHRUVA WOOLLEN MILLS PVT. LTD.

ORDER DATE: 14.09.2017

The RERA Authority held that the complainant is not an allottee of Runwal Garden City-Dahlia. He has no locus standing to file the complaint before this Authority. However, the promoter is directed to upload any cases pending against this project on the website.

SWATANTRA ANAND V/S PARADIGM AMBIT BILDCON

ORDER DATE: 18.09.2017

The Complainant claimed as a contractor of the respondent and asked to pay outstanding bills. During the course of hearing he could not prove that he was contractor of the respondent therefore, Maharashtra RERA Authority dismissed complaint in absence of evidence and found the dispute between parties as a civil matter. Non-disclosure of contractor in Registration Form has violated the provisions of Section 4 of RERA Act, 2016.

DEEPA AND AVINASH MANSBADAR V/S RUNWAL HOMES PRIVATE LIMITED

ORDER DATE: 18.09.2017

Agreement to Sale is not as prescribed under RERA and Real Estate (Regulation and Development) Rules 2017 accordingly respondent is directed to modify it. The revised Agreement to Sale was also not as per the provisions of RERA. Revised Agreement to Sale was according to model form of Agreement prescribed under Real Estate (Regulation and Development) Rules 2017.

VIJAYA POWAR V/S SONA ENTERPRISES

ORDER DATE: 18.09.2017

The Complainant is the owner of the land. There was an agreement for development between them. As per said agreement the complainant had to receive her 50% area share out of the total constructed area. The respondent has violated the said agreement and left the project incomplete and also the respondent filed Civil Suit. During the hearing it was found by the Authority that the complainant being the owner of the land is having area sharing in the project as per the Development Agreement. However the respondent, while registering the project known as "Sona Paradise" has not mentioned the name of the complainant as co-promoter of the said project and therefore has violated the provisions of RERA Act, 2016. The argument of the respondent that the competent authority has granted approval for construction of ground + 4 upper floors comprising of total 32 apartments, out of which 16 to be sold by the respondent and remaining 16 by the complainant as per the Development Agreement. The RERA Authority decided that complainant is co-promoter therefore respondent should have disclosed the relevant information regarding the project and also directed both the parties to upload the information jointly such as name of the co-promoter, Development Agreement, designated bank account details, declaration in Form B, sanction layout plan and total number of apartment details etc. on the website of MahaRERA.

KISHORE JADHAV V/S JAYANTIBHAI PATEL AND HIRAL PATEL OF M/S. VINAYAK ASSOCIATES

ORDER DATE: 19.09.2017

Complaint has been filed for alleged violation of RERA Act, 2016 by the respondent while registering the Real Estate Project. The complainant has alleged that the disclosure made by the respondent in the MahaRERA registration is false. The respondent has stated that as per Joint development Agreement he is actual promoter of the project and complainant is the Co- promoter.

Complainant and respondent have registered same project separately and obtained two separate registration numbers which is not permissible under the RERA Act, 2016.

MahaRERA directs the complainant and the respondent to jointly update the information and make suitable modification in the information of the project and the other registration of project will have to be cancelled.

SUSHIL AGARWAL V/S YASHDHAN ASSOCIATES

ORDER DATE: 19.09.2017

Complainant was owner/co- owner of the land. He alleged that he has sold project land to respondent, but he has not received full consideration and thereby the respondent has cheated him. The respondent borrowed finance from HDFC Bank under Mortgage deed and had suppressed the material facts about encumbrances, while registering the said project with Maharashtra RERA. The complainant prayed that the respondent directed to clear the outstanding dues of Bank with interest, compensation, damage and also penalize under section 60 & 61 of the RERA Act, 2016. After hearing both the parties Maharashtra RERA decided that the complainant is neither the owner nor the allottee of the project. The complaint stands dismissed for want of locus Standi of the complainant.

GANESH KALYANASUNDARAM V/S RUNWAL DEVELOPERS PVT. LTD.

ORDER DATE: 19.09.2017

Office space purchased by the complainant is not a part of the project that is registered with Maharashtra RERA; the matter is dismissed for want of Jurisdiction.

AMOL KADAM V/S HORIZON PROJECTS PVT. LTD.

ORDER DATE: 19.09.2017

Booking amount paid by the Complainant has been substantially refunded therefore Maharashtra RERA Authority has not directed to refund any Amount to the Complainant.

SEJAL GANDHI V/S JAYANT NARENDRA MEHTA

ORDER DATE: 21.09.2017

Complainant alleged that her name has not been displayed in the Board of the Society. Building known as “Kamla Vihar CHS” Group Housing Society situated at Kandivali and has not registered with Maharashtra RERA. The Respondent clarifies that the said project is already occupied and therefore is not required to be registered with MahaRERA and he further mentioned that the complainant is neither an original member of said project but her father was original allottee. Therefore, her name has not been included in the list of occupant. The said building is not part of the project that is registered with MahaRERA; the matter is dismissed for want of jurisdiction.

SHRI NILESH KUDALKAR V/S KINGS EMPIRE HEIGHTS PVT LTD

ORDER DATE: 26.09.2017

Complainant has entered into Joint Development Agreement with the Respondent of the development of the said project. The Complainant alleged that the respondent has made the following incorrect or incomplete disclosures in the RERA registration application pertaining to the said project:-

1. Name of the Complainant who is a director in the respondent company, has not been disclosed.
2. Copy of the said Joint Development Agreement not disclosed.
3. Certain Litigations pertaining to the parties concerned in this case, not disclosed.
4. Various other matters not pertaining to the violations of the Real Estate (Regulation and Development) Act, 2016

Finally Maharashtra RERA has directed to the respondent to make necessary change in discloser made along with RERA application and upload the name of the complainant as a director.

BAJRAN SINGH, GRS SHELTERS PRIVATE LIMITED V/S MCGM

ORDER DATE: 26.09.2017

Since the complainant file with Maharashtra RERA is fake in nature not pretend to specific violation of RERA provision is dismissed for want of jury.

VISHAL KAMBLE V/S AMOL LALCHAND BHIARE AND KIRAN AMBADAS GOTE

ORDER DATE: 26.09.2017

The Complainant alleged that 50 % share in the project as per the registered development agreement executed between him as the landowner and the respondents. The complainant alleged that the respondents had forged the agreement with malafide intension and shown area in Square feet in the agreement instead of 50 % share. Respondent claimed that this project pretends to year 2012 and after a lapse of 5 years the complainant is disputing the agreement. There is no substance in the complaint. After considering both the parties it appears that the complainant is seeking directions for specific performance of the Development Agreement executed between the complainant and the respondents. The Maharashtra RERA has no jurisdictions to try or entertain such civil disputes. The Authority directed both the parties along with 40 co-owners of the said project to upload the all relevant information within a period of 5 days accordingly matter is disposed off.

SUNIL MAYEKAR V/S ARYAMAN INFRATECH INDIA PVT. LTD.

ORDER DATE: 04.10.2017

The complainant has filed this complaint before the Maharashtra RERA seeking direction to respondent to refund the advance amount with 10% interest paid by them. The complainant paid partial amount against the full consideration but the respondent did not execute the registered agreement for sale with the complainant and hence the complainant cancelled the said booking and wants refund of his money paid with interest from the respondent as per provisions of RERA Act, 2016. The respondent pointed out that the complainant was no longer an allottee of the registered project because his allotment had been cancelled on his request. The respondent refunded the partial amount and the balance amount would be paid by deducting 20% administrative charges as provided in clause 5 of the allotment letter. The respondent further stated that the agreement could not be registered, since the complainant did not pay stamp duty and registration charges. The respondent also informed that he had already sold the said flat to the third party. It is clear from above facts that the complainant was no longer an allottee as his allotment had been cancelled on his request and the money was being refunded. The respondent is directed to pay back the outstanding amount of refund to the complainant within a period of 15 days after reducing the administrative charges.

MODERN ABODES PVT. LTD. V/S BALSAM DEVELOPERS PVT. LTD.

ORDER DATE: 04.10.2017

Complainant purchased two open plots and also entered into a contract for construction of bungalows with sister concern of the respondent. The respondent has proved that he has handed over the possession of the developed plots purchased by the complainant and thereby the role of the promoter in this specific case has ceased to exist. The contract to construct the said bungalows between the parties is not a matter of jurisdiction of Maharashtra RERA Authority.

MEGHA BHIKE V/S ROHIDAS CHAVAN

DATED: 05.10.2017

The Complainant has filed this complaint before RERA Authority seeking directions to respondent to immediately give possession of flat and to pay interest for the delayed possession. The complainant had purchased the flat from the respondent in December, 2014. A registered agreement had been executed, in which date of possession was mentioned as December 2015. However, till date complainant has not received possession of the flat. The respondent submitted that the other person was original allottee of the flat and after obtaining their NOC, he sold flat to the complainant. They have obtained the occupation certificate for said flat and on payment of such outstanding dues such as Service Tax & VAT etc. they are ready to handover possession of the flat to the complainant. RERA Authority directs to the respondent to provide the details of the outstanding dues payable in respect of flat, to the complainant within a period of one week. The complainant shall pay the said dues and thereafter, the respondent handover the possession of the said flat immediately to the complainant.

