

MAHARERA

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RECENT JUDICIAL PRONOUNCEMENT ON SECTION 7 (3) PRONUOUNCED BY MAHARERA AUTHORITY

- a. Shahbaz Dawood Mukadam Vs Hitech Haifizi Town Developers
- b. Varghese Chacko & others Vs Nirmal Life Style (Kalyan) Pvt Ltd
- c. Tagore Nagar Anjali Buyers Association Vs Aditya Enterprises

Relief Sought by allottees

- a. Possession of the flat with interest for delayed possession u/s 18 of the Act.
- b. Refund of principal with interest and compensation by choosing exit option for delayed possession u/s 18 of the Act.

The common facts were as under :-

- a. There has been delay in handing over the possession since long time.
- b. The revised timeline mentioned by promoter on web site of Maharera while registering the project , has expired.
- c. Promoter has not filed application u/s 6 or 7 (3) of the Act for granting further extension of the timeline for completion of the project.

Section 6 of the Act provides for extension of the project completion timeline which are summarised as under :-

- a. Authority are empowered to grant extension the project timeline on application of promoter due to force majeure.
- b. force majeure means war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting regular development of the real estate project.
- c. The maximum permissible extension of the timeline shall in no case exceed one year from the timeline originally mentioned by the promoter.
- d. The prescribed fees applicable for registration of project needs to be paid by the promoter.

However, Authority have been taking lenient view and automatic extension of one year of the timeline have been granted without looking into the force majeure conditions as prescribed by section 6 of the Act.

Promoters were not allowed in any case extension beyond one year even after looking t force majeure conditions or factors beyond the control of the promoter.

The provisions of section 6 restricting the extension up to only one year is challenged as unworkable , unreasonable and unconstitutional in the Writ Petition No.2737/2017 Neelkamal Realtors suburban Pvt Ltd Vs Union of India.

The matter had been elaborately discussed by Hon'ble High Court , Mumbai in the said writ petition and authority had been directed to use section 7(3) route for further grant of extension of timeline based on merits of the facts.

Pronouncement by the Authority in the above matters :-

- a. Project as of date on account of non extension has lapsed.
- b. Promoter to form association of allottees and share contact details of allottees.
- c. Respondent is directed to approach for further extension of timeline of the project.
- d. If the promoter is unable to complete the project then association contemplate action u/s 7 & 8 of the Act.

- e. Complainant in one sense are equity holders as they are interested in completion of project which involves financial issues.
- f. It is necessary for Maharera to first decide extension/revocation of the project before any compliant could be considered.
- g. Complaint stand disposed off and complainant is at liberty to re approach Maharera once the project is revived.
- h. Relief sought for refund of principal amount paid with interest/ interest for delayed possession and compensation remains unaddressed.

FOOD FOR THOUGHT :-

1. Whether Authority order is sustainable in law ?
2. Whether Authority can simply ask association to initiate action u/s 7 of the Act and remain passive spectator ?
3. Whether preamble and main objects of introduction of RERA law are being defeated ?

Keep watching for critical analysis on Section 6, 7, 8 of the Act in the next issue

To be continued

GR dated 14th Jan, 2020 issued by Cooperative Ministry of Govt of Maharashtra has postponed the election to the Cooperative Housing Society having members upto 250 members till 29th Feb, 2020. It is expected that the amendment to MCS(Election to Committee) Rules, 2014 will be finalised in respect of CHS upto 250 members.

GR dated 7th January, 2020 issued by Revenue Ministry of Govt of Maharashtra has relaxed the requirement of obtaining the No objection certificate from the collector office to give the flats on leave and license basis from the collector. This will facilitate and encourage vacant flats on the collector land to give on leave and license basis.