

Registration of Projects- Issues & Challenges

CA Yogesh Ashar

No Registration with Authority : No advertising – marketing – booking – selling – offering for sale [Sec. 3]

No promoter shall:

- advertise,
- market,
- book,
- sell or
- offer for sale, or
- invite persons to purchase in any manner

-any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority (RERA) established under this Act.

Cases where no *registration of real estate project* required [Sec. 3(2)]:

- **Small Projects below 500 Sq. Mts. / 8 Apartments inclusive of all phases**
- **Where completion certificate is Received:** where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- **Where no marketing, advertising involved:** Where, for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Issues & Challenges

- No Registration under RERA – No Sale – No Money from Sale for the promoter
- This is for Projects that requires Registration u/s 3 of RERA 2016
- Without Funding from Flat Purchasers, a Project would, normally, find it difficult to sustain or de-risk itself
- Financers/ Lenders/ VCs / Private Equity would be wary of funding such projects

Ongoing Projects also within jurisdiction of RERA [Sec. 3(1) Proviso 1]:

Ongoing Projects are those:

- which are ongoing on the date of commencement of this Act and
- Completion certificate in respect of which has not been issued.

Promoter of such Ongoing Project shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

Consequence for Not Registering Ongoing Project [Sec. 59 (1)]:

- If any promoter contravenes the provisions of section 3, he shall be liable to **penalty which may extend up to ten per cent** of the estimated cost of the real estate project
- as determined by the Authority.

Phased Development Each phase a stand-alone project [Sec. 3- Explanation]:

- Where a real estate project is to be developed in phases
 - every phase shall be considered a stand-alone real estate project,
 - Promoter shall obtain registration under the Act for each phase separately

Issues & Challenges

- Time for Completion of Project applies to each Phase
- 70% Withdrawal of Sale Proceeds applies to each Phase and not to larger Project
- Can not Sell Flats in Subsequent Phases unless Project is registered
- Size matters - Small could be manageable
- Big may have its own problems with respect to:
 - Timely Project Completion
 - Utilization of Sale Proceeds
 - Penalty Provisions for future non-compliance - Overall Credibility of Promoter etc.

Application for registration of real estate projects

[Section 4]

Every promoter shall make an application to the Authority for registration of the real estate project

- in such form [Form A],
- manner,
- within such time and
- **accompanied by such fee** [on the proposed land area developed @ Rs.10/-P/Sq. Mt, - minimum Rs.50,000/-and maximum Rs. 10 Lakhs – [Rule 3(5)]

as may be *prescribed*

- The promoter shall enclose the various documents along with the application for Registration [Rule 3(2)]
-

.. Documents to be filed by Promoter with Application for Registration [Rule 3(2)]

- PAN Card
- Name, photograph, contact details and address of the promoter/ Partners/ Directors
- Copy of the legal title report reflecting the flow of title of the owner / promoter to the land on which development is proposed, with authentication of such title by practicing advocate
- Where the promoter is not the owner of the land, a copy of the collaboration agreement, development agreement, joint development agreement etc., entered into between the promoter and such owner, reflecting
 - a. consent of the owner of the land and
 - b. Legal title report of such owner.....

Re. Information of Legal Title Report

- Copy of the legal title report:
 - Reflecting Flow of title of the owner / promoter to the land, with authentication of such title by practicing advocate
 - Where the promoter is not the owner of the land, Copy of collaboration agreement, development agreement, joint development agreement etc. entered
 - between the Promoter and Owner, reflecting the consent of the owner of the land
 - authenticated copies of legal title report reflecting the title of such owner, on the land
- ...

Issues & Challenges – Title to Land - Certificate of Advocate

- Severe implication may follow if Project delay is caused due to defects in Title of Land and the ensuing litigation
- Non-specific /Vague / misleading Title Related information given to Flat Purchasers can attract Penalty
- Disclosures as to satisfaction Re. establishing complete chain of title be made
- In this, if any gaps are observed, these be disclosed unambiguously
- Disclosure as to verification of original title deeds be made – Its absence, if any, be highlighted
- Non-compliance of legal / regulatory formalities of predecessors in title be adequately highlighted
- In title verification, relying on photocopies of documents lead to litigation & Project delays
- Practice of giving Title Report making it ‘subject to’

