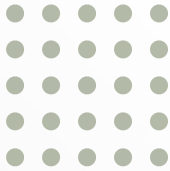




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**01.11.2022 || Tuesday**

Dear Members,

Greetings!!!

We are very happy to share with you this Fourth Newsletter on RERA.

RERA Act is the only special act that deals with matters relating to the Realty sector where both the Builders and home buyers can resolve their disputes relating to violation of acts or breach of terms and conditions of construction agreements.

The sale and construction agreements are very important and are to be executed before collecting money from the allottees by the builders. In case of absence of any such agreement, the promoter of the real estate company cannot collect the money from the home buyers.

In the recent order passed by the Odisha RERA it (ORERA) underlined that in the absence of a format of the agreement for sale as per the provision of Real Estate Rules 2017, the promoter cannot continue the booking amount.

It is important to mention that it is the duty of the promoters of real estate projects to obtain prior registration from RERA authorities before the commencement of the project by way of submitting the proper documents otherwise they are not allowed to proceed with the project and they are liable for non-compliances under RERA Act. In a recent case, the Maharashtra RERA has ordered to file of a criminal case against the property developers for allegedly fabricating documents for the registration of their constructions under the Real Estate Regulatory Authority.

The Home buyers' interest is not only secured under RERA Act but it is also protected under the Insolvency and Bankruptcy code. The recent order passed by the Hon'ble NCLT Principal Bench held that the decree of a civil court will not alter the basic nature of a transaction. The transaction prima facie must be considered for the purpose of adjudicating a claim. The NCLT further held that the claim submitted by the real estate allottee is a financial debt and he is treated as Financial Creditor as per the code. The extract of the order passed by Hon'ble NCLT principal Bench is included in this newsletter.

This newsletter consists of the above orders passed by various State RERA authorities and recent developments in realty sector.

Thanking Yours

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**Bench: Hon'ble NCLT principal Bench**

**Date of Order: 26/09/2022**

**In the Matter of**

**Jones Lang Lasalle Building Operations Private Limited**

**Vs**

**M/s.Celebrity City Projects Private Limited**

**Case no, IA-2158/2022 in (IB)652(PB)/2019.**

**Observation: The decree of a civil court will not alter the basic nature of a Transaction.**

In this case, the Applicant is a real estate allottee of the Corporate Debtor. The Resolution Professional had rejected the Applicant's claim upon the premise that the latter had ceased to be a real estate allottee on account of an Arbitral Award dated 25.10.2018 passed in her favor. In the Award, the Corporate Debtor was directed to deliver the possession of the Unit to the Applicant and to pay a penalty for the delayed period and interest. There was a clause in the Award that the Applicant would be entitled to enforce the allotment of the Unit within 60 days or in default it could secure the same by way of a money decree. Therefore, the applicant made a claim before the Resolution Professional stating that it is a real estate allottee and its claim should be treated in that class. The Resolution professional rejected the claim and directed the Applicant to file the same as a financial creditor as the award was in the form of a decree.

Thereafter, the Applicant filed an application before the Adjudicating Authority seeking recognition of her status as a Financial Creditor of the Corporate Debtor in a class of allottees. The Applicant argued that the nature of the original document shows that she is a real estate allottee. The issue of decree should not stand in the way of a Resolution Professional admitting the claim of a real estate allottee in a class.

Reliance was placed on the NCLAT judgment in Mukul Agarwal v Royale Resinex Pvt. Ltd., C.A. (AT) (Ins) No. 777 of 2020, wherein it was held that the decree of a civil court will not alter the basic nature of a transaction.

Hon'ble NCLT, after hearing the arguments and taking note of the above judgment held that, that the Applicant should be treated as the real estate allottee/creditor in class and be dealt with accordingly.

The application was allowed and disposed off accordingly.

