



ATLAS LAW
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COVID-19: EFFECT ON REAL ESTATE PROJECTS

Introduction:

The Real Estate industry is one of the major sectors that contribute to the overall Gross Domestic Product (GDP) of our country. According to the KPMG report titled 'Indian Real Estate and Construction: Consolidating for growth' presented by the National Real Estate Development Council (NAREDCO) and Asia Pacific Real Estate Association (APREA), read with CIRIL's Half Yearly Round Off 2019 report, the Indian real estate sector is expected to contribute 13 percent to the country's GDP by 2025¹.

However, since the onset of the Novel Coronavirus or 'COVID-19', there has been a cascading effect on the economy including the real estate sector.²

The Government of India had earlier imposed a complete lockdown over the entire country for 21 days with effect from March 24, 2020 and which has now been further extended till May 3, 2020.

Delays in construction and completion timelines of real estate projects

There has been a complete closure of all offices, shops, business operations (other than essential services) with disruption in supply chains and mass exodus of migrant labourers.

The supply of raw material for construction also stopped as the lockdown orders only exempted transportation of essential supplies. This situation has led to a complete halt of work at construction sites throughout India.

The abrupt halt in construction of upcoming projects is bound to lead to delays in completing project and it is estimated that this would have a direct impact on approx. 15 lakh under construction residential units across India and out of which 4.25 lakh under construction flats in Delhi NCR alone according to Anarock, real estate consultant firm.³

The Real Estate (Regulation and Development) Act, 2016 ("**Act**") read with the rules and regulations were brought into effect to *inter alia* regulate developers and ensure the compliance of timelines for completion of projects.

It is pertinent to note that while the Act imposes penalties in case of delays in completion of project within the specified timelines, it also provides for a mechanism to apply for an extension.

Section 6 of the Act states as under:

"The registration granted under section 5 may be extended by the authority on an application made by the promoter due to

¹ http://naredco.in/notification/pdfs/data_file-kpmg-1539770622.pdf;
http://www.naredco.in/notification/pdfs/CIRIL%20Half%20Yearly%20Report-2019-H1_01.pdf

² <https://economictimes.indiatimes.com/wealth/real-estate/covid-19-impact-housing-sales-may-fall-35-in-2020-demand-for-office-space-may-shrink-30/articleshow/74947019.cms>

³ <https://www.hindustantimes.com/cities/lockdown-impact-4-25-lakh-under-construction-flats-in-ncr-will-be-delayed/story-ysMP4ttL6GBZeio9WP0aiO.html>

force majeure, in such form and on payment of such fee as may be prescribed: Provided that the authority may 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, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

The process of applying for an extension is further laid down under the State Rules. In Haryana for example, the Haryana Real Estate (Regulation and Development) Rules, 2017 under Rule 6 of the Haryana Real Estate (Regulation and Development) Rules, 2017 prescribes Form REP V to be submitted before the Authority:

“(1) —The registration granted under the Act, may be extended by the authority, on an application made by the promoter in Form REP-V, in triplicate within three months prior to the expiry of the registration granted.

(2) The application for extension of registration shall be accompanied with a demand draft or a bankers cheque in favour of “Haryana Real Estate Regulatory Authority” drawn on any scheduled bank or through online payment mode, as the case may be, for an amount equivalent to half the registration fees as prescribed under sub-rule (2) of rule 3 along with an explanatory note setting out the reasons for delay in the completion of the project and the need for extension of registration for the project, along with documents supporting such reasons:

Provided that where extension of registration is due to force majeure, court orders, Government policy/guidelines, decisions, the authority may at its discretion, waive the extension fee of registration.

(3) In case of extension of registration, the authority shall inform the promoter about the same in Form REP-VI and in case of rejection of the application for extension of

registration, the authority shall inform the promoter about such rejection in Form REP-IV:

It is relevant to note that the Act provides for an explanation defining “Force Majeure” event 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.”

Hence, RERA has provisioned for force majeure events while considering an application for extension. The issue is whether the COVID-19 pandemic and the ensuing lockdown would be considered a force majeure event under the Act.

In this regard, various groups and organisations from the industry including CREDAI and NAREDCO have sought to make COVID-19 a part of the *force majeure* provision under Section 6 of RERA, extension of project timelines by a year, in addition to other relief.

Relief Measures

In order to tackle the present crisis, various Government departments have provided relief measures, some of which have a direct bearing on real estate projects are briefly discussed here.