Further Details to be given in Application for Registration

- Proposed Plans
 - Proposed FSI to be consumed
 - proposed Number of building(s) or wing(s) & Floors to be constructed
 - area of the recreation open space
 - number of covered parking spaces
 - particulars of Architecture and Design Standards, Type of Construction Technology, Earthquake Resistant Measures to be adopted for Buildings & Common Areas & amenities / facilities in the Layout Plan of the project;
 - Coop. Society etc. of allottees to be formed to which title of such land parcels is to be conveyed and the specific local laws to govern such organisation of allottees on completion of real estate project
 - Such other information and documents, as may be required by the Authority under these rules or the regulations
-

Project related details to be given in Application for Registration ..

- **Copies of approvals obtained for the Project**
- **To file sanctioned plans, layout plan and specifications of the project**
- **Details of proposed development works and proposed facilities**
- **Details of Location – Land demarcation – boundaries etc.**
- **Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees**
- **Number, type and carpet area of apartments for sale**
- **Garage - Number and area of garage for sale in the project**

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... Project related details to be given in Application for Registration ...

- **Details of real estate agents for the Project**
- **Details of contractors, architect, structural engineer**
- **Declaration as to Land title – encumbrances –**
- **Time to Completion of the Project**
- **Undertaking as to 70% of amounts realised for the project to be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost**
- **amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project**

... Contd..

... Project related details to be given in Application for Registration ...

- **Undertaking as to obtaining pending approvals in time**
- **Audit of accounts [Sec. 4(2)(I)(D)] –**
 - promoter shall get his accounts audited within six months after the end of every financial year by a CA in practice, and
 - shall produce a statement of accounts duly certified and signed by such CA
 - it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and
 - Withdrawal from **separate account to be maintained in a scheduled bank** have been in compliance with the proportion to the percentage of completion of the project

Further Info to be given - Registration of Project – Re. withdrawal of 70% of amounts realised from Project [Rule 3(8)]

- For withdrawal of 70% of amounts realised from Project, to be deposited in a separate account to cover the cost of construction and the land cost (to be used only for that purpose)
- To spell out:
 - Land cost in the real estate project for the purposes of Sec. 4(2)(1)(D)
 - Cost of construction in real estate project for the purposes Sec. 4(2)(1)(D)
 - “estimated cost of the real estate project,” within the meaning of Sec. 2 (v)
[Sec. 2 (v) : "estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges]

Disclosure by promoter of ongoing real estate projects [Rule 4]

- Where OC or Completion Certificate is NOT Received u/s 3(2)(b) - submit application for registration for each such phase of the project, within a period of three months from the date of commencement of section 3
- Disclose complete Details of ongoing Projects u/s 4(1) & (2) AND Rule3 i.e.

... Contd..

Ongoing Projects .. Details to be submitted [Rule4(2)]

A. Promoter shall also disclose:

- Original time period disclosed for completion of the project at the time of sale including the delay
- Time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

B. Promoter shall submit Certificates from :

- Practicing project **Architect** certifying the **percentage of completion of construction work** of each of the building / wing of the project,
- **Engineer** for the **estimated balance cost to complete the construction work** of each of the building / wing of the project, and
- Practicing **Chartered Accountant** for:
 - (a) Estimated **balance cost to complete the project** Re.
 - (b) Balance amount of **receivables from the apartments / flats / premises sold or allotted and in respect of which agreement have been executed and**
 - (c) **Estimated amount of receivables in respect of unsold apartments / flats / premises** calculated at the prevailing ASR rate on the date of certificate.

..Two CAs to certify Project related info ..

- **CA appointed under Rule 4(2)(1)(D) Proviso 1 –Re. periodic withdrawals from 70% of amounts realised**
 - shall certify **Re. periodic withdrawals from 70% of amounts realised** from each Project, (as deposited in separate account to cover the cost of construction and the land cost) –
 - To certify that such periodic withdrawals are **to cover the cost of the project, in proportion to the percentage of completion of the project**
 - This Certificate shall be based on the Certificate of Architect & Engineer as to Work completed and costs incurred
- **CA appointed under Sec. 4(2)(1)(D) Proviso 2 for Audit of accounts shall have to certify that :**
 - In audited accounts within six months after the end of every financial year
 - It shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and
 - Withdrawal from **separate account to be maintained in a scheduled bank** have been in compliance with the proportion to the percentage of completion of the project