# ORERA STAYS BDA PROJECT OVER RERA VIOLATION ALLEGATION

Odisha Real Estate Regulatory Authority (ORERA) has stayed a housing project undertaken by the Bhubaneswar Development Authority (BDA) in Bhubaneswar and sought a reply on why the registration certificate of the project not be revoked.

ORERA found noncompliance of the norms of the Real Estate Act by the BDA in its housing project.

BDA has been asked to comply to the show cause notice by October 11 the date on which the next hearing is scheduled.

RERA activist Bimalendu Pradhan had sought the intervention of ORERA pointing out that the term 'super built-up area' used by the BDA in its notice issued on July 22, 2022, for the project 'Daya Enclave' lacks clarity.



He claimed that the BDA in its RTI reply to a query in 2019 itself had stated that terms like 'Super area' and 'Super built up area' do not exist in any State law and as per the norms of RERA only 'Carpet area' should be used for describing an apartment's size.

In its interim order, ORERA underlined that in the absence of a format of 'agreement for sale' as per the provision of Real Estate Rules 2017, the promoter cannot continue the process for the selection to allottees by receiving the booking amount.

# UP RERA IMPOSES PENALTY OF OVER RS 1.39 CRORE ON 13 DEVELOPERS FOR NON-COMPLIANCE

## **SYNOPSIS**

Uttar Pradesh RERA is continuously taking strict decisions against the insensitive promoters for the protection of the interests of the home buyers and is fully committed to protecting the interests of home buyers, it said.

In a bid to tighten the noose around errant builders, Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has imposed a penalty of over Rs 1.39 crore on 13 builders for non-compliance. The decision was taken by UP RERA chairman Rajive Kumar in the authority's 104th meeting today, i.e. September 23.

Kumar said that Uttar Pradesh RERA is continuously taking strict decisions against the insensitive promoters for the protection of the interests of the home buyers and is fully committed to protecting the interests of home buyers.



The authority noted with displeasure that some of the promoters failed to comply with its orders despite the authority granting them sufficient time for the same. "The authority is making constant efforts to ensure enforcement of its orders and provide speedy justice to the aggrieved allottees. The action of penalty against the guilty promoters is an important step toward compelling them to comply with the orders of the Authority. Taking the above facts into account, the authority decided to impose an appropriate penalty against the promoters to ensure compliance with its orders and protect the interests of the home buyers," said the UP-RERA in a statement.

The authority imposed the penalty on the promoters under section 38/63 of the RERA Act. The act empowers the authority to penalise the non-compliant promoters with up to 5% of the cost of the project.

The Authority also directed the promoters to submit the compliance report of its orders within 15 days and deposit the amount of penalty within 30 days, else, the amount of penalty shall be recovered as arrears of land

# RISLAND'S SOUTH DELHI PROJECT UNDER RERA SCANNER OVER LAND DISPUTE

## **SYNOPSIS**

*The authority also directed the Municipal Corporation of Delhi (MCD) to ensure that building by-laws are followed, a step that could lead to the halting of construction. The building sanction plan and the RERA registration for the project have expired and both the civic body and the RERA are not extending them due to a dispute over the ownership of the land.*

Hong Kong-based Risland Holdings' first real estate project in India, at Delhi's Chattarpur, has landed in controversy, with the Real Estate Regulatory Authority (RERA) asking the developer to stop sales and purchase of units.

The authority also directed the Municipal Corporation of Delhi (MCD) to ensure that building by-laws are followed, a step that could lead to the halting of construction. The building sanction plan and the RERA registration for the project have expired and both the civic body and the RERA are not extending them due to a dispute over the ownership of the land. The high-end luxury project is being developed by Brilliant Etoile Private Limited, which is registered in India as a subsidiary of a foreign company.

The project is based on a joint development model with Delhi-based Uppal Housing.



“One needs to examine the provisions and interpretation of these by-laws – whether construction can continue pending an application for renewal or extension of the sanctioned plans; and whether such an application was duly submitted by the promoters within the prescribed timelines,” said Hardeep Sachdeva, senior partner, AZB & Partners.

