



Rajasthan RERA

## Rajasthan Real Estate Regulatory Authority

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No. F1(83)RJ/RERA/2019/873

Dated 22<sup>nd</sup> May, 2020

### ORDER

#### Sub: Extension of Registration of Projects

Whereas section 6 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'RERA') provides for, in addition to extension on grounds of *force majeure*, extension of registration of a project for upto an aggregate period of one year 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.

Whereas there are a number of cases before the Authority where the project has not got completed within the validity of registration and even within the extended period of one year granted under the said section 6; and the Authority is required to take a view whether to grant extension beyond one year or to treat all such projects as lapsed, oust the promoter and try to set up an alternative arrangement for completion of the remaining development works in these projects.

The Hon'ble Bombay High Court has dwelt on this issue in its detailed order, pronounced on 06.12.2017, in Writ Petition No. 2737 of 2017 "Neelkamal Realtors Suburban Pvt. Ltd. and anr. *versus* Union of India and ors." and other connected writ petitions, wherein it has, *inter alia*, observed that -

1. It is possible that a genuine promoter, after making good efforts is unable to complete the project within the time stipulated at the time of initial declaration or under extended period.
2. Considering the extent of power conferred on the authority under Section 7, we need to put up a harmonious construction on the provision of Section 6 of RERA. The law confers powers under Section 7 on the authority, in the larger public interest to regulate the real estate sector. The authority shall be entitled to take into consideration reasons and circumstances due to which the project



could not be completed within the extended aggregate period of one year as prescribed under Section 6. We, therefore, find that a balanced approach keeping in view the object and intent of the enactment and the rights and liabilities of promoter and allottee in larger public interest is to be adopted. The authority would exercise its discretion while dealing with the cases under Sections 6, 7, 8 read with Section 37 of RERA.

3. We would observe that in case the promoter fails to complete the project in the prescribed time declared by him or the extended time under Section 6, then it shall not mean that the only outcome would be to oust the promoter from the project.
4. In case the promoter establishes and the authority is convinced that there were compelling circumstances and reasons for the promoter in failing to complete the project during the stipulated time, the authority shall have to examine as to whether there were exceptional circumstances due to which the promoter failed to complete the project. Such an assessment has to be done by the authority on case to case basis and exercise its discretion to advance the purpose and object of RERA by balancing rights of both, the promoter and the allottee. In such exceptional cases, the authority would be entitled to allow the same promoter to continue with the subject project for getting the remaining development work complete as per the directions issued by the authority.
5. If the authority does not find any deliberate lapses on the part of the promoters and in case the authority is convinced that there are exceptional circumstances compelling in nature which prevented the promoter to complete the development work, then it shall be necessary for the authority to continue the same promoter under its directions.
6. Having a careful scrutiny of the relevant provisions of the RERA, its object and scheme and considering the submissions advanced, we have harmoniously construed the provisions of Sections 6, 7, 8 and 37 of RERA. We hold that in case the authority is satisfied that there are exceptional and compelling circumstances due to which promoter could not complete the project in spite of extension granted under Section 6, then the authority would be entitled to continue the registration of the project by exercising powers under Sections 7(3), 8 or 37 of the RERA. Such powers shall be exercised on case to case basis. We hold that while



exercising powers in this regard, the authority shall be bound to hear the promoter, allottee or associations of allottees, as the case may be. In deserving cases the authority would be even entitled to consult the appropriate Government. The authority, while dealing with such cases, shall be bound to pass a reasoned order.

7. The construction placed by us on these provisions shall not be construed to mean that in every case of failure of promoter to complete the project within the extended time as prescribed under Section 6, the promoter shall be entitled as of right to seek further extension.
8. RERA is not a law relating to only regulatory control over the promoter but its object is to develop the real estate sector, particularly, the incomplete projects across the country.

In view of the aforesaid interpretation of the provisions of RERA, the Authority considers it appropriate that before ousting the promoters from all such projects that remain or have remained incomplete at the end of the extended period of one year, each case is considered on its merits to decide whether it will be in the better interest of completion of the project to continue the same promoter by extending registration beyond one year.