Certificates for Periodic Withdrawals from 70% deposited in Sch. Bank [Rule 5(1)(b)]

- Certificate from **Project Architect** certifying the percentage of completion of construction work of each of the building / wing of the project
- Certificate from **Engineer** for the actual cost incurred on the construction work of each of the building / wing of the project
- Certificate from **practicing CA** for:
 - Cost incurred on construction cost and the land cost
 - Proportion of the cost incurred on construction and land cost to the total estimated cost of the project.
 - Total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the separate account.
- The promoter shall be required to follow the aforesaid procedure at the time of every withdrawal from the separate account till occupancy certificate in respect of the project is obtained.
- On receipt of completion Certificate in respect of the project the entire balance amount lying in the separate account can be withdrawn by the promoter.

Cost of completion of percentage of the project - Land Cost

[Rule 5(1) Explanation 1]

Land cost shall include:

- The costs incurred by the Promoter for acquisition of ownership and title of the land parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost;
- Premium payable to obtain development or redevelopment rights;
- Amount paid for acquisition of TDR;
- Premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- Consideration payable to the outgoing developer to relinquish the ownership and title rights over such land parcels;
- Amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, transfer charges, registration fees etc.; and
- ASR linked premiums payable by any Promoter as per requirement of any Law, rules or regulations for obtaining right for redevelopment of lands owned by Public Authorities;

Cost of completion of percentage of the project - **Cost of construction** [Rule 5(1) Explanation III]

Cost of construction for the purpose of Sec. 4(2)(I)(D) shall include:

- All costs, incurred by Promoter towards the on-site and off-site expenditure for the development of the Project including:
 - payment of Taxes, Fees, Charges, Premiums,
 - Interest etc. to any Competent Authority or Statutory Authority of the Central or State Government including Principal sum and interest, paid or payable to any financial institutions including scheduled banks or non-banking financial companies etc. or money-lenders (under the Maharashtra Money-Lending Regulation Act, 2014) for the Project

What is NOT allowed as Cost of Construction:

- **Interest on Borrowings for purchase of land** or for obtaining the development rights over such land - This may be paid out of 30% of Amt's Received from Flat Purchasers

Ongoing Projects .. Details to be submitted [Rule 4(3)]

RE. apartments sold: To disclose

- (a) Number of the apartments sold or allotted to the allottees and
- (b) Size of the apartments sold based on carpet area even if such apartments are sold earlier on any other basis, such as super area, super built up area etc.

Re. Plotted development –To disclose area of the plots sold to the allottees including extent of share of common areas and amenities etc

*.. Ongoing Projects .. Deposit of amounts
Received in separate account [Rule 5(2)(ii)]*

Ongoing project **where OC / CC not received**

- 70% of the amount to be realized from the allottees shall be deposited in such separate account

Where Promoter has already collected more than 70% of estimated cost of completion of the project:

- 100% of the amount to be realized from the allottees shall be deposited in the said separate account

Issues & Challenges - Furnishing misleading Information Concerning the Project – Ongoing Projects

- **Misleading / untruthful info Re.**
 - **FSI – Bldg / Wings/ Floors / Open Spaces / Covered Parking**
 - **Common amenities**
 - **Society Formation etc**

Issues & Challenges – Estimate of Cost to Completion

- Estimates are estimates / Opinion / forward-looking Statements / Informed Guesses
- Expert help for all cost estimates must be sought and disclosure of reliance thereon must be placed prominently
- Caveat as to estimates / Opinion / forward-looking Statements be made as necessary in each Certificate

Issues & Challenges Penal Consequences

- **Penalty u/s 60** : Any act of suppression of facts or misleading information concerning title of Land can expose the Promoter to Penalty u/s 60 of the Act
- **Sec. 60**: If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to 5 % of the estimated cost of the real estate project, **as determined by the Authority**

Grant of registration [Section 5]