“If the answer to any of these is negative, then this order can be interpreted as requiring the promoter to not continue with the construction and ..

The MCD later informed the RERA that no construction could be permitted to proceed without validly sanctioned building plans, in accordance with the Delhi Development Authority's Unified Building By-Laws of 2016.

“After hearing all parties and going through various orders passed by the revenue authorities, we order that the promoter applicant shall abide by the Unified Building By-Laws of DDA, 2016 in the matter of construction of the project and MCD shall ensure this,” the Delhi RERA bench comprising chairperson Anand Kumar and members Ajay Kumar Kuhar and Ramesh Chandra said in the order.

Legal experts said the MCD has been asked to follow the building by-laws, according to which construction cannot be carried out without a sanction plan. As per the RERA direction, the MCD has the power to stop construction at the project.

# ORISSA HIGH COURT ASKS STATE GOVT TO EXPEDITE RERA COMPLIANT RULES

## **SYNOPSIS**

*The Orissa High Court on Tuesday was informed that the State government is preparing a new Odisha Apartment Ownership Management Bill.*

**CUTTACK:** The Orissa High Court on Tuesday was informed that the State government is preparing a new Odisha Apartment Ownership Management Bill. The court was hearing a PIL that had challenged the validity of Odisha Apartment Ownership (Amendment) Rules 2021.

State counsel DK Mohanty stated before the court that the Bill is being prepared in consultation with the stakeholders. It will be eventually be tabled in the State Assembly. Bimalendu Pradhan, a Bhubaneswar-based apartment owner filed the petition challenging it on the ground that it is contrary to provisions of the Real Estate (Regulation and Development) - RERA Act, 2016.

The RERA Act, 2016 mandates transfer of common areas in favour of the Association of Apartment Owners. In an interim order the court had clamped a ban on registration of sale deeds related to apartments and flats on May 12.

The embargo was imposed after it was brought to its attention that sale deeds conveying common areas to the individual owners of apartments were getting registered by the builders on daily basis in violation of the RERA Act, 2016. The court had directed the state government to come up with a RERA-compliant rule. Subsequently, the Inspector General of Registration (IGR) had issued an instruction to all the registering officers in the State that they should refuse to register any instrument which is contrary to the RERA Act.



The State counsel also informed the court that Urban Development and Housing department had on September 12 notified the Odisha Real Estate (Regulation and Development) Amendment Rules 2022. A model format of a sale deed will be notified to enable execution of sale deeds in the format consistent with the notified amended rules. However, indicating that the interim order will continue, the division bench of Chief Justice S Muralidhar and Justice Chittaranjan Dash said, “Any ad hoc temporary solution to the problems faced by the apartment owners will only compound their difficulties.”

# CASE AGAINST 27 BUILDERS IN THANE FOR FABRICATING DOCUMENTS TO OBTAIN RERA REGISTRATION

## SYNOPSIS

*The accused developers had allegedly cheated home buyers from 27 villages and the Kalyan Dombivli Municipal Corporation (KDMC) as part of a racket, an official from Manpada police station said.*



THANE: Police have registered a case of cheating against 27 property developers in Maharashtra's Thane district for allegedly fabricating documents for the registration of their constructions under the Real Estate Regulatory Authority (RERA), an official said on Wednesday.

According to a complaint filed by a KDMC official, the accused forged documents to show that permissions for the construction of houses were issued by the KDMC and based on that they got the registration done under RERA

The accused developers had allegedly cheated home buyers from 27 villages and the Kalyan Dombivli Municipal Corporation (KDMC) as part of a racket, an official from Manpada police station said.

The developers indulged in the fraud between 2017 and 2022, and home buyers shelled out Rs 25 lakh to Rs 35 lakh for each of the tenement constructed by these developers, the police official said.

A case was registered in this connection on Tuesday night, he said, adding that no arrest has been so far.