VASANT JADHAV V/S KAILAS PATIL

ORDER DATE: 05.10.2017

The complainant has filed this complaint u/s 18 of Real Estate (Regulation & Development) Act, 2016 (for short, RERA) for getting compensation on account of the respondent's failure to give the possession of his booked flat no. 404 in the respondent's project 'Kailas Heights' situated at Kalwa, Dist. Thane.

The complainant contends that the respondent is the proprietor of Ms. Trinity Construction Company which launched the aforesaid project. The respondent executed the agreement of sale of the said flat on 28.08.2015 and agreed to give the possession of the said flat within 18 months from the date of agreement. However, for one reason or the other he avoided to complete the construction of the building and give possession of the booked flat. Hence the complainant claims a compensation amounting to Rs. 10,000/- per month of last five years towards the

house rent and the mental harassment. He also claims the future house rent at the rate of Rs. 10,000/ - per month till he gets the possession.

Respondent admits that the possession of the flat has not been given till the date. He has filed the reply to contend that after commencement of the construction in the year 2008 a bridge constructed on a stream collapsed and therefore, he could not continue the construction till the year 2012 when the bridge was reconstructed. He further contends that in the record of rights the area of survey no. 48/ 4 is shown 2,230 sq. meters but in the record of inspector of land records it was less than that. In order to get it corrected, he had to wait till 30.12.2014. Thereafter he submitted the amended plan for construction of additional floors in the place of initial 7 floors and had to spend one year in the process. Thereafter in the year 2015 L.B.T. rules were brought into effect by Thane Municipal Corporation and it took some time to settle the issue. He also had to wait till the record of inspector of land records/ city survey office was corrected regarding the transfer of his land used for D.P. Road. Thereafter, he has submitted the amended plan on 20.07.2017 for further construction of work and the sanction is awaited. Hence he contends that the project is delayed because of the reasons which were beyond his control.

I have heard the parties and perused the documents produced by them.

The only point that arises for my consideration is, whether the respondent has failed to deliver the possession of the flat on the agreed date and if yes, whether the complainant is entitled to get compensation or the interest on his investment u/s 18 of RERA?

The complainant has produced the copy of index II to show that the respondent executed the agreement of sale of the above numbered flat in his favor on 28.08.2015. Page no. 14 of the agreement shows that respondent agreed to give possession of the flat within 18 months from the date of agreement. The contention of the complainant has not been challenged by the respondent regarding the delay in handing over the possession of the flat. The respondent has assigned the reasons of delay which are mentioned above. It is seen that initially

the respondent was to construct a building having only 7 stories. Thereafter he changed his mind to add additional floors and according to him till 2017 the process of obtaining the sanction is going on.

The facts to which the respondent refers to above are not, in my opinion, sufficient to hold that the project is delayed because of the reasons beyond his control. Not only was that during those days Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) at 1963 holding the field. Section 8(b) of the said Act provides that if the promoter for reasons beyond his control is unable to give possession of the flat by date specified, or the further agreed date and a period of 3 months thereafter, or a further period of 3 months if those reasons still exist, then in such case the promoter is liable to pay the interest at the rate of 9% on the amounts paid by the buyer. Even if all the circumstances were in favor of the respondent to hold that he could not deliver the possession because of the reasons which were beyond his control, he cannot get the extension of more than three plus three months' period from the agreed date. In any circumstance I find that the respondent has failed to deliver the possession on the agreed date and hence, he incurs the liability u/s 18 of RERA to pay interest on the amounts paid by the complainant and in case of special damage, compensation also.

The complainant has produced agreement of lease entered by him with his landlord Mr. Kishen Pun to show that he has been residing in a rented house and he has to pay heavy interest on the loan amount. The complainant has produced the receipts dated 08.10.2010 of Rs. 50,000/- , 19.08.2015 of Rs. 7,00,000/-, dated 27.10.2015 of Rs. 22,50,000/-, dated 02.01.2016 of Rs. 1,53,375/- and dated 13.11.2016 of Rs. 62,490/-. Thus the complainant has paid Rs. 32,15,865/ - The complainant is entitled to get simple interest at the rate of marginal cost of lending of SBI which is currently 8.15% plus 2% p.a. on these amounts. He has not made out any special case for grant of compensation. In the circumstance, I do not find that he is entitled to get the compensation separately.

ORDER

The respondent shall pay the complainant the monthly simple interest at the rate of 8.15% plus 2% p.a. on Rs. 32,15,865/ - from the date of default i.e. from 28.02.2017, till he delivers the possession of the flat to the complainant.

The respondent shall clear the arrears of interest accrued till 30.09.2017 within one month of this order together with Rs. 20,000/- towards the cost of the complaint.

RAVI NAIR V/S M/S. NIRMAL LIFESTYLE (KALYAN) PVT. LTD.

ORDER DATE: 10.10.2017

The complainant has filed this complaint for claiming interest for delayed possession from the respondent. As per the agreement, the date of possession was June 2016 but respondent had extended the date thus there was delay in possession. The respondent replied that the matter will be settled amicably as per the provisions of RERA Act, 2016. The respondent has been directed to pay interest equal to the State Bank of India highest Marginal Cost of Lending Rate prevailing at such time plus two percent, as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and development) Rules, 2017 from May 2017 onwards till the date of possession.

SUREKHA TUSHAR GAIKWAD V/S M/S. UNIVERSAL INFRA DEVELOPERS

ORDER DATE: 10.10.2017

The Complainant had booked an apartment in the respondent's project "Universal Infra Developers". The Complainant has alleged that the respondent has agreed to give the possession of the said apartment on or before 30th October, 2014 but respondent had extended the date thus there was delay in possession. **The respondent submitted that the delay in Occupation certificate was beyond his**

control. Respondent is ready to give possession of apartment on or before 30th November, 2017. The RERA Authority directed to the respondent to hand over the flat before the period ending November 2017, failing which the respondent shall be liable to pay interest to the complainant from 1st December 2017 till the actual date of possession, on the entire amount paid by the complainant . The said interest shall be at the rate of the State Bank of India highest Marginal Cost of Lending Rate prevailing at such time plus two percent, as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and development) Rules, 2017.

RAJIVE KUMAR E.K. V/S M/S. UNIVERSAL INFRA DEVELOPERS

ORDER DATE: 10.10.2017

The Complainant had booked an apartment in the respondent's project "Universal Infra Developers". The Complainant has alleged that the respondent has agreed to give the possession of the said apartment on or before 30th October, 2014 but respondent had extended the date thus there was delay in possession. The respondent submitted that the delay in Occupation certificate was beyond his control. Respondent is ready to give possession of apartment on or before 30th November, 2017. The RERA Authority directed to the respondent to hand over the flat before the period ending November 2017, failing which the respondent shall be liable to pay interest to the complainant from 1st December 2017 till the actual date of possession, on the entire amount paid by the complainant . The said interest shall be at the rate of the State Bank of India highest Marginal Cost of Lending Rate prevailing at such time plus two percent, as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and development) Rules, 2017.

PRAVIN UTAM HIWALE V/S DARODE JOG HOMES PVT. LTD.

ORDER DATE: 11.10.2017

The complainants have filed this complaint for getting refund of the amounts paid by them to the respondent. Complainant entered into an agreement of sale with the respondent and the respondent agreed to deliver the possession of the Flat on

or before within two and half years from the date of agreement whichever is later. The complainant no. 2 also entered into the agreement of sale with respondent. Therefore, the complainant no. 1 was entitled to get the possession of his flat in April 2017 and the complainant no. 2 was entitled to get the possession of his flat in May 2017. The revised date of completion mentioned by the respondent while registering the project is 31.12.2018. The complainants want to withdraw from the project and claim back the money paid to the respondent. The plea of the respondent is recorded and it accepts that the possession of the flats are not given on or before the dates agreed by the respondent.

1. The RERA Authority directed to the respondent to pay compensation with interest namely MCLR of S.B.I. i.e. 8.15% plus 2% from 01.05.2017 till their payment.
2. The respondent shall pay the complainants Rs. 20,000/- towards the cost of the complaint.

BIVASH CHANDRA BISWAS & OTHERS V/S SIR GEORGE P JOSEPH

ORDER DATE: 11.10.2017

The Complainant had booked an apartment in the respondent's project "Leo Heights" under registered agreement for sale executed in the year 2013 in which no definite date of possession is mentioned. The date of possession is mentioned as 3 years from the date of commencement certificate. Complainants now pray for peaceful and early possession of their respective apartments. Respondent has mentioned date of completion as December 2022 in their RERA registration application. The RERA Authority directed to the respondent to hand over the flats before the period ending December 2020, failing which the respondent shall be liable to pay interest to the complainant from 1st January 2021 till the actual date of possession, on the entire amount paid by the complainant . The said interest shall be at the rate of the State Bank of India highest Marginal Cost of Lending Rate prevailing at such time plus two percent, as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and development) Rules, 2017.

