



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Order No. ३८ / 2022

No. MahaRERA/Secy/File No.27/744/2022

Date: 13/12/2022

Sub: In the matter of non-negotiable clauses in the agreement for sale to be executed with the allottees.

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as "the Authority".

And whereas, the Government of Maharashtra has notified the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures of Website) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, under Section 34 of the Act, some of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act as well as to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the Rules and Regulations made thereunder.

And whereas, the Authority under Section 37 of the Act, and Regulation 38 of the Regulations is vested with the powers to issue directions to promoters, real estate agents and allottees from time to time as it may consider necessary.

And whereas, the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

MAHARERA HEADQUARTERS

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महारेरा मुख्यालय

हाउसफिन भवन, प्लॉट नं. सी-21, ई-ब्लॉक, वांद्रे-कुर्ला-कॉम्प्लेक्स, वांद्रे (पूर्व), मुंबई ४०००५१.

दूरध्वनी. क्रमांक. ०२२-६८१११६०० ई-मेल: helpdesk@maharera.mahaonline.gov.in

And whereas, Section 4 (2)(g) of the Act mandates promoters to upload along with application for registration of the real estate project, the proforma of the agreement for sale proposed to be signed with the allottees.

And whereas, Rule 10 (1) of the Rules states that for the purpose of Section 13 (2) of the Act, the agreement for sale shall be in conformity with the provisions of the Act, the Rules and Regulations made thereunder and shall be in accordance with the model form of agreement at Annexure 'A'.

And whereas, promoters along with their application for registration of the real estate projects upload the proforma of the agreement for sale proposed to be signed with the allottees, however, most of the times the proforma of the agreement for sale as uploaded are not in accordance with the model form of agreement at Annexure 'A' of Rule 10 (1) of the Rules.

And whereas, the Explanatory Note in the model form of agreement at Annexure 'A' of Rule 10 (1) of the Rules categorically states that the model form of agreement may be modified and adopted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are in accordance with the statute and mandatory according to the provisions of the Act shall be retained in each and every agreement executed between the promoter and allottee and any clause found contrary to or inconsistent with any provisions of the Act, the Rules and Regulations would be void ab initio.

And whereas, in view of the above-referred Explanatory Note the Authority has permitted modifications in the agreement for sale however such modification are to be highlighted and also mentioned in the deviation sheet and also to be uploaded in order to enable the allottee to have proper and easy understanding of the modification made.

And whereas, inspite of the above, promoters are modifying the clauses which are mandated as per the provisions of the Act, the Rules and the Regulations made thereunder, some of such deviations (not exhaustive) that are modified by the promoters in the proforma of the agreement for sale to be signed with the allottees are as follows:

- (a) It is noticed that promoters are attempting to expand the definition of force majeure to include items beyond the law. Force majeure clause not being in accordance with the explanation given under Section 6 of Act

and Rule 6 (a) of the Regulations which provisions are reproduced herein below for ready reference.

Section 6 "Explanation. - For the purpose of this section, the expression "force majeure" shall 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."

Rule 6 (a) "Upon the registration number in Form "C". The period for which registration shall be valid shall exclude such period where actual work could not be carried by the promoter as per the sanctioned plan due to specific stay or injunction orders relating to the real estate project from any Court of law, or Tribunal, competent authority, statutory authority, high power committee, etc."

- (b) Time period for the formation of association of allottees by whatever name called, not being in compliance with the proviso of Section 11 (4)(e) of the Act read with Rule 9 (1) of the Rules which proviso and Rule are as follows:

Section 11(4)(e) "Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;"

Rule 9(1)(i) "Where a Co-operative Housing Society the Promoter shall submit the application in

that behalf to the Registrar for registration of a Co-operative Housing Society under the Maharashtra Co-operative Societies Act, 1960 or a company or any other legal entity, within three months from the date or which fifty-one per cent of the total number of allottees in such a building or a wing have booked their apartment.

Rule 9(1)(ii) "Where a Promoter, then the Promoter shall submit an application to the Registrar for registration of the Co-operative Society or the company application to the Registrar for registration of the co-operative society or the company to form and register an Apex Body in form of Federation or Holding entity consisting of all such entities in the layout formed as per clause(i) of Sub-rule (1) of rule 9(1)(i) herein above. Such application shall be made within a period of three months from the date of the receipt of Occupation Certificate of the last of the building which was to be constructed in the layout.