# KARNATAKA RERA CRACKS DOWN ON DEVELOPERS NOT REGISTERING PROJECTS

The Karnataka Real Estate Regulation and Development Authority (KRERA) has ordered Bengaluru-based developer Ozone Urbana Infra Developers Private Ltd to register its project Urbana Serene in Devanahalli taluk under Section 3 of the Real Estate (Regulation and Development) Act, 2016.

The order says, "The complainants also alleged that Ozone Urbana has not formed an association as per the existing provisions of law, but suo motu made Serene Senior Living Private Ltd the manager in the Deed of Declaration dated May 21, 2016, without the consent of the allottees."

Since Urbana Serene has not yet been completed, the complainants have asked KRERA that it be declared an "ongoing project" and grant all the relief.



KRERA intervened and summoned representatives of the realtor and the complainants and asked them to submit the relevant documents. After going through the documents, KRERA found that Ozone Urbana had obtained an occupancy certificate from the Kannamanagala panchayat on August 16, 2017. The Serene Urbana//Urbana Serene// project was as on July 31, 2017, an 'ongoing' and incomplete project and hence attracts legal obligation to get registered under Section 3 of the RERA law, the order added.

## **Homebuyers welcome the order**

In an earlier incident on August 19, KRERA had passed a similar order in the case of buyers of homes at Sobha City, a project by Sobha Ltd, in Bengaluru. According to the order, the builder did not complete the apartments by the promised date of 2015 and the complainant, an association of allottees, was forced to take possession in the same year even before getting the occupancy certificate (OC).

"Complainants have alleged they have frequent power disruption and shortage of water... Further allegations of the complainants include that on the basis of partial OC, the developer made the owner believe that it is a real OC and has compelled the allottees to carry out maintenance of the project without executing the conveyance deed of the property," the document said.

In a March 11 Karnataka High Court ruling in Total Environment Building vs Verghese Stephen, the court noted, "Learned counsel submitted that there is no concept of partial occupancy certificate under the Act." Additionally, the court ruled, "The first is that no person shall occupy or let in any other person to the building or part thereof until an Occupancy Certificate to such a building or part thereof has been granted."

Dhananjaya Padmanabhachar, sanchalak or director, Karnataka Home Buyers Forum, said the National Consumer Dispute Redressal Commission had ruled that homebuyers will be liable to pay maintenance charges for their flats only after the builder gets an OC from the civic authorities. "But in reality, homebuyers are forced by the builders in Bengaluru to pay the maintenance without OC. The RERA in Karnataka must pass an order to ensure the builders and the agency should not demand maintenance from the homebuyers without obtaining an OC," he said.

# RERA ORDERS FORENSIC AUDIT IN ILD HOUSING PROJECT CASE

## **SYNOPSIS**

The RERA bench led by its chairman Dr KK Khandelwal and three members heard the arguments of promoter and allottees for over two hours before passing the order. The authority after going through the facts and circumstances of the project observes with pain and anguish that the promoter has miserably failed to complete the project, as there is no progress of work on site in the past four years.

The Real Estate Regulatory Authority (RERA) Gurugram has ordered a forensic audit in the ILD Arete housing project case.

The authority also issued a show cause notice to the promoter to furnish details by October 4 failing which the RERA will impose a penalty of Rs 50000 per day, according to an order.

"The authority has observed it very seriously and exercising the power under section 63 of the Act 2016 hereby decides to issue a show cause notice as to why a penalty of Rs 50,000/day be not imposed on him (director Alimuddin) during the continued default period for not submitting information," the order said. The RERA bench led by its chairman Dr KK Khandelwal and three members heard the arguments of promoter and allottees for over two hours before passing the order.

"The authority after going through the facts and circumstances of the project observes with pain and anguish that the promoter has miserably failed to complete the project, as there is no progress of work on site in the past four years. The allottees are feeling cheated and disturbed about the commitment made by the promoter time and again regarding recommencing the holdup construction," authority noted.