YOGESH BALGHARE V/S MUKESH MANOHAR YEALE

ORDER DATE: 11.10.2017

The Complainant is the owner of a land which is developed by the respondent. Complainant is alleged that the respondent is using the FSI for remaining land which is not given for development. The nalla shown in the DP plan and the DP road have been diverted by the respondent without any permission. The NOC is given by Air force for 5 years, which is ambiguous and the Honorable Bombay High Court in the writ petition No. 13216/2016, have made it clear that such NOC is illegal. The respondent denied the contentions raised by the complainant. They are liable to handover the flats by executing Supplementary Agreement within prescribed time but complainant is not co-operating.

The MahaRERA as held that complainant failed to establish the case as to which provisions of RERA Act, 2016 has been violated. The complainant wanted to issue for specific performance of development agreement executed by both the parties which is out of jurisdiction of RERA Authority and it is a civil dispute, accordingly the case is dismissed.

AVINASH SARAF, NEHA DUGGAR SARAF V/S RUNWAL HOMES PVT. LTD.

ORDER DATE: 13.10.2017

1. The complainants have been claiming the amounts paid by them to the respondent towards the consideration of the booked flat bearing no.3204, tower no. 7, wing 'G' in a building known as Redwood in the respondent's Runwal Greens project having MahaRERA Registration No. P51800000271, under section 18 of Real Estate (Regulation & Development) Act, 2016.
2. **Pleadings:** The complainants contend that they have paid 97% of total consideration of the said flat. The respondent has specified in the agreement of sale that the possession of the flat shall be handed over to the complainants on or before August 2016 but it has failed to hand it over till the date of complaint. They further contend that under subvention scheme promoted by the respondent, respondent paid interest up to August 2016

under tripartite agreement. Thereafter the bank has recovered the installments with interest from the complainants. Therefore, they demand the amount of consideration with interest at the rate of Rs. 21% p.a. from the respondent with compensation.

The respondent has filed explanation/ reply to contend that the project is at an advanced stage and shows its willingness to offer the flat to the complainants for interior works by December 2017. It contends that the agreement of sale has been executed on 10.11.2014 whereas RERA has come into effect from 01 May, 2017. Hence, MahaRERA has no jurisdiction to entertain this complaint. It further contends that as per the agreement it is the responsibility of the complainants to bear the charges of stamp duty and registration namely Rs. 8, 56,800 / - and Rs. 30,000/- respectively. These amounts had been paid to the Govt. hence; they cannot be recovered from it. According to it, under tripartite agreement it was liable to pay interest till August, 2016 and it paid it. After 31st August 2016 it is the duty of the borrowers to pay the instalments of the bank and it is absolved of the said agreement. The date of possession envisaged in the agreement of the sale was subject to various reasons mentioned in the clause 17 of the agreement which were beyond the control of the respondent. The respondent constructed public parking lot under the said building and applied for its occupation certificate on 5 December, 2014 and received it on 30 May, 2015. The development control regulations for greater Mumbai were amended by notification dated 06.01.2012. The Authorities delayed in granting approvals and sanctions. These reasons were beyond the control of the respondent. When the complainants showed their willingness to cancel the booking, the respondent offered to refund the amounts received by it by its e-mail dated 01.03.2017 but the complainants insisted to pay interest at the rate of 21% and therefore, the matter could not be resolved.

3. An attempt to resolve the dispute amicably has failed.
4. **Point for determination:** Whether the complainants are entitled to get back the amounts paid to respondent with interest and / or compensation? Is the

point for determination. Both the parties have filed their documents and their advocates have argued the matter. I answer the point in affirmative for below mentioned reasons.

5. **Undisputed Facts:** There is no dispute between the parties regarding booking of the flat, the payment of money by complaints to respondent and the possession of the flat has not been given even after the lapse of agreed date of giving the possession i.e. on or before August 2016. The complainants have decided to withdraw from the project and they demand their money. On this backdrop it is necessary to look at the merits of the case.
6. **Relevant Provision of Law:** RERA has come into force from 01.05.2017 in the state of Maharashtra. The respondent's project is governed by it and therefore it is registered with MahaRERA. Relevant part of section 18 of RERA reads as under-
Return of amount and compensation-(1) If the promoter fails to complete or is unable to give possession of an apartment plot or building,

In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:"

7. **Jurisdiction:** The respondent's learned advocate submits that the agreement of sale has been executed on 10.11.2014 i.e. during the Maharashtra Ownership of Flats (Regulation of promotion of Construction, Sale, Management and Transfer) Act 1963 (for short, MOFA) regime. He also refers to one interim order passed by me in C006000000000049 holding that RERA came into effect from 1st May, 2017 and it is prospective. He further submits that the date of possession mentioned in registration certificate is not crossed and therefore there is no breach of any provision of RERA. Hence, MahaRERA has no jurisdiction to entertain this complaint.

I find the cause of action for claiming possession after the lapse of the agreed date of possession becomes a recurring cause of action. The claimants' right to claim their money back or to claim possession continues from August 2016 till the date of filing of this complaint. If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects requiring registration u/s. 3. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief relating to it. This view gets the support from Section 88 of RERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71(1) of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/s 12, 14, 18 & 19 of RERA, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered by sections 12, 14, 18, 19 of RERA is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission on or before the commencement of RERA, he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This provision therefore, indicates that sections 12,14,18,19 RERA are retroactive. The right to claim return of amounts paid by the allottee to the promoter is preserved by Section 18 of the Act.

Moreover, relevant part of section 18 of RERA reads,

Return of amount and compensation-

If the promoter fails to complete or is unable to give possession of an apartment plot or building-

- (a) accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

On plain reading of this provision it becomes clear that date of completion referred to in this provision means the date specified in the agreement. The word "therein" refers to the "agreement" and not the date of completion revised by the promoter unilaterally while registering the project. Hence I find myself unable to accept the submission of respondent's learned advocate that as till the date of completion mentioned in registration certificate is not crossed, this Authority has no jurisdiction. Considering all these aspects, I find that the Authority has jurisdiction to entertain this complaint as the complainants' right to claim back their money in the case of withdrawal from the project still subsists under RERA.

8. Is the time of delivery of possession is extended?

The parties are not at dispute that the respondent agreed to deliver the possession of the flat on or before 31st August, 2016 as mentioned in the agreement of sale. However, the respondent submits that on 13.09.2016 itself the respondent informed the complainant that because of the circumstances beyond its control it would not be able to deliver the possession as agreed but offered to deliver it on 18th June, 2017. The complainants did not reply the letter. The respondent by its e-mail dated 01.03.2017 indicated the complainants that it would offer the possession by October 2017. E-mails were sent between 01.03.2017 to 20.04.2017 but the complainants did not object to the extended time hence, the complainants by their conduct agreed

to extend the period of delivery of the possession of the flat. I do not find any force in the submission because a party cannot take unilateral decision and impose it upon the other party. The facts revealed from the correspondence do show that the complainants waited for the completion of the project and when they lost the hope, they decided to withdraw from project. They did not mention anywhere that they agreed to the new dates unilaterally declared by respondent. This leads me to hold that the project is delayed and the respondent failed to deliver the possession of the flat on the date agreed by the parties.

The respondent contends that the project is at an advanced stage and shows its willingness to offer the flat to the complainants for interior works by December 2017. The learned advocate of the complainants has brought to my notice that National Consumer Disputes Redressal Commission has held that the possession without occupation certificate is mere paper possession and possession without such certificate is illegal. In this context Division Bench of Hon'ble Bombay High Court in its ordinary original civil jurisdiction in M/s. Sion Kamgar Co-operative Housing Society Ltd. V/s Municipal Corporation for Greater Mumbai and others, (writ petition no. 829 of 2013 decided on 15th October, 2013) held that occupying the building without occupation certificate cannot be permitted in law. Therefore, this offer has been rejected by the complainants and has exercised their right to claim back their money.

9. **Reasons of Delay:** The respondent constructed public parking lot under the said building and applied for its occupation certificate on 5 December, 2014 and received it on 30 May, 2015. It is very difficult to hold that only because of this reason the respondent had to stop the construction of the upper floors of a building. After getting commencement certificate and the approved plans it was entitled to make the further construction. In other words, the occupation certificate of public parking lot could not act as the obstacle in the process of construction.

The second reason assigned by the respondent about delay is, the development control regulations for greater Mumbai were amended by

notification dated 06.01.2012. The Authorities delayed in granting approvals and sanctions. These reasons were beyond the control of the respondent. Even this reason is not justifiable because the parties entered into an agreement on 10.11.2014. it means that the agreed date of possession had been agreed upon after the period of two years and ten months. In this context, Mr. Chandnani has brought to my notice that the National Consumer Disputes Redressal Commission has observed in Kamal Sood V/s DLF Universal Ltd. (FA /557 /2003) decided on 02.04.2007 that it was the duty of the builder to plan in advance, obtain necessary permission and thereafter, promise to deliver the possession of flat in the stipulated time. It is unfair trade practice on the part of the builder to collect money from the prospective buyers without obtaining the required permission. I am also of the same opinion. Hence, I do not find that the reasons assigned by the respondent were the real reasons which delayed the project.