- On receipt of the application under Sec. 4(1), the Authority shall within 30 days :
 - grant registration and provide a registration number, including a Login Id and password for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or
 - reject the application for reasons to be recorded in writing, if such application does not conform to the Act or the rules or regulations made thereunder:
- **No Rejection without** the applicant been given an **opportunity of being heard**
- Deemed Registration: If within 30 days, the Authority fails to grant registration or reject the application, the project shall be deemed to have been registered,
and
the Authority shall within 7 days of the expiry of the said 30 days, provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project
- **Period of Validity of Registration:** The registration granted under this section shall be valid for a period declared by the promoter [under Sec. 4(2)(l)(c) for completion of the project or phase thereof

Extension of registration - Section 6

- Registration granted u/s 5 **may be extended** by the Authority on an application made by the promoter **due to *force majeure***, in such form and on payment of such fee as may be *prescribed*
- Authority may **in reasonable circumstances, without default on the part of the promoter**, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, **not exceed a period of one year**
- **No Rejection** of application for extension **unless** the applicant has been given an **opportunity of being heard** in the matter.
- *Meaning of "force majeure"*: For the purpose of this section, the expression "force majeure" shall mean a case of **war, flood, drought, fire, cyclone, earthquake** or any other calamity caused by nature **affecting the regular development of the real estate project**

Issues & Challenges – Extension Registration – Sec. 6

- *force majeure is clearly defined*
- Shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project
- In a recent case concerning delay in project completion [Sheela Vira / Nitin Shah & Others Vs. Sea Princess Realty [CC006000000001244 - CC006000000001241 dt. 16.01.2018], the reasons of general nature such as:
 - Demonetization
 - Introduction of GST
 - Non-availability of sand / other material etc- were not considered as force majeure

.. Force majeure cannot be presumed to be anyone's birth right

- Held, the arguments made by the advocate for the Respondent and the reasons given by him for the delay in handing over possession of the said apartments, are general in nature.
- On the basis of the arguments advanced by the advocate for the Respondent a maximum period of six months' delay may be allowed to be condoned but certainly a delay of six months is attributable to the Respondent, for which he is liable to pay interest on delay as per Section 18 of the Act
- [Sheela Vira / Nitin Shah & Others Vs. Sea Princess Realty [CC006000000001244 - CC006000000001241] dt. 16.01.2018

Where Promoter could show delay in Project sanction, that is
Force majeure - Venkolo Phonindra Kumor Volluri (Complainant) Vs. Akshar
Space Pvt Ltd. [COMPLAINT No: C C 006000000000977]

- It is clear from the above analysis that the project got delayed partly because of the delay at the level of NMMC and SEIAA to give environmental clearance for the said project.
- In the registered agreements for sale executed between the complainants and the respondents, it has been clarified in Clause Nos. 14, 18 & 19 that the date of possession would be extended further if the project gets delayed due to force majeure and reasons beyond control of the promoter such as, delay caused on the part of govt.. semi-govt-, NMMC, Revenue Authority or any other concerned Authority/local bodies in granting necessary permissions/sanctions, NOC that shall be required by the promoters from time to time.
- Considering the disruption in construction work for a period of more than a year and other constraints, it is reasonable to extend the date of possession by a year and half to calculate the promoter's contractual liability under section-18 of RERA Act. 2016. The promoter/respondent is, 'therefore, liable to pay interest to the allottees from July 1, 2017.

If Builder aware of possible causes of delay, there can not be **Force majeure**

- Promotor cannot avoid his obligations to complete the Project on the pretext of economic downturn. Ban on sand mining and quarrying of stones:
- The agreement was executed between the respondent and the allottee in 2013 and the respondent was very well aware of all these constraints. Therefore, Builder cannot make this factor as an excuse for the delay in completion of his project.
- Omkar Dabholkar Vs. Neelkamal Realtors (Suburban) Private Limited [CC006000000001394]

Redevelopment not covered under RERA:

- Section 13 applicable to transactions that involve an agreement for sale
- and not agreement for permanent alternate accommodation
- Shrawankumar Pardeshi Vs. Sagar Shopping Developers [CC006000000012403]
- *Held.* During the course of the hearing, it was explained to the Complainant that the provisions of section 13 are applicable to transactions that involve an agreement for sale and not agreement for permanent alternate accommodation.
- It was also explained that the provisions of section 18 of the Act, allowing interest on delay, are not violated.
- The Complainant has not been able to point out any contravention or violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 or the rules or regulations made there under and therefore, MahaRERA is not the proper forum to resolve the abovementioned issues, raised by the Complainants.
- This appears to need reconsideration

Why redevelopment should be covered under RERA

- Sec. 2(s) : **Development includes redevelopment**
- Sec. 2(zn): "real estate project" **means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.**
- Nomenclature of technicality (of not calling **agreement for permanent alternate accommodation as 'agreement for sale '**) should not prejudice rights of Flat Purchaser when RERA Law says: **Development includes redevelopment.**

Revocation of registration - Section 7

What initiates the process of revocation?

