

Real Estate (Regulation and Development) Act, 2016 (RERA)

Case law study

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This article attempts to discuss the issues in respect of revocation of registration of project, completion of project and liability of the Land owner to complete the project as per provision of RERA.

Issues:

Whether a GujRERA Authority should revoke the registration of project or to exercise the power under Section 7(3) of RERA.

Whether Land owner is also liable to complete the project in the capacity of co-promoter.

Provisions:

As per Section 7 (1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;
- (b) the promoter violates any of the terms and conditions of the approval given by the competent authority;
- (c) the promoter is involved in any kind of unfair practice or irregularities.

7(2) The registration granted to the promoter

7(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

Section 2(zk) Promoter means

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- (iii) any development authority.....
- (iv) an apex State level co-operative housing.....
- (v) any other person who acts himself as a builder.....
- (vi) such other person who.....

Fact of the case:

In the present case total 63 complaint were made against the promoter Dharti Madrid Country LLP for various grounds i.e. delay in construction work and handover of possession as per agreement to sale, and non-execution of conveyance deed.

The complaints were made with the GujRERA Authority that construction work of the project has stopped due to internal dispute between the Developer and the Land owner. The Landowner who is also the partner in the LLP called Dharti Madrid Country LLP has denied to sign the conveyance deed and cheques to release the payment to various vendor on the ground that consideration in respect of the land was not received as per development agreement. This dispute has resulted in delay in completion of the project.

On the request of allottees to speed up the construction work and to verify the financial irregularity in the project GujRERA authority has issued order for forensic audit, however as per the forensic audit report there were no finding in respect of financial irregularity in the project and it was found that the money was utilised for the purpose of the project only.

The forensic auditor was assisted by the technical expert in the field of engineering and land matter to find out the cost of construction and the amount payable to the land owner and it was found that sufficient amount was paid to the land owner and only some part payment is to be paid.

After considering all the reports and finding, it was requested to resolve the matter amicably but the same could not be resolved and the time line to complete the project was expired on 31st December, 2019 and due to this one new issues has arisen that whether the registration of the project needs to be revoked or GujRERA Authority should exercise the power under section 7(3) of RERA.

However, with the object to protect the interest of the home buyer, registration of the project was not revoked and it was permitted to remain in force subject to some terms and conditions.

Conclusion:

1. Promoter will make an application for extension of project within 30 days.
2. Promoter shall complete the project as per estimation made by technical consultant who has assisted the forensic auditor.
3. A monitoring committee shall be formed, comprising of the Senior technical Consultant-GujRERA, Finance Controller-GujRERA, Technical Officer-GujRERA and Representative from Sun Lucas Owners Association, to supervise the project.
4. Promoter shall provide Bank Guarantee of Rs. 1.3 Cr of the amount equivalent to the 3 months requirement of the project.
5. Operation of the Existing RERA will be kept in abeyance and new account will be opened.
6. New account will be operated by the Developer, Land owner and representative of the allottee. However, the withdrawal will be subject to approval of the monitoring committee.
7. Money received in the new account will be first utilised for the construction of project and balance can be utilised for to make the payment to landowner.
8. The Administrative officer-GujRERA will sign the sale deed and agreement to sale if one of the land owner (Chaital Bhatt) deny to sign the same and all the agreement to sale and sale deed will be signed jointly by the Developer, Landowner (Sunil Patel) and the Administrative officer-GujRERA.
9. The above arrangement is up to completion of the project only.
10. Local Authority is directed that no construction permission will be granted on unutilized portion of the disputed land.