10. **Refund of the amounts paid by the complainants & compensation:** Section 18 of RERA imposes the liability on the promoter to return the amounts received by him in respect of the apartment of which he fails to give the possession on time. The complaints have been claiming refund of the consideration of the booked flat. The complaint discloses that from 09.10.2014 to 18.01 .2017 the complainants have paid Rs. 1,74,17,986 /- towards consideration. The complainants are entitled to get them back. Complainants claim interest at the rate of 21% p.a. This cannot be accepted for the obvious reason that section 18 of RERA allows the interest at specified rate and the rules framed under the Act provide that it shall be at highest marginal cost of lending rate of interest of S.B.I. plus 2%. Hence, the complainants cannot get interest more than the rate fixed by the statute that too from 1.5.2017 onwards.

The complaint shows that the complainants paid Rs. 8,86,800/- towards the stamp duty and registration charges on 15.11.2014. Learned advocate of the respondent submits Rs. 8,56,800/- & Rs. 30,000/- collected from the complainant for stamp duty and registration of the agreement of sale cannot be refunded as the said money went to the Govt. Moreover, clause 63 of the

agreement of sale clearly provides that these charges shall be borne by the purchaser. Mr. Chandnani brings to my notice that on the cancellation of agreement of sale the party purchasing the stamp is entitled to get the refund of its purchase price. He also agrees that the money spent for registration of the documents cannot be refunded but claimants are entitled to get its compensation. To conclude, I hold that all amounts paid by the allottee will have to be refunded. Respondent becomes liable to shoulder the responsibility of returning the amounts received by it because of its failure to deliver the possession on the agreed date. Cancellation of the agreement is inevitable because of its default and therefore, the allottee cannot be held liable to bear any burden when the transaction is frustrated. Section 72 of RERA mandates that while adjudging the quantum of compensation or interest u/s 71 the Adjudicating Officer shall have due regard to the factors (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default and (b) the amount of loss caused as a result of default. I have acted on these principles.

The complainants paid the bank Rs. 11,00,000 /- towards the interest from 30.09.2016 to 31.07.2017. There is issue of subvention scheme and tripartite agreement. Admittedly the respondent promised to pay service interest on the amounts drawn till August 2016 and the respondent has paid it. It is true, it is mentioned in the said agreement that the liability to pay the interest thereafter would be that of the borrower and the promoter shall be absolved. In this context, one has to keep in mind that when the parties entered into the said agreement it was anticipated that by August 2016 the possession of the flat would be delivered and therefore, the agreement was executed on its basis. In view of this fact, I find that because of the default of respondent, the borrower cannot be made liable to pay the interest on bank loan. The promoter has to sustain this loss by compensating the complainants.

In view of the factors to be considered as laid down by section 72 of RERA, I find that respondent has used the money paid by the complainants from time

to time. They are at loss of the interest or a reasonable return on their investment. On the other hand, if respondent would be absolved from this liability, it would get unfair advantage for it which is not permissible in law. Hence complainants are entitled to get compensation at the rate of 9% on the money paid by them from the date mentioned in Annexure 13, till 30th April 2017.

11. Conclusion: After considering all the legal and factual aspects of the matter, I find that the complainants are entitled to get-

- a) The consideration amount of Rs. 1,74,17,986/ -,Rs.8,86,800/ -, stamp duty and registration charges and Rs. 11,00,000 / -, the amount of interest paid by complainants to bank during 30.09.2016 to 31.07.2017, with interest at S.B.I.'s highest marginal cost of lending rate plus 2% from 01.05.2017 till their payment.
- b) The compensation at the rate of 9% from respective dates of payment on the above mentioned amounts.
- c) Rs. 20,000 /- towards the cost of the complaint.
- d) The complainants shall execute the deed of cancellation of agreement of sale and respondent shall bear its cost.

Hence the following order:-

ORDER

The respondent shall pay the complainants-

1. Rs. 1,94,04,986/ -with interest at S.B.I.'s highest marginal cost of lending rate plus 2% from 01.05.2017 till the payment.
2. The compensation at the rate of 9% on the amounts mentioned in Annexure 13 from respective dates of their payment till 30.4.2017.
3. Rs. 20,000/- towards the cost of the complaint.
4. Annexure 13 shall form the part of the order.
5. The complainants shall execute the deed of cancellation of agreement of sale and respondent shall bear its cost.

MAHESH PARIANI V/S MONARCH SOLITAIRE LLP

ORDER DATE: 16.10.2017

The Complainant has invested some amount in the residential project known as 'Monarch Solitaire' and reserved four apartments in the said Project. The said Project is registered under MahaRERA. The Complainant stated that after reservation of four apartments, Respondent neither gave his invested money back with interest nor is giving the possession of the apartments earmarked for him.

While going through the documents, it is observed that the Complainant and Respondent have signed a 'Memorandum of Understanding' on 12th March 2014 from which it is seen that the Complainant is an investor in the said Project and not an allottee. The 'Memorandum of Understanding' mentions that when the complainant sells his apartments in the market then the profit from such a sale will be shared between the complainant and respondent in the ratio of 70:30 %. It means that the Complainant has the status of a 'Co-promoter' of the Project, as clarified in MahaRERA circular.

It is evident that the dispute between the complainant and the Respondent is of a civil nature between the promoter and co-promoter and does not pertain to any contravention of the Real Estate (Regulation and Development) Act, 2016. The complaint is, therefore, dismissed.

PART-III: Notification & Circulars

राजस्थान सरकार नगरीय विकास विभाग

क्रमांक प.3(50)नविवि/3/2012 पार्ट

जयपुर, दिनांक 20.09.2017

आदेश

राज्य सरकार द्वारा विभागीय परिपत्र क्रमांक प.2(30)नविवि/3/2016 पार्ट/1516-30 दिनांक 25.04.2017 से यह निर्देश दिये गये हैं कि प्राधिकरण/न्यास परिधि क्षेत्र में स्थित कृषि भूमि खातेदार द्वारा आवासीय निर्माण करने पर 500 वर्गमीटर तक का निःशुल्क पट्टा दिया जा सकेगा। इस संबंध में कई जगह से यह पूछा जा रहा है कि क्या उक्त पट्टा देने से पूर्व राजस्थान भू-राजस्व अधिनियम, 1956 की धारा 90-ए किया जाना आवश्यक है या नहीं ?

इस संबंध में राज्य सरकार के स्तर पर निर्णय लिया गया है कि किसी भी खातेदार उस कृषि भूमि में पट्टा देने से पूर्व निम्नांकित शर्तें पूर्ण करना आवश्यक है:-

1. यदि किसी खसरा में एक या एक से अधिक खातेदार हैं तथा उनके द्वारा 500 वर्गमीटर तक आवासीय निर्माण किया हुआ ऐसे क्षेत्र को खातेदार अथवा खातेदारों द्वारा तकासमा करवा कर अपने नाम उक्त आवासीय क्षेत्र प्रथक करावें खसरा नं. भी अलग अंकित करावें।
2. तत्पश्चात उस क्षेत्र का राजस्थान भू-राजस्व अधिनियम, 1956 के 90-ए की कार्यवाही करते हुए संबंधित प्राधिकरण/न्यास निःशुल्क पट्टा दे सकेगी।
3. उपरोक्तानुसार पट्टा देने से पूर्व पट्टे में यह अंकित किया जावें कि योजना बनाते समय उक्त पट्टे की भूमि को भी योजना में समाहित किया जावेगा।
4. पट्टा देते समय यह ध्यान अवश्य रखा जावें कि पट्टा मास्टर प्लान के अनुरूप ही है।

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

DATED: 08/09/2017

ORDER CASE NO. 4 OF 2017

The RERA Authority Maharashtra received 10,852 applications online for registration of ongoing projects till 31/07/2017 midnight. The penalty imposed on applications received

on 1st and 2nd August, 2017 was Rs. 50,000. Thereafter, applications received from 3rd August till 16th August; the penalty increased to Rs. 1,00,000 or amount equivalent to registration fees of the said project, whichever is more.

The applications received after 16th August till 31st August shall also be penalised @ Rs.1,00,000 or amount equivalent to registration fees of the said project. The quantum of penalty for applications received after 1st September till 30th September would be Rs. 2,00,000 or amount equivalent to twice the registration fee, whichever is higher subject to a ceiling of Rs. 10,00,000. The applications received after 30th September would be decided by applying the provision of Section 5(1) (b) of RERA.

GUJARAT REAL ESTATE REGULATORY AUTHORITY

DATED: 16.09.2017

CIRCULAR NO.: 4/2017

By this circular RERA Authority Gujarat has clarified that validity of registration of promoter and period of completion of the real estate project by the promoter imply the same meaning which is the time period within which the promoter undertakes to complete the project. The registration granted u/s 5(3) shall be valid for a period declared by the promoter in Form No.: B.

