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MAHA RERA CONDITIONALLY WITHDRAWS OFFICE ORDER ON CO-PROMOTER

24 November 2017

Maha RERA conditionally withdraws office order on Co-Promoter

The Maharashtra Real Estate Regulatory Authority (the Maha RERA or the Authority) had vide its order dated 11 May 2017 bearing Reference No RERA/LA/32/2017 (Co-Promoter Order) defined the term "Co-Promoter".

Maha RERA in the Co-Promoter Order clarified that as The Real Estate (Regulation and Development) Act, 2016 (RERA Act) does not define the word Co-Promoter, it is defining it as per the powers vested in it by virtue of Regulation No 38 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

Definition of Co-Promoter as per the Co-Promoter Order

"Co-Promoter means and includes any person(s) or organisation(s) who, under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a share of total revenue generated from sale of apartments or share of the total area developed in the real estate project. The liabilities of such Co-Promoters shall be as per the agreement or arrangement with the Promoters, however for withdrawal from designated Bank Account, they shall be at par with the Promoter of the Real Estate Project".

Writ Petition challenging Co-Promoter Order

Mr Ismail Ibrahim Patel and six others filed Writ Petition 2773 of 2017 in the High Court of Judicature at Bombay (Hon'ble Court) against the State of Maharashtra, Maha RERA, Union of India and Shiv Krupa Enterprise inter-alia questioning and challenging the validity of the Co-Promoter Order.

The grounds of challenge on the basis of which the Writ Petition is filed as follows:

- RERA Act, itself does not define Co-Promoter but defines the word "Promoter";
- Maha RERA under Regulation 38 is not empowered to coin a new definition of "promoter" and notify the same in absence of any statutory authority under RERA;

- Maha RERA is not empowered to interpret the provisions of a Central enactment; and
- The definition of Co-Promoter has added to the confusion amongst stake holders.

Arguments putforth by Maha RERA

Maha RERA in defence of the Co-Promoter Order, argued before the Hon'ble Court that the Co-Promoter Order has been issued only as and by way of a clarification in order to elaborate the definition of "Promoter" which is already defined under the RERA Act and to bring in transparency in the process of registration of a real estate project.

However, Maha RERA submitted an affidavit in reply before the Hon'ble Court wherein it was inter-alia stated that in order not to disturb the various steps that are already taken by all stake holders and to dispel various apprehensions expressed by the petitioners during the course of the arguments, Maha RERA decided to supersede the Co-Promoter Order by withdrawing the same and replacing the same appropriately with effect from the same date, i.e. from 11 May 2017, within a period of 3 (three) weeks from the date of final disposal of the Writ Petition, i.e. 3 weeks from 14 November 2017.

Order of the Hon'ble Court

The Hon'ble Court vide its order dated 14 November 2017, disposed of the Writ Petition by permitting the petitioners to withdraw the same on the basis of the affidavit in reply filed by Maha RERA stating that the Co-Promoter Order shall be superseded by withdrawing the same and replacing it appropriately within a period of 3 (three) weeks from 14 November 2017, which shall be applicable from 11 May 2017.

The Hon'ble Court clarified that it has not dealt with the averments made in the affidavit by Maha RERA explaining the circumstances and reasons behind passing the Co-Promoter Order. Further, the Hon'ble Court also recorded the argument of the petitioners that it is not dealing with the explanation given by Maha RERA on the reason for issuing the Co-Promoter Order.

Present status

In light of the Hon'ble Court's order dated 14 November 2017, till such time Maha RERA issues a fresh order, which should not be later than 3 (three) weeks from 14 November 2017, presently there is no definition or clarity on who is a "Co-Promoter".

One will have to wait and watch for the new order which Maha RERA shall notify keeping in mind all stake holders interest and the consequence thereof on all the past acts done by various parties and various orders passed by Maha RERA on the basis of the Co-Promoter Order.

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