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Ref. No. MCHI/PRES/19-20/062

October 9, 2019

To,

Shri Manu Kumar Srivastava (I.A.S.)

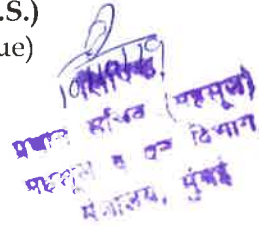
Additional Chief Secretary (Revenue)

Registration and Stamp

Revenue & Forest Department

Government of Maharashtra

Mantralaya, Mumbai - 400 032.



Sub: Clarification requested on Circular dt.20.09.2019 of Revenue & Forest Department with Sr. No. 2017/2453/Pr.Kr.410/M-1 (policy)

Respected Sir,

Greetings from CREDAI-Maharashtra.

With reference to the above Circular, there are certain hardships faced, which we would like to bring to your attention.

At the outset we would like to state that the provisions of RERA are primarily for the purpose of regulating the relationship between developer and an allottee. The intention of the department is very good and we welcome it. However we would like to state that-

Section 3 of the Real Estate (Regulation and Development) Act, 2016, requires all construction and development projects to be registered with the appropriate State Authority. It also specifically states that "(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, 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 established under this Act"

There is also Section 5(3) of the Act, which reads as under, "(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be."

Keeping in view both the sections of the Act, project registration under the RERA is not required if the project has procured a Completion Certificate or Occupancy Certificate prior to the act coming in force. Further, where no relationship/ agreement is executed with any allottee prior to completion of the project, RERA does not mandate project registration.

We would like to also note that the provisions of the Central Government Act in section 3 also state that projects that are 500 sq. mtrs and above and that are 8

apartments and more are required to be registered under RERA (which has been adopted by the Government of Maharashtra)

Thus keeping these points in mind we would like you to exempt the following types of projects from the circular dt/- 20.09.2019-

1. Section 3(2) of the Act exempts registration of projects with land area less than 500 sq.mtrs and less than 8 units (both need to qualify together)
2. Projects that have received completion certificate/occupation certificate prior to the date of RERA coming in force in Maharashtra to be exempted
3. Projects that have taken completion certificate/occupation certificate and have now executed agreement to sale and presented document for registration to be exempted.
4. In plotting development projects where final N/A or completion certificate is given prior to the RERA coming in force to be exempted
5. In plotting development projects where N.A. or final approval is given to the layout by Authority and after which sale of such plots is executed and presented for registration to be exempted
6. Resale of flats/apartments/plots wherein the developer is not a party in the document is to be exempted.

We once again laud the intention of the above circular to control unauthorized constructions, but at the same time our apprehension is that it should not cause any hardships to the genuine situations as discussed above. Since the issuance of the circular the Sub-Registrars have been refusing registrations of projects not registered with RERA.

We request you to kindly take urgent intervention to issue a clarifications on the above suggested projects as per the provisions under RERA so as to avoid the troubles before the festive season.

We may be given an opportunity to meet and discuss with you the same as per your convenient day, date and time.

Thanking you.

Yours faithfully,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer

Encl:-

- 1) Photo Copy of the relevant provisions namely Sec.3 (2) - a & b and also Sec.5 (3)
- 2) Photo Copy of the Oder issued by MahaRERA Authority dtd. 18th Dec., 2017
- 3) Additional FAQ no. 2- Query no. 11

CHAPTER II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, 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 established under this Act:

Prior registration of real estate project with Real Estate Regulatory Authority.

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter 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:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act:

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) 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.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

Application for registration of real estate projects.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

2 of 1934.

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(n) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

5. (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

Grant of registration.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder;

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), 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.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

6. The registration granted under section 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 specified by regulations made by the Authority:

Extension of registration.

Provided that the 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:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter

Explanation.— 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.

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

COMPLAINT NO: CC006000000000012

Mr. Sanjay Phulwaria
Versus

Complainant

M/s. Bellissimo Crown Buildmart Pvt Ltd (Lodha Developers Pvt Ltd)

MahaRERA Registration No. P51900000314

Respondent

Coram: Hon'ble Dr. Vijay Satbir Singh, Member 1

Advocate Avinash Pawar appeared for the complainant.