The RERA Authority Gujarat clarifies that the promoter upon obtaining the occupancy certificate from the competent authority and the payment made by the allottee as per the agreement shall offer in writing the possession of the apartment/plot to the allottee in terms of this agreement to be taken within 3 months from the date of issue of such notice. Occupancy certificate for the purpose of development of plotting scheme shall mean a certificate by the architect indicating provisioning of civil infrastructure by the promoter along with conveyance of title to allottee and common area to the association of allottee; provided that the occupancy certificate as defined in the Act is not issued by the competent authority under the local laws.

GUJARAT REAL ESTATE REGULATORY AUTHORITY

DATED: 19.09.2017

ORDER NO.: 1

Promoter/Developer who does not apply for the registration of their ongoing projects before 01/10/2017 will be required to pay a registration fee and a penalty equivalent to

the registration fee for applications during the period from 01/10/2017 to 31/10/2017. From 01/11/2017 to 30/11/2017, the amount to be paid at the time of registration would be the registration fee plus two times registration fee as a penalty. The promoter has to give detailed reasons for not completing the process of registration in prescribed time.

UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY

DATED: 28.09.2017

S.N.: 13/UP-RERA/2017-18

The server of UP RERA was not working properly; fees could not be deposited within prescribed time. The Honourable Allahabad High Court directed the promoters for depositing fees and getting registration for ongoing project.

भू-सम्पदा विनियामक प्राधिकरण, उत्तर प्रदेश

प्रथम तल, जनपथ मार्केट, हजरतगंज, लखनऊ

संख्या : 13/यू.पी.-रेरा/2017-18.

दिनांक 28 सितम्बर, 2017

कार्यालय ज्ञाप

भू-सम्पदा (विनियमन एवं विकास) अधिनियम, 2016 की धारा (3) में यह व्यवस्था है कि जो परियोजनाएं इस अधिनियम के प्रारम्भ की तिथि को चल रही हैं, प्रवर्तक (Promoter) उक्त परियोजनाओं (Projects) का पंजीयन प्रारम्भ कराने के लिए, इस अधिनियम के प्रारम्भ होने की तिथि से 03 माह के अन्दर प्राधिकरण को प्रार्थना-पत्र देगा।

परियोजनाओं, प्रवर्तकों तथा एजेण्ट्स के पंजीयन की ऑन-लाईन व्यवस्था दिनांक 26.07.2017 को लागू की गयी। दिनांक 31.07.2017 के पश्चात् चालू परियोजनाओं के पंजीयन हेतु आदेश संख्या 10/यू.पी.रेरा-2017, दिनांक 01.08.2017 द्वारा निम्नानुसार शास्ति लगाये जाने का निर्णय लिया गया:-

| | |
|-----------------------------|--|
| 01.08.2017 से 15.08.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का शून्यप्रतिशत |
| 16.08.2017 से 31.08.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का 01 प्रतिशत |
| 01.09.2017 से 15.09.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का 05 प्रतिशत |
| 16.09.2017 से 30.09.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का 10 प्रतिशत |

रेरा के आदेश 14/यू.पी.रेरा-2017, दिनांक 31.08.2017 द्वारा उपरोक्त आदेश दिनांक 01.08.2017 में संशोधन करते हुए ऑन-गोईंग परियोजनाओं के पंजीकरण हेतु निम्नानुसार शास्ति लगाए जाने का निर्णय लिया गया है, जो सम्प्रति प्रभावी है :-

| | |
|-----------------------------|---|
| 01.09.2017 से 30.09.2017 तक | भू-संपदा परियोजना की अनुमानित लागत के 01 प्रतिशत शुल्क के साथ |
|-----------------------------|---|

आदेश दिनांक 01.08.2017 के विरुद्ध कतिपय प्रवर्तकों द्वारा मा. उच्च न्यायालय में याचिका प्रस्तुत करके बिना अर्थदण्ड तथा सामान्य रूप से अनुमन्य पंजीयन शुल्क के साथ ऑन-गोंग प्रोजेक्ट्स के पंजीयन की अनुमति हेतु प्राथना की गयी।

सिविल मिसलेनिस याचिका संख्या 20019 वर्ष 2017 यूनिटेक लिमिटेड बनाम उत्तर प्रदेश राज्य में मा. उच्च न्यायालय, की लक्षनउ खण्डपीठ के समक्ष याची द्वारा यह अभिकथन किया गया कि उन्हें ऑन-गोईंग प्रोजेक्ट्स का पंजीयन शुल्क दिनांक 15.08.2017 तक जमा कराने की अनुमति थी तथा भुगतान ऑन लाईन करने की व्यवस्था थी। उनके द्वारा दिनांक 11.08.2017 से 15.08.2017 के मध्य भुगतान हेतु बार-बार प्रयास किया गया, परन्तु सर्वर के फॉल्ट के कारण धनराशि जमा नहीं की जा सकी। उनके द्वारा मा0 उच्च न्यायालय में वेब पेज का स्क्रीन शॉट भी प्रस्तुत किया गया जिसमें (Server being under Maintenance) प्रदर्शित हो रहा था। याची के अभिकथनों के आधार पर मा0 उच्च न्यायालय द्वारा दिनांक 29.08.2017 को निम्नलिखित आदेश पारित किए गए हैं:-

- (i) The petitioners are permitted to deposit the registration fee (minus the penalty) within a week from today.
- (ii) The Nodal Officer of the Real Estate Regulatory Authority, Lucknow may pass appropriate orders on the pending request of the petitioners referred to above within two weeks in accordance to law after affording adequate opportunity to the petitioners.
- (iii) The question of payment of penalty would abide by the decision so taken by the Nodal Officer on the request of the petitioners.
- (iv) Till then the respondents shall not insist on payment of penalty.
- (V) It would be open for the petitioners to challenge the order passed by the Nodal Officer as directed in accordance to law if the order is passed against them.

उक्त पिटीशन के अतिरिक्त मैसर्स एस.के. कान्द्रैक्स प्रा. लि. की रिट पिटीशन सं. 44319/2017, मैसर्स अपना ड्रीम हाउस प्रा.लि. की रिट पिटीशन संख्या – 20098/2017, मैसर्स के. जी.आर. ग्रीन्स इन्फ्राटेक प्रा.लि. की रिट पिटीशन संख्या-22726/2017 में भी मा0 उच्च न्यायालय द्वारा इसी प्रकार का आदेश पारित किया गया है।

मा0 उच्च न्यायालय के आदेशों के क्रम में वेबसाईट पर याची द्वारा किये गये पेमेन्ट के प्रयासों की पुष्टि हेतु लॉग हिस्ट्री के देखने से इस बात की पुष्टि होती है कि उनके द्वारा दिनांक 15.08.2017 को 03 प्रोजेक्ट्स का पंजीयन शुल्क ऑन लाईन जमा किया गया और 03 अन्य प्रोजेक्ट्स का शुल्क जमा करकने का प्रयास किया गया, परन्तु वेबसाईट/पेमेन्ट गेट-वे में समस्या होने के कारण भुगतान असफल रहा।

उपरोक्त उल्लिखित अन्य याचिकाकर्ताओं के संबंध में भी वेबसाईट पर डेटा इन्ट्री/पेमेंट की समस्या का उल्लेख है और इसी प्रकार के स्क्रीनशॉट उनके द्वारा भी संलग्न किये गये हैं।

पंजाब नेशनल बैंक के प्रवर्तकों (Promoters) द्वारा 15.08.2017 या उससे पूर्व भुगतान करने के प्रयासों से संबंधित एम.आई.एस. विवरण प्राप्त किया गया जिसके अनुसार इस अवधि में 42 प्रोजेक्ट्स के रजिस्ट्रेशन हेतु प्रवर्तकों द्वारा पंजीयन शुल्क के भुगतान के लिए पेमेंट गेट-वे को एक्ससे किया गया, परन्तु भुगतान सफल नहीं हो पाया। प्रारम्भिक दिवस में वेबसाईट पर कतिपय समस्याएं संज्ञान में आयी हैं।, जिनसे कतिपय प्रामेटर्स को परियोजनाओं के पंजीयन में असुविधा हुयी।

उतः मा0 उच्च न्यायालय, इलाहाबाद के आदेशों के समादर तथा उपरोक्त उल्लिखित परिस्थितियों के दृष्टिगत प्रदेश में ऑन-गोईंग परियोजनाओं (On Going Projects) के पंजीयन हेतु आ रही समस्याओं के दृष्टिगत न्यायोचित दृष्टिकोण अपनाते हुए धारा-59(1) में निहित व्यवस्था के अन्तर्गत यू.पी. रेरा आर्थेरिटी के समक्ष चालू परियोजनाओं के पंजीकरण हेतु निम्नानुसार आदेश दिनांक 01.08.2017 तथा 31.08.2017 को संशोधित करते हुए निम्नानुसार शास्ति लगाये जाने का निर्णय लिया गया है।

| | |
|------------------------------------|--|
| दिनांक 16.08.2017 से 31.10.2017 तक | रु. 1000 /— |
| दिनांक 01.11.2017 से 30.11.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का 05 प्रतिशत |
| दिनांक 01.12.2017 से 31.12.2017 तक | भू-संपदा परियोजना की अनुमानित लागत का 10 प्रतिशत |

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

DATED: 18.10.2017

No.F.1(5) RJ/RERA/2017

Rajasthan Real Estate Regulatory Authority has notified the formats of various certificates to be issued under RERA. The format of following certificates is being prescribed by the authority.