A. RERA

In view of the nation-wide lockdown, the Real Estate Regulatory Authority in certain States have acknowledged the severe impact that COVID-19 has had on real estate projects stating “*the supply chains for obtaining construction material have been disrupted and labour work force may have migrated back to their home states*” and have acted accordingly.

Maharashtra RERA vide its notification dated April 02, 2020 (No. MahaRERA /Secy /25 /2020) has issued the following order:

“For all MahaRERA Registered projects where completion date, revised completion

date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months. MahaRERA shall accordingly issue project registration certificates, with revised timelines for such projects, at the earliest. Further, the time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which were due in March / April / May are extended to 30th June 2020.”⁴

Similarly, the Karnataka RERA issued an order vide notification dated April 04, 2020 (KRera No.Sec.CR.4/2019-20) stating that all registered projects where completion date, revised completion date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months. The Authority further provided relaxation of timelines for statutory compliances and extended the same upto June 30, 2020.⁵

Recently, Uttar Pradesh RERA issued a Press Release dated April 14, 2020, in pursuance of its first and second meetings held by video conferencing on April 13 and 14, 2020. In its meetings the Authority deliberated on the issue of whether to ‘grant of extension to the registration of the projects in view of the nationwide lockdown in fight against COVID-19 pandemic’ and decided to extend the date of completion of the projects with the date of completion between 15 March 2020 and 31st December, 2020 by three months. The Authority further allowed the promoters to update the QPR of the first quarter for 2020

and extend the date for other statutory compliances to May 31, 2020.⁶

Other States may follow suit given the extension of the lockdown and mounting pressure from developers and real estate bodies who are reeling under the strain of the situation.

B. Ministry of Home Affairs

In pursuance of its order extending the lockdown till May 3, 2020, the Ministry of Home Affairs vide its Order no.40-3/2020-DM-I(A) dated April 15, 2020 issued consolidated revised guidelines regarding lockdown measures to be taken by Ministries/Departments of Government of India, State/UT Governments for containment of COVID-19 epidemic in the country.⁷

In this regard, the MHA has permitted certain additional activities and services to operate with effect from April 20, 2020, among which include construction related activities as follows:

- i. Construction of road, irrigation projects, building and all kinds of industrial projects, including MSMEs, in rural areas i.e. outside the limits of municipal corporations and municipalities; and all kinds of projects in industrial establishments;*
- ii. Construction of renewable energy projects;*
- iii. Continuation of works in construction projects, within the limits of municipalities, where workers are available on site and no workers are required to be brought in from outside (in situ construction).”*

⁴<https://maharera.mahaonline.gov.in/Site/Upload/PDF/Final%20Order%20for%20Revision%20of%20Duration%20v4.pdf>

⁵<https://rera.karnataka.gov.in/reraDocument?DOC=nbHboHdOzsUUksQRs9UF%2Fw%3D%3D>

⁶<https://up-rera.in/frmIframforPDF.aspx?Param=PressRelease32603ExtensionofValidityperiod.pdf>

⁷https://mha.gov.in/sites/default/files/PR_Consolidated%20Guideline%20of%20MHA_28032020%20%281%29_1.PDF

However, it may be noted that the relevant State/UT/ district administration will operationalise the exemptions and ensure appropriate arrangement as per the Standard Operating Procedures for social distancing, other requirements to be implemented in such workplaces, offices, etc. are in place. While the MHA has issued a general SOP, the State/ UT/ district level orders and direction are awaited, and are expected to be issued in the coming days.

Conclusion:

The recent MHA order allowing construction activities in rural areas and in-situ construction in case of municipal areas is a step in the right direction. However, it remains to be seen whether construction can resume effectively given the disruption in supply of material, non-availability of manpower due to the exodus of migrant labour and implementing SOP.

In its circular dated April 16, 2020, the MHA has further clarified that “*construction activities in rural areas includes water supply and sanitation; laying /erection of power transmission lines and laying of optical fibre and cable along with related activities.*”⁸

However, there is still ambiguity on the extent of activities that are permitted within construction itself that need to be further clarified.

While certain steps have been taken by the Government towards mitigating the hardship, there is still a need for bigger relief to address the liquidity challenges being faced by the real estate sector and ensure the long term sustainability of this sector. State governments also need to step in, including RERA, by granting extensions, to project deadlines, if not already provided, and allowing further relaxations to project related compliances.

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⁸<https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dated%2016.4.2020%20on%20Consolidated%20Revised%20Guidelines.pdf>