Advocate Rahul Vardhan a/w Advocate Sunilraja appeared for the respondent

Date : 18th December, 2017

Order

1. The complainant has filed this complaint seeking directions of this Authority to the respondent to a) register the entire project tower Diuro with MahaRERA as he has only registered 41 to 45 floors. b) to complete the construction work at the earliest and give possession of the flat with full OC and c) to pay 18% interest for the delayed possession from the agreed possession date till actual possession in the MahaRERA registered project bearing No. P51900000314.
2. This matter was heard today. The complainant stated that he had purchased a 2BHK flat bearing No. 2503 having carpet area 925 sq.fts on 25th floor in Diuro for a total consideration amount of Rs. 27,078,705/- vide agreement for sale dated 23-07-2013. As per the said agreement, the possession was to be given on 31-12-2015 with grace period of one year i.e. by 31-12-2016 positively. But, till date the possession was not given and the construction work was still incomplete. Further, the respondent had obtained part occupation certificate from MMRDA for the said project and registered only 41 to 45 floors of the said project

and thereby mislead the Authority by submitting incomplete and wrong information.

3. However, the respondent has denied the contention raised by the complainant and stated that the present complaint is not maintainable, as the complainant has booked a flat bearing No. 2503 on 25th floor of B wing of Building known as Lodha Dione tower for which the part occupancy certificate has already been issued by the competent authority on 8-06-2017. Therefore, the said completed phase of the project has not been registered with MahaRERA. The respondent has submitted a copy of the part occupancy certificate on record of this Authority.
4. An identical issue has been dealt with by the Hon'ble Full Bench of MahaRERA vide order dated 17-11-2017 passed in Complaint No. CC006000000000182 along with other two matters, wherein it was held that as per section 3 of the RERA Act, 2016, the ongoing projects which have received the completion certificate/part occupancy certificate do not require registration and where the project is to be developed in phases, every such phase shall be considered a standalone real estate project.
5. In the present case, since the part occupation certificate for ground plus 40 upper floors, which includes the flat of the complainant, has been obtained, there is no need to have registration with MahaRERA. As the flat of the complainant is not coming under the registered phase of the project with MahaRERA, this Authority does not have jurisdiction to entertain the present complaint.
6. In view of above, the present complaint stands dismissed for want of jurisdiction.


(Dr. Vijay Satbir Singh)
Member-I

Additional FAQ 2

Q. 1: (A) From a buyers perspective, what is an acceptable evidence of sanction under RERA ? (a) IOD, or (b) Commencement certificate (CC) upto plinth or, (c) CC endorsed for the floor on which buyer wants to book the apartment ?

Ans: For registration and booking it is IOD or IOA, which is building plan approval. For completion of the project within the time period mentioned in the registration, it is Occupancy Certificate.

(B) Will sale of TDR amounts, form part of sales realization, and thus required to be deposited in the separate account for utilization towards construction cost of the project?

Ans: Separate account is meant for amounts collected from allottees only.

(C) If a phase is considered up to certain floors as envisaged in the rules, then how & when will conveyance happen. Assuming the next phase approvals for upper floors are not secured in a timely manner, what will be the remedy envisaged for effecting conveyance?

Ans: Conveyance of the structure (floors) contained in the phase is possible.

Q. 2: (1) What if it's SRA Project, where the allottees complain regarding the demands put forward by them, not fulfilled by promoter? Can promoter complain about customers asking for extra area?

Ans: Complaints to MahaRERA have to be against registered projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

(2) Can change in layout plan be made when DCR 2034 comes in effect after getting prior approval of previous plan?

Ans: Such changes would require 2/3rd consent of allottees.

Q. 3: (1) 10% booking amount will have to be paid after registration of project with RERA ?

Ans: There is no such provision.

(2) Can RERA upload allottee persons' details on website like name, telephone number?

Ans: There is no such provision.

Q. 4: How to know the FSI allotted on the registered project?

Ans: It can be seen in the details of the registered project on MahaRERA website.

Q. 5: Our builder (1) Selected about 4 yrs. back is adopting delaying tactics by not submitting final BMC approved drawings for Managing Committee approval etc. so that they can be submitted to BMC for approval. (2) Developer is disregarding terms of D.A. and supplemental D.A. is just dragging the project period. (3) He wants possession of society building without completing contractual obligation. Will 'RERA' help us in any manner?

Ans: Complaints to MahaRERA have to be against registered projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

Q. 6: How "Existing Member's" interest is protected in re-development project ?

Ans: Existing members are members of the society which is a co-promoter in the redevelopment project. Complaints to MahaRERA can be filed against such registered projects, with respect to violations/contraventions of provisions of Act, Rules or Regulations.