1. Certificate by Architect.
2. Certificate by Engineer.
3. Certificate by Chartered Accountant.
4. Annual Report on Statements of Accounts.

FORM R-1

[see Regulation 3(4)]

CERTIFICATE BY ARCHITECT

(To be uploaded by the Promoter on his webpage on the RERA website before withdrawal of money from separate account)

To,

The _____ (Name & Address of Promoter),

Subject: Certificate of percentage of completion of construction work of ____ Building(s) of the ____ Phase of the Project (RERA Registration Number ____) situated on the Plot bearing No. ____ demarcated by its boundaries (latitude and longitude of the end points) ____ to the North ____ to the South ____ to the East ____ to the West ____ village ____ Tehsil ____ District ____ PIN ____ admeasuring ____ sq.mts. Area being developed by ____ [Promoter's Name]

Sir,

I/We _____ have undertaken assignment as Architect of certifying percentage of completion of construction work of the ____ Building(s) of the ____ Phase of the Project, situated on the plot bearing No. ____ Village ____ Tehsil ____ District ____ PIN ____ admeasuring ____ sq.mts. Area being developed by ____ [Promoter's Name]

1. Based on site inspection, with respect to each of the Building of the aforesaid Real Estate Project, I certify that as on the date ____ . The percentage of work done for each of the building of the Real Estate Project (registration number ____ under Rajasthan RERA), is as per TABLE-A herein below, The percentage of the work executed with respect to each of the activity of the entire phase is detailed in TABLE-B.

TABLE – A

Building Number ____ (to be prepared separately for each Building of the Project)

| S. No. | Tasks/Activity | Percentage of work done (Approximately) |
|--------|--|---|
| 1 | 2 | 3 |
| 1 | Excavation | |
| 2 | number of Basements(s) and Plinth | |
| 3 | Stilt Floor | |
| 4 | number of Slabs of Super Structure | |
| 5 | Internal Walls, Internal Plaster, Floorings within Flats/Premises, Doors and Windows to each of the Flat/Premises | |
| 6 | Sanitary Fittings within the Flat/Premises, Electrical Fittings within the Flat/Premises. | |
| 7 | Staircases, Lifts Wells and Lobbies at each Floor level connecting Staircases and Lifts, Overhead and Underground Water Tanks. | |
| 8 | The external plumbing and external plaster, elevation, | |

| | | |
|---|--|--|
| | completion of terraces with waterproofing of the Building/Wings | |
| 9 | Installation of lifts, water pumps, Fire Fighting Fittings and Equipment as per CFO NOC, Electrical fittings to Common Areas, electro, mechanical equipment, Compliance to conditions of environment/CRZ NOC, Finishing to entrance lobby's, plinth protection, paving of areas appurtenant to Building, Compound Wall and all other requirements as may be required to obtain Completion Certificate. | |

TABLE – B

Internal and External Development Works in respect of the entire Registered Phase/Project.

| Sr. No. | Common areas and Facilities/Amenities | Proposed (Yes/No) | Percentage of Work done | Details |
|---------|--|-------------------|-------------------------|---------|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Internal Roads & Footpaths. | | | |
| 2 | Water Supply | | | |
| 3 | Sewerage (chamber, lines, Septic Tank STP). | | | |
| 4 | Storm Water Drains | | | |
| 5 | Landscaping & Tree Planting. | | | |
| 6 | Street Lighting | | | |
| 7 | Community Buildings | | | |
| 8 | Treatment and disposal of sewage and sullage water. | | | |
| 9 | Solid Waste management & Disposal. | | | |
| 10 | Water conservation, Rain water harvesting. | | | |
| 11 | Energy management | | | |
| 12 | Fire protection and fire safety requirements | | | |
| 13 | Electrical meter room, sub-station, receiving station. | | | |
| 14 | Others (Option to Add more). | | | |

Yours Faithfully,
Signature & Name
(IN BLOCK LETTERS) of Architect
(Address)

Place :

Date :

FORM R-2

[See Regulation 3(4)]

CERTIFICATE BY ENGINEER

(To be uploaded by the Promoter on his webpage on the RERA website before withdrawal of money from separate account)

To,
The _____ (Name & Address of Promoter),

Subject: Certificate of Cost Incurred for Development of (Project Name) for Construction of ____ building(s) of the ____ Phase (RERA Registration Number ____) situated on the Plot bearing No. ____ demarcated by its boundaries (latitude and longitude of the end points) ____ to the North ____ to the South ____ to the East ____ to the West of Village ____ Tehsil ____ District ____ PIN ____ admeasuring ____ sq. Mts. Area being developed by [Promoter].

Sir,

I/We ____ have undertaken assignment of certifying Estimated Cost for the Subject Real Estate Project proposed to be registered under RERA-Rajasthan, being ____ Building(s) of the ____ Phase situated on the plot bearing No. ____ of Village ____ Tehsil ____ District ____ PIN ____ admeasuring ____ sq. Mts. Area being developed by [Owner/Promoter]

1. We have estimated the cost of the completion to obtain Occupation Certificate/Completion Certificate, of the Civil and Allied works, of the Building(s) of the project. Our estimated cost calculations are based on the drawings/plans made available for the project under reference by developer.
2. We estimate Total Estimated Cost of completion of the building(s) of the aforesaid project under reference as Rs. _____ (Total of Table A and B). The estimated Total Cost of project is with reference to the Civil and allied works required to be completed for the purpose of obtaining occupation certificate/completion certificate for the building(s).
3. The Estimated Cost incurred till date is calculated at Rs. _____ (Total of Table A and B). The amount of Estimated Cost incurred is calculated on the base of amount of Total Estimated Cost.
4. The Balance cost of Completion of the Civil and Allied works of the Building(s) of the subject project to obtain Occupation Certificate/Completion Certificate from ____ (planning Authority) is estimated at Rs. __ (Total of Table A and B).
5. I certify that the Cost of the Civil and allied work for the aforesaid Project as completed on the date of this certificate is as given in Table A and B below:

TABLE A

Building bearing Number ____ or called _____

(to be prepared separately for each Building of the Real Estate Project)

| S. No. | Particulars | Amounts |
|--------|---|---------|
| 1 | 2 | 3 |
| 1 | Total Estimated cost of the building as on .. date of Registration is | Rs..... |

| | | |
|---|--|----------|
| 2 | Cost incurred as on (based on the Estimated cost) | Rs. |
| 3 | Work done in Percentage (as Percentage of the estimated cost) |% |
| 4 | Balance Cost to be Incurred (Based on Estimated Cost) | Rs..... |
| 5 | Cost Incurred on Additional/Extra Items as on not included in the Estimated Cost (Annexure A) | Rs..... |

TABEL B

(to be prepared for the entire registered phase of the Real Estate Project)

| S. No. | Particulars | Amounts |
|--------|--|---------|
| 1 | 2 | 3 |
| 1 | Total Estimated cost of the Internal and External development Works including amenities and Facilities in the layout as on date of Registration is | Rs..... |
| 2 | Cost incurred as on (based on the Estimated cost). | Rs..... |
| 3 | Work done in Percentage (as Percentage of the estimated cost). |% |
| 4 | Balance Cost to be Incurred (Based on estimated Cost). | Rs..... |
| 5 | Cost Incurred on Additional/Extra Items as on not included in the Estimated Cost (Annexure A) | Rs..... |

Yours Faithfully,
Signature of Engineer.
(Address.....)

***Note :**

1. The scope of work is to complete entire Real Estate Project as per drawing approved from time to time so as to obtain Occupation Certificate/Completion Certificate.
2. The estimated cost includes all labour, material, equipment and machinery required to carry out entire work.
3. As this is an estimated cost, any deviation in quantity required for development of the Real Estate Project will result in amendment of the cost incurred/to be incurred.
4. All components of work with specifications are indicative and not exhaustive.

