

Uttar Pradesh Real Estate Regulatory Authority

Naveen Bhavan, Rajya Niyojan Sansthan,
Kala Kankar House, Old Hyderabad, Lucknow – 226007

No. ²²⁵/U.P. RERA/Extension/Compliances/Order/LKO/2021-22

Date: 18/08/2021

Office Order

Subject: Granting additional extension of registration to eligible projects to mitigate the impediments in the development of such projects due to dislocations caused by Covid-19 pandemic along with some additional time for filing QPRs and annual audit reports of the projects registered with UP RERA.

A representation has been submitted by the CREDAI on 27/05/2021 and by the NAREDCO on 08/05/2021 for some reliefs and directions in view of the adverse impact of Covid-19 pandemic on the real estate sector in the state. The two confederations have made following submissions in support of their proposal for relief and relaxations with a view to ease the impediments to the development of the sector.

Representation by the CREDAI

- Entire economy is under stress because of Covid-19 pandemic. Even after unlocking of the country, there has been scarcity of the availability of the resources.
- Not only the real estate developers, but also the suppliers of the materials essential to the sector, are suffering. Although the construction activities have been permitted, current restrictions make it impossible to reach the pace of development prior to the pandemic. It's not possible to be sure about when this pandemic is going to end.
- The sector depends on inter-state supplies for key construction materials and for some materials like elevators on over-seas sources. It's likely that the effective supply of the raw materials will take another 10 to 12 months to normalize.
- The labourers have migrated to their home towns, even some of those who had gone back to their homes in March 2020, are still to come back. Some of them may not come back even for next 10 to 12 months. Different types of works in the sector are performed from the labourers from different states as per their specializations.
- Speed of work is hampered because of Covid Protocol issued by the Government. This is likely to affect the work for future 8 to 10 months.
- The revenue collection from the allottees has been seriously strained, new sales are not expected for at least two years and this condition may delay the projects for at least 12 months.

- The sector is foreseeing a large number of cancellations by the existing allottees.
- Real estate sector is not a preferred sector for financing by the financial institutions because of the risk factors. Scarcity of financial resources may add 8 to 10 months to the life span of the projects.
- Demand in the real estate sector has come down and this all may take one to two years to settle.

Representation by the NAREDCO

- The construction activities in all the projects came to a complete standstill with the clamping down of weekend curfew w.e.f. from 23/04/2021 on account of Covid-19 pandemic second wave. It is expected that construction will suffer for about 6 months as no definite end of the pandemic is in sight.
- The offices of the developers and other associated offices are closed. The contractors and the labourers have left the sites.
- Government offices, responsible for granting approvals and clearances, are closed.
- There is liquidity crisis as the banks are not advancing funds to the promoters and home-buyers.

The two confederations have requested for following reliefs and concessions:-

1. Declaring period between 01/03/2020 and 31/12/2021 as period of force majeure with no liabilities, responsibilities and penalties under the Act to be attracted either towards the allottees or the Authority.
2. Completion dates of the projects, with their extended dates, if any, ending on 01/03/2020, be automatically extended by 1 year and 9 months to December, 2021 and all liabilities, responsibilities and penalties under the Act be deferred/ not levied, thereby providing complete relief to the projects.
3. Complete waiver of fees/ penalties applicable on extension of projects or any delay under the Act as per Rule 7 of the U.P. RERA Rules.
4. Complete waiver of refund/ interest/ penalties/ compensation pertaining to the extended period of projects and no benefits to be passed on to the home-buyers as provided under Clause 7 of the Agreement for Sale.
5. Directions to all competent authorities/ regulatory authorities under the State to extend the validity of the maps/ NOCs for this extended period without levying of any charges/ fees/ penalties/ cess as per the powers conferred under Section 32 of the RERA Act.