Q. 7: Newspaper REPORTS say No Development Permission (New Construction) as BMC is not clearing garbage/debris, shortage of water supply (i.e. infrastructure & environment requirement) No FSI also will be given to redevelopment project. Will the promoters be held responsible for such delays in ongoing projects? If policy changes by govt or by High Court verdict, the project will be delayed. Who will be responsible?

Ans: Affected promoters may bring such issues up before MahaRERA. MahaRERA will take action in accordance with the Act and Rules, in consultation with concerned stakeholders.

Q. 8: (1) If project is mortgaged by developer but it is not disclosed on website what is the solution ?

Ans: Complaint can be filed by interested person for incorrect disclosure and violation of section 4 of the Act.

Q.9: Our builder has abandoned the project (redevelopment project). Will this project come under MAHARERA?

Ans: Every on-going project has to be registered with MahaRERA before 30th July 2017. If the said redevelopment project does not have layout/building plan approval and if no booking of sale flats have taken place, the project will not be called an ongoing project.

Q.10: (1) In ongoing project the agreement with purchaser after 1st May 2017 is to be prepared as per MOFA OR RERA OR BOTH ? (2) If the buyer has already paid stamp duty before 1.5.2017 and executed agreement then under which Act is the agreement with buyer?

Ans: Agreement entered prior to 1st May 2017 will be as per MoFA. All agreements post 1st May, 2017 have to be in accordance with the model form of agreement of MahaRERA.

Q.11: If O.C. / B.C.C. are issued in May/June/July, does project have to be registered?

Ans: On-going projects have time till 30th July to register. If before doing registration, the project has got OC/BCC, the project has been completed as per section 5(3) of the Act. Hence, it does not require registration.

Q.12: (1) If a promoter has declared FSI, common amenities etc. in the MOFA Agreement, can he reduce the same while registration of the project & if he reduces, what is the remedy to the consumer?

Ans: Violations in the terms of the MoFA agreement have to be taken up with the competent authority under MoFA. Complaints to MahaRERA have to be against registered projects, with respect to violations/contraventions of provisions of RERA Act, Rules or Regulations

Q.13: In the case of joint development, where owner is there, is he liable to the development and would the owner include government authorities also i.e. land owning authorities.

Ans: Yes, they are co-promoters.

Q.14: Pl. enlighten on the buildings which are occupied fully for last several years but no O.C./BCC till date. Are such buildings required to be registered under RERA?

Ans: An on-going project is one where construction is still not complete, OC is yet to be obtained and building has not been occupied by allottees. Such on-going projects have to be registered with MahaRERA.

Buildings without OC/BCC but occupied by allottees have to approach Competent Authority under MoFA for deemed conveyance and thereafter approach planning Authority for OC.

Q.15: As per our agreement completion date is June 2015. While registering with MahaRERA, promoter gives, say Jan. 2020 completion date. MahaRERA will enforce which date June 2015 or Jan. 2020? What happens to delay since June 2015 which is the completion date as per agreement. How can buyer get compensation w.e.f. June, 2015?

Ans: Section 18 of the Act will apply.

Q.16: (1) In JOA project wherein land owners share of revenue is say 40% & developers as 60%, the 70:30 maintainable will also be applicable for land owners share? (2) What if the developer has already obtained a takeout funding? (3) Cost of land includes premium & TDR payable which may be misutilized by Developer.

Ans: Such land owners are Co-promoters. Their liabilities and responsibilities have been detailed in MahaRERA order available on the MahaRERA website.

Q.17: Is Title Insurance applicable?

Ans: Yes, in accordance with section 16 of the Act but only after notification by State Government.

Q.18: (1) If promoter doesn't register on the MahaRERA website how can we complaint against him? (2) By when can we expect the result after complaint against him?

Ans: Complaint against non-registration can be filed through an email to maharera.helpdesk@gmail.com. Such complaint will be treated as source complaint and suo-moto action will be initiated by MahaRERA.

Q.19: Navi Mumbai right now has NAINA as approving authority, does this come under MahaRERA ?

Ans: Yes, they are Planning Authority under MR&TP Act.

Q.20: I have booked the flat in completed project with O.C. in the month of April 17 with 20% payment . Stamp duty is also paid in April 17. However registration of agreement of sale is not done in light of MahaRERA. Kindly guide for the consumer.

Ans: Provisions(including model form of agreement) of MahaRERA apply after 1st May 2017.