Therefore, in exercise of the powers conferred on the Authority under section 37 read with sections 6, 7 and 8 of RERA, the following directions are hereby issued for processing extension of registration beyond one year, in deserving cases:

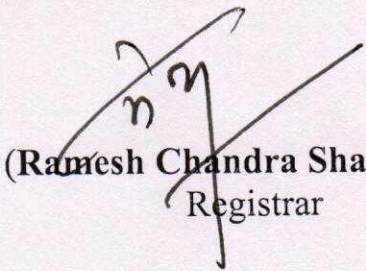
1. The promoter will apply for extension in the prescribed form, stating clearly the exceptional and compelling circumstances and reasons due to which the project could not be completed even within the extended period of one year.
2. The application will be accompanied with a demand draft, banker's cheque or proof of deposit/online payment of fee (extension fee and standard fee) as specified in para 3 of the Authority's order No. F.4(1)RJ/RERA/ 2017/D-3080 dated 16.08.2019.
3. The application will have to be submitted before expiry of the extended period of one year granted under section 6 of RERA, along with fee as specified in the preceding para. In those cases where the extended period of registration of one year has already elapsed, or will elapse in the meanwhile, the application for further extension under this order can be submitted within three months of the date of issue of



this order, along with fee as specified in the preceding para. In cases of delay in submission of application beyond these deadlines, extension fee, penalty and standard fee shall be payable as specified in para 4 of the Authority's order No. F.4(1)RJ/RERA/ 2017/D-3080 dated 16.08.2019.

4. No promoter will be entitled to an extension beyond one year as a matter of right. Such extension will be granted by the Authority only where it is convinced that there were compelling circumstances and reasons that have delayed the project even beyond the extended period of one year and the promoter is likely to complete the project within the period so extended.
5. The Authority will, therefore, take decision, on case to case basis, based on facts and circumstances of each case; and the decision taken in one case will not constitute a precedent for another case. The Authority will also be free to impose any special condition(s) that it may consider necessary in the facts and circumstances of a particular case.
6. Before deciding the application, besides the promoter, the allottees or the association or society or co-operative society, as the case may be, of the allottees, where such association or society or co-operative society has been formed under clause (e) of sub-section (4) of section 11 of RERA, will be given an opportunity of being heard.
7. Being not on grounds of *force majeure*, the extension granted under this order shall always be without prejudice to the rights and interests of the allottees under the agreement for sale. Nor will it exonerate the promoter from his obligations to the allottees under RERA.
8. Where extension is not applied for under this order or is refused, the project, remaining incomplete at the end of one year of extension granted under section 6 of RERA, will be treated as a lapsed project, the promoter will be ousted from the project and further steps will be taken by the Authority to get the development works of the project completed under the provisions of section 8 of RERA.

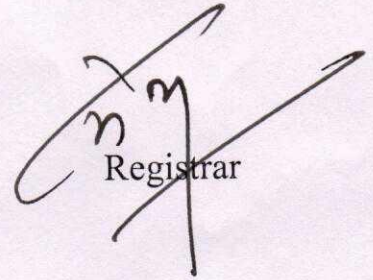
This issues with the approval of Hon'ble Chairman of the Authority.

  
(Ramesh Chandra Sharma)  
Registrar



Copy to the following for information and necessary action:

1. PS to Chairman, Rajasthan RERA, Jaipur
2. President, CREDAI Rajasthan, Jaipur
3. President, TODAR, Jaipur
4. President, RAHDA, Jaipur
5. President, CREDAI NCR BhiwadiNeemrana, Bhiwadi
6. President, RERA India Educational & Resources Federation, Jaipur
7. Chairman, RERA Awareness Committee, ICAI, Jaipur Branch , Jaipur
8. Chairman, RERA Committee, Tax Consultants Association, Jaipur
9. Chief Editor, RERA Times, Jaipur
10. All officers of Rajasthan RERA
11. RERA website
12. Guard file

  
Registrar