- (c) Time period for execution of registered conveyance deed with the association of allottees by whatever name called, not being as per the mandate of Section 17 of the Act read with Rule 9 (2) of the Rules, the said mandate reads as follows:

Section 17 "Provided that in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

Rule 9 (2) (ii) "Period for Conveyance of title, by Promoter, to legal entity of allottees in case of single building project.

The Promoter shall (subject to his right to dispose of the remaining apartments, if any) execute the conveyance of title within three months from the date of issue of occupancy certificate."

Rule 9 (2) (iii) "Period for conveyance of title, by Promoter, to organization of allottees in case of Layout.

(a) In the case of a building or a wing of a building in a Layout, the Promoter shall (subject to his right to dispose of the remaining apartments, if any) execute the conveyance of the structure of that building or wing of that building (excluding basements and podiums) within one month from the date of issue of occupancy certificate.

(b) In the case of a layout, the Promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly or otherwise within three months from the date of issue of occupancy certificate to the last of the building or wing in the layout."

(d) Not mentioning of the defect liability period or reducing the defect liability period. The relevant provision of the Act i.e. Section 14 (3) reads as follows:

Section 14 (3) "In case any structural defect or any

other defect in workmanship, quality or provisions of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession... .. under the Act."

Further, 2 (two) clauses in the model form of agreement at Annexure 'A' of Rule 10 (1) of the Rules are not permitted to be modified and are considered by the Authority as non-negotiable which are as follows:

- (i) **"The Promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area, subject to a variation cap of three percent. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area within the defined limit then Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate specified in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area allotted to Allottee, the Promoter shall demand additional amount from the Allottee as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square meter as agreed in Clause 1(a) of this Agreement."**
- (ii) **"Without prejudice to the right of promoter to charge interest in terms of sub clause 4.1 above, on the Allottee committing default in payment on due date of any amount due and payable by the Allottee to the Promoter under this Agreement (including his/her proportionate share of taxes levied by**

concerned local authority and other outgoings) and on the allottee committing three defaults of payment of instalments, the Promoter shall at his own option, may terminate this Agreement:

Provided that, Promoter shall give notice of fifteen days in writing to the Allottee, by Registered Post AD at the address provided by the allottee and mail at the e-mail address provided by the Allottee, of his intention to terminate this Agreement and of the specific breach or breaches of terms and conditions in respect of which it is intended to terminate the Agreement. If the Allottee fails to rectify the breach or breaches mentioned by the Promoter within the period of notice then at the end of such notice period, promoter shall be entitled to terminate this Agreement.

Provided, further that upon termination of this Agreement as aforesaid, the Promoter shall refund to the Allottee (subject to adjustment and recovery of any agreed liquidated damages or any other amount which may be payable to Promoter) within a period of thirty days of the termination, the instalments of sale consideration of the Apartment which may till then have been paid by the Allottee to the Promoter."

The above-referred provisions of the Act, the Rules and Regulations made thereunder as well as the 2 (two) clauses in the model form of agreement at Annexure 'A' Rule 10 (1) of the Rules should be mentioned in the clauses of the agreement for sale to be executed between the promoter and allottee and if the same is not incorporated or if the same are modified the following directions shall apply.

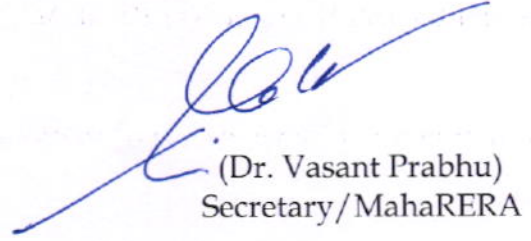
The provisions of the Act, the Rules and Regulations as amended up-to-date shall be binding upon the promoter as well as 2 (two) clauses of the model

form of agreement at Annexure 'A' of Rule 10 (1) of the Rules which are considered by the Authority as non-negotiable, irrespective of what is agreed upon between the promoters and the allottees in the registered agreement for sale executed between the said parties and all such clauses in the registered agreement for sale shall be considered as void ab initio and not binding upon the allottees.

All applications of registration where there is violation of the above mentioned clauses shall be liable to summary rejection.

This shall come into force with immediate effect.

By order of the Authority



(Dr. Vasant Prabhu)
Secretary/MahaRERA