- Authority to proceed with revocation in following cases:
 - *Either on receipt of a complaint or*
 - *Acting suo motu or*
 - *on the recommendation of the competent authority*
- *For initiating revocation, the Authority is being satisfied on certain counts.*

... Contd ..

The revocation may follow *after the Authority is being satisfied that – Sec. 7(1):*

- **Defaults happened under this Act & Rules:**

- the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder—
 - FUNCTIONS AND DUTIES OF PROMOTER – Sec. 11
 - Obligations of promoter regarding veracity of the advertisement or prospectus – Sec. 12
 - No deposit or advance to be taken by promoter without first entering into agreement for sale- Sec. 13
 - Adherence to sanctioned plans and project specifications by the promoter – Sec. 14
 - Obligations of promoter in case of transfer of a real estate project to third party –Sec. 15
 - Obligations of promoter regarding insurance of real estate project – Sec. 16
 - Transfer of title – To execute Conveyance Deed to Society etc. – Sec. 17
 - Return of amount and compensation - fails to complete or is unable to give possession of an apartment – to return the amount received by him with interest – Sec. 18

- **Other Defaults**

- **Violation of terms of approval**
- **Unfair practice or irregularities – Sec. 7(1)(c) – Explanation**

.. Contd ..

Unfair practice or irregularities – Sec. 7(1)(c) - Explanation

- Such **unfair practice** followed by Promoter, which, **for the purpose of:**
 - promoting the sale or of any real estate project
 - development of any real estate project- adopts any unfair method or unfair or deceptive practice is unfair practice.

Such practice shall include any of the following practices, namely:

A. Wrong written Statement or visible representation which,—

- Misrepresentation as to standard or grade of Services:
- Misrepresentation as to approval or affiliation:
- Misrepresentation as to Services

B. When Promoter permits the **publication of any advertisement or prospectus** whether in any newspaper or otherwise of services that are not intended to be offered.

(c) When the promoter indulges in any fraudulent practices [Sec.7 (1)(d)]

Some instances of this may be:

- Delay in progress of project
- Instances of multiple sale of flats to more than one buyer
- Fraudulent violation of terms of borrowing taken on the project by the promotor
- Not disclosing to flat purchasers the covenants of contract with third-parties/ lenders

Notice to Promotor & Consideration of causes – Natural Justice - Sec 7(2):

- The Authority is obliged to:
 - Give to the promotor not less than 30 days' notice stating the grounds on which it is proposed to revoke the registration
 - Consider causes shown by the promoter for non-compliance as shown in the Notice.
- Sec. 7(2) does not require the Authority to give a reasonable opportunity of being heard to Promoter as is the normal judicial practice. It merely wants the Authority to consider the causes shown by the promoter for non-compliance.

What follows thereafter

- **Revocation – Not the immediate action – Authority May impose further terms and conditions [Sec. 7(3)]**
- **Effect of Revocation Sec. 7(4):**
 - *The Authority, upon the revocation of the registration,—*
 - *debar the promoter –Declare him Defaulter*
 - *Help/ direct to complete Remaining Development*
 - *Debar Promoter from Funds -*
 - The Authority shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (1) of sub-section (2) of section 4, to freeze the account,
 - Thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8; ... Contd..

Obligation of Authority consequent upon lapse of or on revocation of registration - Section 8

- **Lapse of the registration or on revocation of the registration:**
- Sec. 8 triggers upon lapse of the registration and revocation of the registration under the Act.
- The revocation of the registration takes place under Sec. 7. The Authority may consult the appropriate Government to take such action as it may deem fit including:
 - carrying out of the remaining development works
 - Order of Authority after expiry of the period of appeal – Right of Appeal available to Promoter
 - Revocation of registration - Remaining development works - first right of refusal to association of allottees

Thank You