Annexure A

List of Extra/Additional Items executed with Cost (which were not part of the original Estimate of Total Cost) (1)(2)(3)

FORM R-3

[see Regulation 3(4)]

CERTIFICATE BY CHARTERED ACCOUNTANT (On Letter Head)

(To be uploaded by the Promoter on his webpage on the RERA website before withdrawal of money from separate account)

Cost calculation of Real Estate Project

RERA Registration Number

| S. No. | Particulars | Estimated Amt in Rs. | Incurred Amt in Rs. |
|--------|---|----------------------|---------------------|
| 1 | 2 | 3 | 4 |
| 1 | <p>1. (A) Land Cost :</p> <p>(i) Revenue or area share given to land owner in lieu of land under any king of agreement such as Joint Venture, Joint Development etc, in case the Promoter is not the owner of the land,</p> <p>(ii) Amount paid to land owner,</p> <p>(iii) Incidental costs related to acquisition of land such as stamp duty, brokerage, settlement costs of litigation, premiums paid to government authorities related to land,</p> <p>(iv) Interest on finance for purchase of land,</p> <p>(v) Litigation costs incurred for land acquisition,</p> <p>(vi) Property and other taxes, fees, premiums paid.</p> | | |
| | Sub- Total of LAND COST | | |
| | <p>(B) Development Cost/Cost of Construction:</p> <p>(a)(i) Total cost incurred by promoter towards the on site expenditure for physical development of the project,</p> <p>(ii) Fees payable to the architects, consultants, project manager/staff including engineers, marketing agents, Actual Cost of construction incurred as per the books of accounts as verified by the CA.</p> <p>Note : (for adding to total cost of construction incurred, minimum of (i) or (ii) is to be considered).</p> <p>(iii) On-site expenditure for development of entire project (excluding cost of construction as per (i) or (ii) above), i.e. salaries, consultants fees, site overheads, development works, cost of services (including water, electricity, sewerage, drainage, layout roads etc.), cost of machineries and equipment including its hire and maintenance costs, consumables etc. All costs directly incurred to complete the construction of the entire phase of the project registered.</p> <p>b. Payment of Taxes, cess, fees, charges, Approval cost for construction etc. Premiums, interest etc. to any statutory Authority.</p> <p>c. Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction & Project.</p> | | |

| Sub- Total of Development Cost | | |
|--|--|---------|
| 2. Total Estimated Cost of the Real Estate Project [1(A) + 1(B)] of Estimated Column. | | Rs..... |
| 3. Total Cost Incurred of the Real Estate Project [1(A)+1(B)] of Incurred Column. | | Rs..... |
| 4. Percentage completion of construction work (as per Project Architect's Certificate) | |% |
| 5. Percentage of the Cost incurred on Land Cost to the Total Estimated Cost. | |% |
| 6. Percentage of the Cost incurred on Construction Cost to the Total Estimated Cost. | |% |
| 7. Amount which can be withdrawn from the Separate Account. (to be calculated as below) | | Rs..... |
| Total Estimated Cost (item 2 above) x total percentage of cost incurred (as mentioned at item 5 & 6) | | |
| 8. Less: Amount withdrawn till date of this certificate as per the Books of Accounts and Bank Statement. | | Rs..... |
| 9. Net Amount which can be withdrawn from the Separate Bank Account under this certificate. | | Rs..... |

This certificate is being issued for the Project (RERA Registration No.....) in compliance of the provisions of section 4(2) (1) (D) of the Act and is based on the records and documents produced before me and explanations provided to me by the management of the Promoter.

Yours Faithfully.
Signature of Chartered Accountant
(Membership Number)
Name.....
Address.....
Contact details.....

FORM R-4
(see Regulation 4)

ANNUAL REPORT ON STATEMENT OF ACCOUNTS

(on the letter head of chartered accountants, who is statutory auditor of the promoter's company/firm)

To [name and address of promoter]

.....

Subject : Report on Statement of Accounts on project fund utilization and withdrawal by [Promoter] for the period from ____ to ____ with respect to the project (RERA Registration Number ____)

1. This certificate is issued in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 read along with the Rules and Regulations made there under.

2. I/We have obtained all necessary information and explanation from the Promoter Company, during the course of our audit, which in my/our opinion are necessary for the purpose of this certificate.
3. I/We hereby confirm that I/We have examined the prescribed registers, books and documents and the relevant records of [Promoter] for the period ended..... and hereby certify that:
 - i. M/s (Promoter) have completed % of the project titled (Name) RERA Registration No..... located at
 - ii. Amount collected during the year for this project is Rs..... and amounts collected till date is Rs.....
 - iii. Amount withdrawn during the year for this project is Rs. ;and amount withdrawn till date is Rs....
4. I/We certify that the [Name of Promoter] has utilized the amounts collected for.... project only for that project and the withdrawal from the separate bank account of the said project has been in accordance with the proportion to the percentage of completion of the project.
(if not, please specify the amount withdrawn in excess of eligible amount or any other exceptions).

(Signature and Stamp/Seal for the Signatory CA)

Name of the Signatory:

Full Address

Membership No.

Contact No.

E-mail :

Place :

Date :

PART-IV: RERA NEWS

THE ECONOMIC TIMES

DATED: 15.09.2017

PUSHING BACK DATE OF DELIVERY OF FLATS

Builders are pushing back the date of delivery of flats to buyers by several months and even years as a result of the new real estate law in the state. This has put many buyers in a bind because their agreements of sale with the builders mention a much earlier date.

Developers registering projects with the Maharashtra Real Estate Regulatory Authority (MahaRera) are mandated to declare the delivery date of projects. There are penalties if they delay beyond the date submitted.

People who have booked flats in projects across the city and in Pune have complained that their builders had committed to hand over the apartments in, say, 2017 and 2018. However, during registration, the developers have shown the date of possession as 2021-2022.

A director of a global firm, who booked an apartment in Kandivli said that his builder was to deliver his flat in December 2017. "But in the RERA declaration he has given date of possession as April 2019.

ECONOMIC TIMES

DATED: 21.09.2017

FORMATION OF CONCILIATION COMMITTEE

Maharashtra will be the first state in India to form a Conciliation Committee under the new Real Estate (Regulation and Development) Act, 2016 comprising a panel representing builders and consumer groups to arbitrate complaints. It will mediate between two parties and help resolve their issues so that they can avoid taking the dispute before the housing regulator. Only in case the dispute is not settled then the party can challenge it and lodge a complaint with the state regulator.

"The panel should start functioning in the next three months," said state RERA chairman Gautam Chatterjee, adding that it would help in building trust between purchasers and developers. Last week, leading developers and consumer activists met state RERA officials to iron out how the new committee will operate.

"Talks have progressed very well so far," said consumer activist Shirish Deshpande of Mumbai Grahak Panchayat (MGP). "MGP is presently in consultation with organizations representing developers like NAREDCO and CREDAI-MCHI to work out the conciliation scheme about which enabling provision exists in RERA Act," he said. Deshpande said that the proposed conciliation scheme will be an Alternate Disputes Redressal (ADR) mechanism to facilitate fair and honorable settlements between aggrieved home buyers and builders without having to resort to expensive, time-consuming and exasperating litigation. Officials said it is entirely voluntary and conciliation can only be initiated when the complainant and builder both willingly agreed.

TIMES OF INDIA

DATED: 21.09.2017

NOTICES TO BUILDERS FOR NOT REGISTERING PROJECT

The Tamil Nadu Real Estate Regulatory Authority (TNRERA) has sent notices to 320 builders who have failed to register with it projects in the Chennai Metropolitan Area (CMA) after plan permission was issued.

TNRERA sources said the Chennai Metropolitan Development Authority (CMDA) approved construction of 400 and 385 buildings in 2015 and 2016. Of these, 320 were not registered as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

According to the Real Estate (Regulation & Development) Act, 2016, ongoing projects with a maximum of eight (apartment) units and 500 sq meters do not come under the purview of the Act. The CMDA and directorate of town and country planning (DTCP) have exempted 450 housing projects across the state from RERA as they have either submitted applications seeking completion certificate or fulfilled the criteria of completion before the June 22 cut-off date.

Builders associations say there is still no clarity on finished products. "For instance, a developer can complete a housing project without advertising it. TNRERA official said, "Any sale of finished product without the stamp of the realty regulator is a complete violation of the act."

DNA

DATED: 22.09.2017

DILUTION OF RERA PROVISIONS

In a major boost to home buyers, Urban Development and Housing Ministry has asked

states to plug the loopholes in Real Estate Regulation Act, 2016. A parliament committee has pointed out dilution of the RERA by the states in order to provide benefit to builders. Rajasthan where the RERA came into effect on May 1, this year is, among the states that circumvented the new act by leaving ambiguity in the rules. The state government while framing the rules defined them in arbitrary way.

As per the central act, ongoing projects have to be registered under RERA. It considers ongoing projects that have not taken completion certificate till the date act came into force. However, in Rajasthan has added several provisions, which are not in tune with the act.

To put an end to this the parliamentary committee has made several recommendations. It said that as per article 254 (2) of the constitution, the central government has right to enact acts like RERA. Such law would override acts and rules implemented by the states. Among the gross violation of RERA by the states, the report mentioned definition of ongoing projects and penalty on the builders for poor quality of construction. It has recommended that the central government must ask states to either change their rules or make fresh rules. Also, the committee should be informed about the action taken on its recommendation.

What did Rajasthan do:-

Projects in which common facilities handed over to residents' association or authorized agency have been included in ongoing projects.