6. Except for reasons of unfair practices, for no other reason should the registration of the project be revoked during this extended period.
7. This period of 1 year and 9 months should be taken into account while considering the complaints of the home-buyers under Section 18 of the RERA Act. The allottees should not be allowed to cancel their registration of the units during this period.
8. No allottee should be allowed to withdraw from the project without the fault of the promoter.
9. Time limit for regular compliances under RERA, like QPRs may be extended for some time.
10. The requirement for taking the consent of 2/3rd of the allottees of the project for an alteration in the project may be reduced to a lower level as the promoters may have to change the project design size based on the present scenario.
11. The promoters may be allowed to split the phases of the registered projects for better execution. Accordingly, the requirements of Section 14 (2) (ii) may be relaxed.
12. The requirement of payment within 45 days of the orders of the Authority be deferred to the extended period of 31/12/2021.

The representations of the two state level apex confederations of the promoters were considered by the Authority in its 66th meeting on 27-07-2021 . The Authority derived the following conclusions based on the factors brought to its notice by the two confederations and other relevant materials at its end:-

1. The Authority, on the basis of the advisory issued by the government of India vide its office memorandum dated 13-05-2020, had in its 35th meeting on 19-05-2020 decided to extend by six months the registration and completion date or revised registration or extended completion date of all the registered projects for which the completion date or revised completion date was ending on or after 25-03-2020, due to outbreak of Covid-19 pandemic which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking force majeure clause. It was further decided that this extension will be granted suo moto and without charging any fee from the concerned promoters. The Authority had also extended the time limit for various compliances, including QPR and annual audit report of projects and the orders of the Authority, which were due to be made by the 31-03-2020, to 30-06-2020 on the ground of force majeure clause.
2. The Authority, in deference of the advisory of the GOI, had used its powers under section 6 of the Act and rule 7 of the Rules which, enter alia, empower the Authority to take a judicious decision at its own level

about the extension of the registration of the projects and waiving of the extension fee on the grounds of force majeure clause.

3. The second wave of the Covid-19 pandemic which started setting in towards the end of March 2021, peaked in the month of April and May and started receding in the month June. This wave was far more devastating than the first wave, although unlike during the first wave of Covid-19 pandemic, no lockdown as such was imposed. The state government, in order to control the rise of Covid-19 cases, firstly imposed weekend and night curfews and later on, imposed partial corona curfew. During the later days of partial corona curfew, the construction activities were permitted with certain restrictions and strict compliance of Covid 19 protocol.
4. Notwithstanding the fact that the construction activity in the sector was permitted with strict observance of Covid-19 protocol, due to the sheer magnitude of the pandemic, the impact on the construction activity in the real estate sector has been no less telling than during the county wide lockdown under the first phase. It was seen that the skilled and unskilled labourers had mostly migrated to their native districts/ states and did not come back in full strength even after the relaxation of partial corona curfew and permission to start construction activity. It was also seen that supply chain was disturbed and the functioning of promoter/concerned offices was also affected.
5. The weekend curfew imposed by the state government is still continuing. Although, construction activity is permitted during curfews, in some ways or the other such restrictions adversely affect normal construction and business activities.
6. Assuming that the benefit of six month extension from 25-03-2020 because of Covid 19 pandemic extended till September 2020, the impact of the weekend curfews lasting over several months, translates into some loss of mandays in the construction activity. On the basis of a rough estimate, it comes to 52 days over six month period between October, 2020 to March, 2021. Taking into consideration the disruptions caused by the factors summarized above, a case for six month extension of registration on force majeure grounds, does not appear to be unreasonable for mitigating the adverse impact of the Covid-19 pandemic across the state.
7. During the year 2019, there has been a dislocation of about three months in the construction activity in the NCR due to orders of the hon'ble Supreme Court, the NGT and the EPCA.
8. As per the provisions of section 6 of the Act, the Authority is empowered to grant extension of registration on the grounds of force majeure on the

application of the promoter. However, granting such extension to all the promoters in case of all the projects, irrespective of the intent and the capacity of the promoter to complete such a project, or irrespective of the fact as to when the registration of the project is ending, may not serve the desired purpose. The waiving of the extension fee in all the instances, whether the extension has been sought solely on the force majeure grounds, or it has been clubbed with normal extension of registration, may also not be in conformity with the letter and spirit of the Rule.

