



Effect of Covid-19 on Projects Registered under RERA

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The incidence of Coronavirus (COVID-19), as we are all aware, has caused worldwide disruptions and has forced businesses to deal with operational and financial challenges overnight. COVID-19 has been declared as a ‘pandemic’ and a ‘public health emergency of international concern’ by the World Health Organisation. In India, a nationwide lockdown of 21 days commencing from March 25, 2020 was imposed by the Ministry of Home Affairs (‘MHA’) to battle and prevent the spread of COVID-19 which has now been extended until May 17, 2020.

The real estate sector, which was already reeling under the effects of a slow economy, has been further severely affected on account of this lockdown. During this lockdown period, construction activities were prohibited (subject to certain exemptions in specific areas) which brought the development of real estate projects to a grinding halt. The present situation not only impacts the allottees/ flat purchasers but also exposes the promoters/developers of the real estate projects to a risk of potential default under the Real Estate (Regulation and Development) Act, 2016 (‘RERA’) as well as the various agreements executed with the allottees in relation to such projects.

In this article, we seek to analyse the effect of COVID-19 on real estate projects registered under RERA broadly under the following two heads:

Effect of COVID-19 on Registration of Real Estate Projects and Statutory Compliances under RERA

- i. Under RERA, at the time of making an application for registration, a promoter is required to declare to the respective state authority established under RERA (‘RERA Authority’), the period within which the real estate project is to be completed by the promoter. Accordingly, the certificate of registration of the real estate project is valid for the period applied for.
- ii. Section 6 of RERA empowers RERA Authorities to grant an extension of the registration period in certain circumstances viz., (a) in the event of a *force majeure* event; or (b) on account of reasonable circumstances (if so deemed fit by the RERA Authority) not attributable to a default on the part of the promoter.

The term *force majeure* has been defined under Section 6 to mean ‘a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project’.

Thus, in order to seek an extension of the registration period for the real estate project, the development of the real estate project must have necessarily been affected either by (a) one of the aforesaid events set out in the definition of *force majeure*; or (b) any other reasonable circumstances which, in the opinion of the relevant RERA Authority, warrants an extension of period of registration. The terms ‘calamity’ or ‘calamity caused by nature’ have not been defined under RERA. However, it can certainly be argued that the term *force majeure* would also include other events, such as the pandemic caused by COVID-19, which are beyond the control of the concerned party. The Ministry of Finance, Government of India has, in fact, recognized the COVID-19 pandemic as a natural calamity and a *force majeure* event. The Union Finance Minister has also, at a press conference held on May 13, 2020, announced that, as a part of the Covid-19 Economic Relief Package granted by the Prime Minister of India, the Ministry of Urban and Housing Affairs will advise¹ the States and Union Territories and their RERA Authorities to (a) treat Covid-19 as a “Force Majeure” event under RERA; and (b) extend the registration and completion date of registered projects expiring on or after March 25, 2020 *suo-motu* by 6 months without the need for individual application, and for a further period of upto 3 months, if required. Additionally, the promoter can seek an extension of the registration on grounds of the delay being due to ‘reasonable circumstances not attributable to a default on the part of the promoter’ since the pandemic and the consequent lockdown was beyond the control of the promoter.

- iii. Keeping this in mind and with a view to reduce the stress on the developers and promoters, several RERA Authorities have taken cognizance of the current situation arising on account of COVID-19 and have, even prior to the press conference of the Union Finance Minister, *suo-motu*, issued notices/ circulars, *inter alia*, granting extension of registration of the real estate projects and the timelines for statutory compliances. We have set out details of extensions granted by some of the RERA Authorities in **Table A** hereto.

¹ This is an advisory from the Central Government to the States and the Union Territories. Considering the present situation, the advisory will most probably be followed by the States and the Union Territories. However, we will have to wait until the requisite circulars/ directions are issued in this regard by the relevant RERA Authorities.

Effect of COVID-19 on the Proposed Date of Handover of Possession of a Unit

- i. RERA does not contain any specific provisions for extension of timelines for handover of possession of a unit to the allottee on account of a force majeure event similar to the extension provision envisaged under Section 6 of RERA in relation to the registration period. The effect of COVID-19 on the proposed date of handover of possession of a unit to an allottee will, therefore, depend on the terms of the agreement executed between the promoter and the allottee ('Agreement') and the inclusion of a force majeure clause in such an Agreement.
- ii. If the Agreement contains a clause for extension of timelines for handing over of possession of a unit on account of a force majeure event, the provisions of such clause will have to be considered carefully to ascertain whether a delay on account of (a) a pandemic/ epidemic; or (b) any order/ circular/ notice issued by the Government or any competent authority affecting the development of the project; or (c) any other reason beyond the control of the promoter which affects the development of the project, is included within its ambit. If such circumstances are clearly included within the ambit of the relevant force majeure clause, the promoter will be entitled to an extension of time in accordance with the terms of the Agreement either on the basis that COVID-19 is clearly a pandemic/ epidemic, or on the basis that the lockdown imposed by the Government is an order/ directive by the Government and is clearly beyond the control of the promoter. It is, therefore, essential to review each Agreement carefully and specifically, the force majeure clause, to ascertain the implication of COVID-19 on the proposed handover date.
- iii. If the Agreement does not contain a force majeure clause or where the Agreement contains a force majeure clause but the provisions thereof do not bring within its fold the circumstances provided above, the promoter may not be able to claim extension of time for handing over the possession of the unit to the allottee. In such cases, the promoter will be liable under Section 18 of RERA, *i.e.*, at the allottee's option, to either (a) refund to the allottee, the entire amount received by the promoter together with the prescribed interest thereon and also, pay the prescribed compensation; or (b) pay to the allottee, the prescribed interest for every month of delay in handing over possession.

