

MAHARERA

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ANALYSIS OF SECTION 7 OF RERDA, 2016 :-

Section 7(1) of the Act deals with Revocation of registration of project upon satisfaction that :-

- a. Promoters violates anything required to be done under Act, Rules and Regulation made thereunder.
- b. Promoter violates terms or conditions of the approval granted by competent authority
- c. Promoter is involved in any kind of unfair trade practices or irregularities.

Section 7(2) of the Act provides that no such revocation can be done by authority unless not less than 30 days notice stating the grounds of revocation is given to the promoter and promoter be given chance of reply to the proposed revocation.

Section 7(3) of the Act empowers the Authority to impose certain terms and conditions on promoter in the interest of allottees, instead of revoking the registration and these terms and conditions shall be binding on the promoter.

The issue raised by various developers under Writ Petition 2737 of 2017 before Hon. High Court Mumbai in connection with stringent provision of Section 6 has been elaborately discussed in the said judgement as under :-

- a. Section 6 permits authority to grant extension only for one year and such provisions were harsh in nature and it fails to appreciate various force majeure conditions and the same has been challenged by developers in the Writ Petition for declaring it to be arbitrary and constitutionally invalid.
- b. Hon. High Court observed that intention of the legislation to be viewed looking at the larger public interest and there lies answer in Section 7(3) which empowers authority to further grant extension beyond one year based on merits of the case. Harmonious and balance construction of Section 6 and Section 7(3) shall suffice the purpose of enactment of RERA law.

Accordingly, authority was required to consider each such case individually on merit and decide the terms and conditions to be imposed upon the promoter for further extension instead of revoking the registration of project as spelled out in Section 7(3) of the Act.

However, authority has issued Maharera Order No.07/2019 dated 8th Feb , 2019 imposing common conditions to all such promoters intending to seek further extension beyond one year that concerned association of allottees resolves that existing promoter be permitted to complete the project in specified time limit.

This means that if association of allottees decides not to continue with the existing promoter then association of allottees shall have first right of refusal to continue as promoter and it can appoint some other developer as promoter.

Authority has imposed such blanket conditions on all promoters without first going into the merits of the case and satisfying whether such projects requires imposition of terms or conditions.

The following issues and practical difficulties arises from operation of this order of the authority :-

- a. In many projects , there are secured creditor like banks and financial institutions having charge on the project land and various units. The issue remains unaddressed in light of the facts that these financial institutions have absolute right to dispose of the project land as it is where it is.
- b. It is difficult to unite all such allottees in the absence of required data viz address, contact details etc. The current Form 3 issued by Chartered Accountants does not have all these details and practically uniting all these allottees is challenge before authority especially where promoter are not attending to such proceedings.
- c. Further, there is requirement of resolution of association of allottee which means that meeting is required to called for and resolution is to be passed in the said meeting. Practically various allottee are spread over geographical area across various cities or countries and it become difficult for promoter to hold the meeting of the association of allottee for getting the resolution passed in favour of the promoter.
- d. In layout conditions standalone project if revoked will affect the entire project land which remains unexplored on account of proposed projects in future and there could be ongoing litigation by the promoter to protect his rights and interest.
- e. There are many projects which have become non feasible for new developer to take over and association will have to complete the project on its own by contributing additional funds and on this count no resolutions could be dawn by the association of allottees.

In Nutshell , the issue requires analytical thought process in depth industry to revive the stalled projects under prevailing state of recession on Real Estate Sector with various stakeholders like financial institutions, promoter and association of allottees etc.

Authority need to assume its administrative jurisdiction to balance out the progress of real estate sector and protect the rights of consumers and should not on back seat by issue of such order u/s 7(3) of the Act and passing all the tasks to be performed by association of allottees which are generally unorganized with different group of allottees having different mind set.

Further, complaint filed by allottees with respect to their claim u/s 18 for refund of entire sum with interest or interest claim for delay in possession, remain unaddressed till revival of the project and presently their complaints are disposed off and they have liberty to re approach Maharera once project is revived by filing new complains , which involves further cost on the part of complainants.