9. The object of the Act is ensuring the delivery of the house to the allottees and the same is abundantly evident from the provisions of section 7 and 8 of the Act also. Section 8 clearly lays down that the Authority shall facilitate the development of the balance work of the project after the revocation or the lapse of registration through the agency of the AOA or the competent authority or through any other means as per the wisdom of the Authority. The hon'ble Bombay High Court has also ruled in its orders in the Neelkamal Realtors and others that provisions of section 6,7 and 8 of the Act should be read in conjunction and that the lapse of registration does not necessarily mean divesting the promoter of its project. However, it has stipulated the consultation with the AOA in such matters. The Authority has accordingly permitted the promoters of some of the projects to complete such projects under the close supervision of the Authority, if the AOA has consented to it. The authorization of the AOAs for the completion of the development of remaining work of the project has not been a smooth affair even when the association has come forward for undertaking the completion of the project. There is almost always a cumbersome litigation on such authorizations. The competent authorities are not coming forward to undertake the development of such projects. So, there is much greater likelihood of the completion of a delayed project if the promoter itself shows commitment to complete the project within the most reasonable timeframe supported by the tying up of the finances.
10. The Authority has been continuously holding review meetings with the promoters of the projects whose registrations have lapsed and it has been gathered from the exchanges with them that they shall need some additional time over and above the extension of one year permissible under section 6 of the Act to complete the project. They have relied on the dislocations caused by the Covid-19 pandemic and the short-term restrictions imposed by the hon'ble Supreme Court, the NGT and the EPCA after the promoter had declared the time frame to complete the project in RERA. More specifically, in the NCR region the restrictions under the orders of the NGT were in force for 8 days with effect from 09-11-2017, for 16 days w.e.f. 29-10-2018, for 5 days w.e.f. 05-11-2019 under the orders of EPCA and for 36 days w.e.f.

04-11-2019 under the orders of the hon'ble Supreme Court. Further, under the orders of hon'ble Supreme Court dated 14-02-2020, night time construction was prohibited. However, some span of restriction was overlapping with the national lockdown on account of Covid-19 pandemic. It can be understood that there had been an interruption of 3 - 4 months in the NCR as a result of combined impact of these orders.

11. The Authority feels that there is a case to grant of some additional time for updating QPRs and other statutory compliances. The Authority also feels that it would be appropriate to send a reference to the government under section 32 of the Act for extension of the validity of the sanctioned plans/maps without charging of fee as was done by the government subsequent on the advisory of the GOI dated 28-05-2020. However, the Authority is of the view that it should not grant such requests of the CREDAI and the NAREDCO which may compromise the lawful claims and interests of the allottees or which may result in diluting the provisions of the Act or the Rules.

Taking the above factors into consideration, the Authority took the following decision with a view to mitigate the impediments in the development of the projects registered with the Authority and in furtherance of the objective of the Act to facilitate delivery of the houses allotted to the allottees:-

1. The registration of the projects may be extended by one year as per the provisions of the first proviso of section 6 of the Act as per the procedure laid down in this behalf. Further to this, the Authority, with a view to realize its mandate under the Act, may grant extension of registration up to maximum period of 15 months in the NCR region and 12 months in the districts outside the NCR, which includes six month extension already granted on the grounds of adverse impact of the first wave of the Covid-19 Pandemic, on the basis of the force majeure clause as per powers conferred on it under section 6 of the Act read with section 7 and 8 of the Act, rule 7 of the Rules and the legal principle laid down by the hon'ble Bombay High Court the case of Neelkamal Realtors and others Vs Union of India and others in this behalf, subject to the following conditions:
 - a. Such an extension shall be granted on an application of the promoter in the prescribed form E, as per section 6 of the Act and rule 7 of the Rules.
 - b. Such relaxation shall be granted in case of projects whose registration, original or extended, is ending or has ended on a date not later than 31-12-2021 if the Authority is satisfied, from the grounds and justification given by the promoter in its application read with the affidavit submitted by it, that the promoter has commitment to complete the project within such extended period of registration and its commitment is substantiated

from the report of the inspection of the project conducted by the Technical Advisor of the Authority and such other reports and materials available at the end of the Authority.