Those projects which have sold 60% plots or housing units or gave their possession.

The projects whose completion certificates have been issued by Chartered Engineer. Even the projects who have applied for completion certificate to the Competent Authority have been considered ongoing projects. If 50% development fee has been deposited. If the Competent Authority has begun regularization of the projects.

TIMES OF INDIA

DATED: 16.10.2017

COMMON AREAS CANNOT BE SOLD

The Union Ministry of Housing and Urban Poverty Alleviation, through its FAQ's of January 17, 2017 clarified that Common Areas include Open Parking Spaces thus; these cannot be sold to allottees, under section 2(n) of the Real Estate Act.

The Real Estate (Regulation and Development) Act, 2016, under Section 2(y), defines 'Garage' as a place with a roof, with walls on three sides, for parking any vehicle within a project, but does not include an unenclosed or uncovered parking space like open parking areas.

This is also for the first time that the act explicitly defines common areas, which include open parking area, basement, stairway, elevators, lobby area, and parks.

The Supreme Court, in the matter of Nahalchand Laloochand Private Limited versus Panchali Co-operative Housing Society Limited has held that under Maharashtra Ownership of Flat (MOFA) Act, 1963, stilt area cannot be treated as a garage. The court said that parking area is open to sky or stilted portion cannot be excluded from the common area and facilities, within Section 2(a)-1 of MOFA. The court said that it is not saleable independently as a flat or along with the flat.

"The Bombay high court also laid down a similar norm in a judgment. Stilt parking and open parking slots were not treated as garage, and the logical inference was that these could not be sold as a separate, saleable unit, "Niranjan Hiranandani, President of NAREDCO, said.

TIMES OF INDIA

DATED: 17.10.2017

EXTENSION OF TIME FOR REGISTRATION

A delay in notifying the draft rules under the Real Estate (Regulation and Development) Act (RERA) and the absence of an online portal for receiving RERA applications from builders, has promoted the state government to extend the deadline for ongoing real estate projects to December 31.

This is the second time that the Goa government has relaxed the cut-off for projects that are yet to receive their completion or occupancy certificate to register with the RERA authority. The date for acceptance of applications for ongoing projects under RERA has been extended to December 31, with no penalty being levied till then.

Officials with the directorate of municipal administration said that the absence of the online portal for applications was one of the reasons for the extensions that will give realtors till December 31 to complete their projects apply for occupancy or completion certificates.

TIMES OF INDIA

DATED: 17.10.2017

POSSESSION LETTER BY JAYPEE INFRATECH

Nearly 1,150 homebuyers in Jaypee Wish Town and Kosmos have received possession letters over the last two and-a-half months when Jaypee Infratech was admitted for insolvency by the National Company Law Tribunal.

Company sources said that during August and September, around 950 possession letters were offered, while another 200 letters have been handed over so far this month. The expectation is that the current pace of construction will be maintained and another 2,300 apartments in Wish Town will be handed over by December 2017.

With the current round of possession letters and 1,700 residential plots and town houses handed over around 7,700 residential units have been offered for possession. Jaypee Infratech had committed to build around 32,000 units across its 27 projects. While some of the projects were launched close to a decade ago, based on the current time lines, possession is to be completed by March 2021.

FORBES INDIA

DATED:26.10.2017

POSITIVE GROWTH IN REAL ESTATE SECTOR AFTER RERA

The implementations of reforms such as RERA (Real Estate Regulation and Development), GST (Goods & Service Tax) have changed the dynamics of the real estate sector. It may lead to near-term pain till the industry adjusts to the new rules, but will certainly augur well for the sector in the future.

RERA has paved the way for a more systematic approach in the real estate business and safeguarded the interest of the buyers by bringing in transparency, ensuring accountability and timely completion of projects. Also from an industry perspective, it has increased credibility which will lead to higher domestic and foreign investments. GST has also resulted in reduced tax burden on buyers purchasing ready-to-move-in apartments.

As per syndicated reports, ready properties currently account for 25 percent of the total housing sales in the country. In the last 12 months ending July 30, 2017, around 75,000 ready-to-move-in apartments were sold across 51 cities in India. The affordable segment continues to see traction in under construction homes while in the mid & luxury segment, the demand is more for ready-to-move-in properties.

Ready homes are patronized by buyers who use bank loans, implying a significant financial burden. Monthly installments and rent need to be paid on their current homes, while awaiting the completion of the project. Paying a little extra, to acquire a house right away, is cheaper than paying rentals over long periods.

A lot of new projects are coming up on the peripheries of major cities, where the supporting infrastructure like roads, electricity, water connection, etc. are not fully developed. So, many buyers are preferring projects where the supporting infrastructure is in place.

One of the significant reasons why buyers are looking at completed projects or those nearing completion is the limited availability of RERA registered under construction homes. For instance, today in the market if a customer inquires about an under construction home, the developer might not be in a position to sell it since he is awaiting the registration number from RERA. So, in that scenario he will market ready to move projects to prospective customers.

Owing to this higher traction is witnessed in ready to move properties post RERA.

Also, investors buy homes with the objective of earning rental income, with an eye on eventual resale to cash-in on capital appreciation. Purchasing a property in a completed project, helps them to immediately start earning out of it through rentals, rather than waiting for a few years and lock their money away in a non-income generating project.

Those looking to invest in under construction projects must invest only reputed builders who have sound track record. Only established players are positioned well to comply with the stringent rules of RERA. This will give buyers the cushion that they can get capital appreciation on their home as well as timely delivery. Also, with reputed developments it is easier to get good rentals.

Eventually, the choice majorly depends on the availability of funds, affordability of a property and the possession time line. If you do not have the funds immediately at your disposal and are willing to wait for some time, an under-construction property is a better option. Apart from the inherently higher cost, the ion of properties in the ready houses is limited compared to the ongoing projects since the latter gives you more alternatives with regards to picking the floor designs, view and a lot more.

Though the implementation of RERA has seen a deceleration in new launches, the demand for well-thought out products continue to be robust in the market. It is certain that RERA will clean up the market and only the strong, reputed developers will be able to do business in the future.

Therefore, the right strategy for the buyers must be to invest as per their need, go with reputed builder' and choose good locations which will give them price appreciation once the cycle turns in future.

PART-V: MISCELLANEOUS

Public Private Partnership Policy for Affordable Housing

Press Information Bureau

21.09.2017

Government of India

Ministry of Housing & Urban Affairs

Meaning of PPP: Agreement between government and the private sector regarding the provision of public services or infrastructure. The social priorities with the managerial skills of the private sector, relieving government from the burden of large capital expenditure, and transferring the risk to the private sector.

Need for Public-Private Partnership: In a competitive global environment, governments around the world are focusing on new ways to finance projects, build infrastructure and deliver services. Public-Private Partnerships are becoming a common tool to bring together the strengths of both sectors. In addition to maximize efficiencies and innovations of private enterprise, PPPs can provide needed capital to finance government programs and projects, thereby freeing public funds for core economic and social programs.

Central Government announced a new PPP Policy for Affordable Housing that allows extending central assistance of up to Rs.2.50 lakh per house to be built by private builders even on private lands besides opening up immense potential for private investments in affordable housing projects on government lands in urban areas.

The PPP models for private investments in affordable housing on private lands include extending central assistance of about Rs.2.50 lakh per each house as interest subsidy on bank loans as upfront payment under the Credit Linked Subsidy Component (CLSS) component of Pradhan Mantri Awas yojana (Urban). Under the second option, central assistance of Rs.1.50 lakh per each house to be built on private lands would be provided, in case the beneficiaries do not intend to take bank loans.

The six models using government lands are:

1. **DBT Model:** Under this option, private builders can design, build and transfer houses built on government lands to public authorities. Government land is to be allocated based on the least cost of construction. Payments to builders will be made by the public authority based on progress of project as per agreed upon milestones and buyers will pay to the Government.
2. **Mixed Development Cross and subsidized Housing:** Government land to be allotted based on number of affordable houses to be built on the plot offered to private builders, cross subsidizing this segment from revenues from high end house building or commercial development.
3. **Annuity Based Subsidized Housing:** Builders will invest against deferred annuity payments by the Government. Land allocation to builders is based on unit cost of construction.
4. **Annuity-cum-Capital Grant Based Affordable Housing:** Besides annuity payments, builders could be paid a share of project cost as upfront payment.
5. **Direct Relationship Ownership Housing:** As against government mediated payments to builders and transfer of houses to beneficiaries in the above four models, under this option, promoters will directly deal with buyers and recover costs. Allocation of public land is based on unit cost of construction.
6. **Direct Relationship Rental Housing:** Recovery of the costs by builders is through rental incomes from the houses built on government lands.

Under these six Government land based PPP models, beneficiaries can avail central assistance of Rs.1.00 lakh to Rs.2.50 lakh per house as provisioned under different components of PMAY (Urban). Beneficiaries will be identified as per the norms of PMAY (Urban).

RERA Reg. No. Raj/P/2017/295



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