Q.21: Whether one building's part can be registered in phase development? In such phase manner when society can be formed?

Ans: Phase is defined in the Rules. Society has to be formed once 51% of allottees have booked their apartment in the phase.

Q.22: Builder has not registered with RERA so far, can he sell his flats, collect the money and can register the sale deed as per format of MOFA not as per RERA.

Ans: Provisions (including model form of agreement) of MahaRERA apply after 1st May 2017.

Q.23: How MahaRERA is helpful in resolving redevelopment related problems for ongoing projects that have taken off before the inception of MahaRERA ?

Ans: All on-going projects, except the ones exempted under section 3 of the Act, have to be registered with MahaRERA before 30th july, 2017. Complaints to MahaRERA, against registered projects, can be filed with respect to violations/contraventions of provisions of Act, Rules or Regulations.

Q.24: Can information uploaded by a promoter during registration be amended / edited by the promoter under the pretext of updating it?

Ans: No. Fields which depict the progress of the project can only be updated.

Q. 25. Pending projects : What if a promoter gives unreasonably extended time frame for handing over possession with OC? Who decides which project should take how much time frame for possession? Are there going to be any norm from RERA or it is left in the sole discretion of promoter?

Ans: The promoter shall disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

Q.26: (1) Whether any particular flat under any RERA regd. project is sold or not, will there be any information on website about the registration no. of the flats already sold to avoid multiple fraudulent sale of one flat to multiple persons?

Ans: There is no such provision. Any fraudulent action of the promoter is punishable under the Act.

Q. 27. Conveyance : If two or more buildings form independent housing societies, how the conveyance of a single plot will be possible without subdivision of plot ?

Ans: Please see rule 9 of Maharashtra Real Estate (Regulation and Development)(Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017.

Q.28: A flat booked in a project. If construction not yet started or only beginning done, and 1% initial amount and stamp duty, registration fees taken and booked the flat. The project is expected to be completed in 2022. The builder may take project loan showing all flats are sold, booked and registered. The flat owner may take housing loan. But if, project not completed or abandoned after 50% how flat owner can get protection from builders banks demand of recovery and what will be position of housing loan liability ?

Ans: MahaRERA will take action in accordance with section 7 and 8 of the Act.

Q.29: I have signed a Development Agreement (D.A./P.A.) with a builder as land owner. I have no involvement/role in the project. How can I be responsible for any project issues under RERA?

Ans: Such land owners are Co-promoters. Their liabilities and responsibilities have been detailed in MahaRERA order available on the MahaRERA website.

Q.30. What if the builder does not register with RERA & no one complains?

Ans: MahaRERA can initiate suo-moto action.

Q.31 : Open parking can't be sold as per RERA. How will they be allotted to the customer?

Ans: The legal entity of the allottees (society/association etc.) will allot.

Q.32. If a promoter has sold entire stock and there is no receivable from any customer, in that case if there is no completion certificate then does the promoter have to register his project with MahaRERA?

Ans: No, if the building work is complete and building is occupied.

Q.33: Agriculture land more than 4000 sq.mtrs. to each purchaser with road, water and clubhouse facility. Is RERA applicable? Does such project need registration?

Ans: MahaRERA registration is required for projects which need approval from Planning Authority under MR&TP Act.

Q.34: Builder is asking me to register flat under MOFA act after 1st May. What should I do?

Ans: Allottee should insist on signing agreement as per RERA Act.

Q.35: I am a land owner and have a JV with a developer. As per RERA, land owner is co-promoter and is equally liable. I have an area sharing and would be getting my share of flats to sell. I read that when I sell my share of flats, the proceeds of sale needs to be deposited in an escrow account. How and under what conditions, I would be able to withdraw the money from escrow account?

Ans: The liabilities and responsibilities of co-promoters have been detailed in MahaRERA order available on the MahaRERA website.

Q36. Is MahaRERA applicable to SRA schemes under DCR 33(10)?

Ans: Yes

Q37. Are existing residents of a redevelopment scheme covered under MahaRERA provisions?

Ans: Yes, they are covered in the definition of allottees in the Act.

Q38. Our society land is less than 500 sq.m. but there are 16 apartments in the redevelopment project. Does MahaRERA apply?

Ans: Yes, if there are some apartments which are for sale.

Q39. Should a society while selecting developer for redevelopment see if the developer is registered with MahaRERA?

Ans: Projects are registered with MahaRERA, developers are not registered.