- c. The promoter shall be required to submit a convincing financial plan to finance the remaining construction and development of the project through project finance or from its own sources.
 - d. In the matters of the projects whose registration is valid beyond 31-12-2021, the concerned promoters are hereby advised to speed up the development work and their cases shall be considered on the basis of the actual progress of the projects at appropriate point of time, on an application by the concerned promoter.
 - e. If any promoter is seeking extension of more than 2 years and 3 months in the NCR region or two years in the districts outside the NCR (which includes one year of extension for reasons of default and 15/12 months, as the case may be, on the basis of the force majeure clause), it shall be required to come with a written agreement with the Association of Allottees (AOA) for appropriate decision at the end of the Authority under section 6 read with section 7 and 8 of the Act.
 - f. This additional extension of the registration shall be without any prejudice to the lawful rights and claims of the allottees of such projects. Other conditions for extension of registration, like the filing of the valid map or compounded map or annual audit report or the QPR, shall remain the same as determined by the Authority in its previous orders.
 - g. The Authority shall not charge any fee for the extension of the registration of a project if such application is on the basis of force majeure clause only. If the application is on the grounds both of normal default and the force majeure clause, the promoter shall be required to submit the prescribed fee for extension of the registration.
 - h. If it is discovered at any stage that the promoter has obtained the extension of the registration by misrepresenting the facts, the certificate of extension shall be cancelled and proceedings to impose penalty under section 63 of the Act initiated.
- 1- The Authority resolves to send a recommendation to the government in the Departments of Housing and Industrial Development using its powers under section 32 of the Act for direction to all competent authorities to extend the validity of the maps/ NOCs for further period of 9 months without levying of any charges/ fees/ penalties/cess as done previously on the basis of the GOI advisory dated 205-2020.
 - 2- The Authority hereby extends the time limit for filing of all pending QPRs of the projects to 30th September, 2021 without payment of any penalties.

Further to this, the time limit to upload the Annual Audit Reports of the separate accounts of the projects is also extended to 31st December, 2021.

- 3- All other requests of the two confederations, impacting the rights and claims of the allottees, shall be addressed by the Authority or its benches in accordance with law after hearing both the parties and taking into account all the relevant circumstances relating to the matter.

These orders are being issued with the approval of the Authority.


(Rajesh Kumar Tyagi)

Secretary

U.P. Real Estate Regulatory Authority

Letter and Date as above.

Copy: For information and relevant action: -

- 1- Hon'ble Chairman, Uttar Pradesh Real Estate Regulatory Authority.
- 2- Hon'ble Members, Uttar Pradesh Real Estate Regulatory Authority.
- 3- Additional Chief Secretary, Industrial Development Govt. of Uttar Pradesh.
- 4- Principal Secretary, Housing & Urban Planning Department, Govt. of Uttar Pradesh.
- 5- Principal Advisor, Uttar Pradesh Real Estate Regulatory Authority.
- 6- Finance Controller, Uttar Pradesh Real Estate Regulatory Authority.
- 7- Technical Advisor, Uttar Pradesh Real Estate Regulatory Authority for sending the copy of this order to all concerned and for further necessary action.
- 8- Legal Advisor, Uttar Pradesh Real Estate Regulatory Authority.
- 9- All CEOs, Industrial Development Authorities, Uttar Pradesh.
- 10- All Vice Chairmen, Development Authorities, Uttar Pradesh.
- 11- Chairman and Secretary, CREDAI, U.P. and NAREDCO, U.P.
- 12- All Home Buyers' Associations, Uttar Pradesh.
- 13- All Promoters of projects registered with UP RERA.
- 14- Project Management Division, Uttar Pradesh Real Estate Regulatory Authority.
- 15- AD (Systems), Uttar Pradesh Real Estate Regulatory Authority for uploading the order on the website of the Authority.


(Rajesh Kumar Tyagi)

Secretary

U.P. Real Estate Regulatory Authority