Conclusion

With the recent increase in the number of COVID-19 cases in India and especially, in the State of Maharashtra, the likelihood of the lockdown being extended is high. This would only prolong the misery of the already bleeding real estate sector and potentially expose the promoters to a vast number of claims and complaints.

Having stated the above, it may be noted that MHA has, by an order dated May 1, 2020 passed under the Disaster Management Act, 2005, issued new guidelines on lockdown measures. In terms of such guidelines, while all construction activities have been permitted in rural areas subject to certain guidelines, only in-situ construction activities (*i.e.*, where workers are available on site and not required to be brought from outside) have been permitted in urban areas.

Given the directions of the Government, the restrictions on development and the direct impact of such restrictions on timelines, in the present scenario, should a promoter/ developer seek extension of the registration period, the relevant RERA Authority may be more inclined to grant such extension.

On the extension of timelines for delivery of possession, whilst the principles of law will be considered in terms of force majeure clauses in the Agreements and the specific facts of the case, considering the gravity of the present situation, impact of lockdown and the detrimental effect on the economy, we would expect the relevant RERA Authority/ Courts to adopt a more balanced approach and direct resolutions to any disputes in this regard factoring equities.



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Table A

STATE	CIRCULAR DATE(S)	CIRCULAR OVERVIEW
Maharashtra	April 2, 2020 April 14, 2020 May 4, 2020 May 18, 2020	<ul style="list-style-type: none"> • Online services, including, project registration, agent registration, project extension, project correction/ update and filing of complaints to continue. • A force majeure period of six months from March 15, 2020 to September 14, 2020 has been invoked. • The validity of registration of the projects registered with Maharashtra Real Estate Regulatory Authority, the completion date or the revised/ extended completion date of which is on or after March 15, 2020, is extended <i>suo-motu</i> till expiry of the aforesaid force majeure period, <i>i.e.</i> by a period of 6 months. • The timelines for all statutory compliances under RERA and the rules thereunder which are due during this force majeure period of 6 months, are automatically extended till expiry of such period. • The force majeure period will be treated as 'moratorium period' for calculating interest payable under provisions of RERA. • The dates of possession set out in registered Agreements will be deemed to be extended by the force majeure period. • The obligation of registering Agreements for Sale and of transfer of title and conveyance being due during the force majeure period is extended till expiry of the force majeure period. • The interest, compensation and penalties payable during the force majeure period will be recovered after expiry of such period.
Gujarat	March 30, 2020 April 13, 2020 May 16, 2020	<ul style="list-style-type: none"> • The validity of registration of the projects, the completion date or the revised/ extended completion date of which is on or after March 25, 2020, is extended <i>suo-motu</i> by a period of 6 months. • As regards projects having their end date on or between April 1, 2020 and September 30, 2021, the promoters are allowed to apply for one time extension of the project end date without payment of any application fee for such extension. • Promoters may opt for a one time project alteration thereby de-registering an identifiable separate portion of the project without payment of a project alteration fee. To affect the above, an application together with consent of the allottees of the portion identified to be de-registered will have to be submitted by the promoter. Such allottees may provide consent either by agreeing to (a) a revised allotment from the continued part of the project; or (b) accept cancellation of booking in terms of the Agreement for Sale. • The possession date in respect of Agreements for Sale executed prior to March 25, 2020 to be extended by a period of 6 months. The promoters are required to extend similar extension in the payment due date where such due dates are between March 25, 2020 and September 30, 2020. • For registered projects, the registration of which has lapsed prior to March 25, 2020, the validity of registration is extended by a period of 6 months, provided that an application with payment of necessary fee is made on the GujRERA portal (where such application has not been made). • GujRERA is implementing a financial quarter based reporting system and the first quarter based quarterly progress report ('QPR') will be required to be filed by July 7, 2020. The projects for which such QPR is filed will be exempted from any regulatory action likely, pending or under process for QPR default committed upto March, 2020.



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STATE	CIRCULAR DATE(S)	CIRCULAR OVERVIEW
Kerala	March 23, 2020 May 15, 2020	<ul style="list-style-type: none">• Since the Kerala Real Estate Regulatory Authority was officially launched on January 1, 2020, the timeline for submitting applications for registration without penalty of ongoing projects in respect of which occupation certificate has not been obtained, which was earlier up to March 31, 2020, has been extended till May 15, 2020.• In case of registered projects having completion date on or after March 25, 2020, the registration and completion period is extended by 6 months.• In case of ongoing projects in respect of which registration certificate is yet to be issued but the completion date committed to the allottees is on or after March 25, 2020, the completion date is extended by a period of 6 months from such committed date.
Tamil Nadu	April 6, 2020	<ul style="list-style-type: none">• The timelines for all statutory compliances which were due in March, 2020 and June, 2020 are extended up to September, 2020.• Completion period of all projects is extended by 5 months and the validity of registration will be co-terminus with the revised completion date.• Registrations valid as on February 1, 2020 are extended automatically up to June 30, 2020.
Karnataka	May 19, 2020	<ul style="list-style-type: none">• The validity of registration of the projects registered with Karnataka Real Estate Authority, the completion date or the revised/ extended completion date of which is on or after March 15, 2020, is <i>suo-motu</i> extended by a period of 6 months by invoking the force majeure clause.• The timelines for all statutory compliances under RERA and the rules thereunder which were due by March 15, 2020 are extended to September 15, 2020.
Uttar Pradesh	April 6, 2020	<ul style="list-style-type: none">• The timeline for updating the QPR for quarter ending March, 2020 has been extended till further notice.



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