

ADVERSELY IMPACTING RERA RULES

DISCLOSURE

1. Rules prescribe that Developer has to declare the proposed plans of the entire project, which is not as per the Central Act. The Act required disclosure of only that portion of the project, which is being registered. However, the Rules require to disclose the details of entire project including FSI etc. Going beyond the Act hence a Deviation.
2. The rules call for disclosure of the estimated cost of the project. This could be a tricky affair, as
 - In Mumbai most developments are done in phases and have time and cost overruns owing to policy changes from time to time. Difficult to forecast the exact figure.
 - As penalties in the event of default shall be based on such estimated disclosures; one will have to play prudent.
 - One will also have to bear in mind that all withdrawals from the escrow account also would get benchmarked against such disclosures.
3. The time period for handing possession of flats is to be disclosed. This could be another area of concern, as it will impact both the withdrawal from the escrow account as also the penal liability arising out of delays in providing physical possession.

APPLICABILITY OF RULES

4. The Rules take all ongoing projects into the ambit. Gujarat has come out with Rules, which states that Act will not apply to projects where work has commenced before 1st November 2016.
 - A 18~24 month transition policy should have been made available for all ongoing projects.
5. The Rules do not put any obligation on the various building plan approving authorities to grant permission in a time bound manner.

LAND COST

6. Land cost does not take into account the amount borrowed from the Bank or NBFC or other lender to finance the cost of purchase of land and interest thereon. So, the Developer will find it difficult to make the payment of interest and installment of the principal amount to Bank/NBFC/Lender by withdrawal from the escrow account. This assumes importance when the Real Estate Funds have and Financial Institutions started taking stringent action under SARFAESI Act even for non-payment of interest.
7. The rules do not provide for inclusion of cost of funds for land acquisition which is a very important component as per the new Land Acquisition Act as part of cost of completion of an ongoing project (Explanation I), which could have adverse implications.

FEES PAYABLE FOR REGISTRATION

8. Fees for registration : Although a cap of Rs. Hundred Thousand has been put, it should have been capped at Rs.25,000/- given the volume of development.
9. Should a promoter for reasons beyond his control apply for extension of registration of a project, shall be liable to pay the same original registration fees all over again. Fees for extension should be capped to a maximum of Rs.10,000/- per project. This will have cost and time implications.

ESCROW ACCOUNT

10. 70% of the amount to be kept aside in the escrow has been defined under the rules as estimated cost of the project including cost of construction and land cost. However, when land cost has already been incurred upfront before the start of the project, what is the logic in still making a provision for the same in the escrow and link all future withdrawals to the extent of construction.
11. The normal requirement of 70% escrow under RERA Act has been practically increased to 100% in all the ongoing real estate project. Under the proposed rules, unsold stock is valued on the basis of Stamp Duty Ready Reckoner value instead of the average sale price of the last 1 or 2 years, whereby the cost of completion would not be less than value of receivable & stock.
 - This is a double whammy – any challenge towards this is likely to affect various representations to IGR that ASR is not in tune with actual market rates and needs to be reduced by at least 30% across micro-markets.
12. The provision of 70% of all sale proceeds to be parked in an escrow account while may be securing the buyers right to timely possession in one way, but in another, this provision debars the promoter to cash out his land cost and all other cash inter – alia to get a clear title of the land, which are otherwise already incurred before project commencement. This is largely going to impact the cash flow and loan liabilities of developers, especially in a scenario where provisions under the SARFESI Act are being tightened.

ANY OTHER

13. The rules specify that the promoter upon receiving the certificate of registration from the Authority, shall obtain insurances as provided by the Act. The Central Act makes it mandatory for the promoter to insure the land title, an instrument that does not exist in India.