

### Real Estate Bytes

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### ✚ In the registration of your Sale Deed, your attendance is not required!

*-Rhea S Verghese, Associate*

The Supreme Court (“SC”) and various states stand on opposite sides of the bridge with the observation so opined by both. The SC observed that at the time of registration of a deed of sale, both the parties needn’t have to be present, in accordance with **Section 32** of the Registration Act 1908 (“Act”). However, rules of certain states require the presence of the seller and the buyer at the time of registration. There are certain exceptions that Section 32 of the Act envisages under the ambit of **Section 31, 88 and 89**. These sections reiterate the importance of the persons authorized by law to be present before the concerned authority under the Act.

The presence of the purchaser before the concerned authority at the time of registration was analysed by the SC in its very recent decision<sup>1</sup>. The notion of the High Court (“HC”) was a conduit to the perception made by the SC and the rules made by various states. A plain reading into the eerie details of **Section 32** makes it clear that the parties needn’t have to be present and further since the conveyance deed did not fall under any exceptions of **Section 32**, the case was disposed of by the SC without conjecturing with the verdict of the HC.

### ✚ Homebuyers expect immediate funding for Negative Net Worth And RERA Non-Registered Projects in budget 2020

*-Neelam Kumari, Legal Intern*

The homebuyers expect immediate deployment of Rs. 25,000 crore alternate investment fund to be restricted not just for positive net worth and Real Estate Regulatory Authority (“RERA”) registered projects but also for negative net worth and RERA non-registered projects in Budget 2020. Earlier, the Government created a fund of Rs. 25,000 crore to boost positive net worth, middle and low-income RERA registered housing projects. Now, homebuyers are hoping for immediate funding for projects that are net worth negative, as such measures will help homebuyers in the completion of stressed housing projects that further boost demand.

This will provide budgetary support to homebuyers who bought units from builders which were later declared net worth negative. Such instances cannot be marked as the fault of homebuyers but they are however stuck in stressed assets.

To improve the situation, the Government had earlier extended its support to this sector but despite all efforts; this segment did not come out of this problem and it required strong building measures to change the fortune of homebuyers and improve their state of affairs. Also, such kind of measure was the need of the hour as any further delay would cause a domino effect amounting to more stressed assets. Additionally, homebuyers proposed that deduction under **Section 80(C)** of Income Tax Act (“Act”) should be segregated from principal repayment on a housing loan i.e. the overall limit of INR 1.5 lakh which currently falls under the ambit of **Section 80(C)** of the Act, and therefore should be set aside from principal repayment of home loan. It is strongly opined that both aspects should not be clubbed together.

### ✚ RERA- A Signature Tune for Homebuyers

*- Ujjal Chattopadhyay, Senior Consultant*

The **Real Estate (Regulation and Development) Act, 2016 (“Act”)** which is the catchline and tag line of the Real Estate Industry has brought the most wanted respect and value to the sector which was earlier unregulated and known for the

<sup>1</sup> H.P. Puttaswamy v Thimmamma & Ors, CIVIL APPEAL NO. 3975 OF 2010

safest sector to deal with unaccounted money. It is a holistic and realistic adjudicating mechanism for faster dispute redressal for optimum regulation and promotion of the sector.

The promoters have succumbed to the situation, finding some sharp curvatures in the route where collisions are inevitable with homebuyers which are being bulleted herein below:

- The Act throws a stricture upon the Promoters to convey and hand over the undivided proportionate title to all the common areas, facilities and amenities to an Association of Allottees or Competent Authority within 90 days from date of issuing occupancy certificate thereby leading to a controversial juncture as to who will manage and maintain the common areas of a project in the interregnum period.
- To add to the injury, the aforesaid stricture also posed a relevant question as to who will bear the registration cost towards registration of Conveyance Deed in respect of common areas.
- Surprisingly, in the 4th year of the Act also, RERA retains its "In Progress" status and the Government may consider amendments in the Act and Rules to make the same more incisive.
- The tenanted and ceased buildings (Pagdi) should be brought under RERA as these buildings are really dotting the landscape of many cities, mainly Mumbai.
- Maharashtra is the forerunner in implementing the majority of the provisions of RERA and the Appellate Tribunal recently under the MahaRERA issued a notification on June 6, 2019, amending certain RERA Rules. Other states are nowhere on the track.
- The Act and Rules do not show any guidelines regarding withdrawing of marketing and brokerage expenses towards the sale of projects from the 70% Escrow Account as Act and Rules are not defined and allow the said two expenses to be a part of the land cost?
- Recent Government circular says that in case of collision and friction between Consumer Protection Act, 1986, RERA Act, 2016 and Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal under IBC, 2016 will be the superior forum to approach as it gets suppressed by the remaining two forums.

## ✚ Getting over Stalled Projects - A Government Panacea

*-Ujjal Chattopadhyay, SeniorConsultant*

The Central Government's courageous initiative to formulate a funding plan to give a thrust to all stuck off housing projects across the country has created a peephole for homebuyers to see some light at the end of the tunnel. A critical analysis would bring out and reveal some pragmatic features of the said scheme as enumerated below:

- The awe-inspirational scheme may exacerbate the pricing issue in the sector as there is a demand-supply imbalance likely to happen once the stalled projects come into the main orbit.
- The projects must be net worth-compliant and should have financial viability and be registered under the Real Estate (Regulation and Development) Act, 2016.
- Though the Government has not put any paraphernalia on any stage of construction, which should be achieved. But, definitely, preference should be given to the projects which can be completed quickly and where a large number of homebuyers can be benefitted.
- The Government's proposed Alternative Investment Fund ("AIF") would act as a scope for the Real Estate-focussed NBFCs and Housing Finance Companies to revive feasible projects once classified as Non-Performing Assets in their records.
- There is a positive surmise that the proposed AIF worth INR 25,000 crore would be highly able to bring 200 million square feet in the main orbit in the next 2-3 years assuming the last mile funding of 30% for the projects with the average construction cost of INR 2,500 per square feet.
- Though only the affordable and mid-income projects are eligible for such funding, other projects have certain other criteria to follow. The government has set the value as well as the size of such stalled projects to be revived.

In spite of the above good and positive notes, will the government's such infusion of funds get you closer to your dream home? According to the government, there are about 1600 stalled projects comprising about 4,58,000

units across India which are fundamentally viable but have been struggling due to lesser sales, customers not buying under-construction properties, operational liquidity crunch and/or lack of credit availability.

#### ✦ Nomination is a means and not an end: Cooperative Group Housing Societies

*-Divyadeep Manu, Associate*

The Indian judiciary has resolved a protracted conundrum between a successor and a nominee, relating to rightful transfer ownership of property. The Hon'ble Supreme Court<sup>2</sup> and Hon'ble Bombay High Court<sup>3</sup> have clarified and settled all ambiguities and confusion of individuals who were in a fix, that, whether the rights of a nominee will prevail over the rights of a successor or vice versa.

The division bench of the Hon'ble Bombay High Court while analysing the **Maharashtra Cooperative Societies Act, 1960 ("Act")**, observed that the Act requires a member of the cooperative society to nominate such person(s) to whom his/ her share and interest should be transferred by the cooperative society after his/her death. Therefore, due to such a condition under the Act, a pertinent question required clarification, that, whether the rights of a nominee would prevail over the rights of a legal heir upon death of the owner.

The Hon'ble Bombay High Court held that the right of a legal heir/successor would prevail over that of the nominees. The court further observed that merely nominating an individual under the Act doesn't create any legal right, title or interest of the nominee in the property, according to the division bench the nominees are only appointed to protect the subject matters given in the nomination as trustee. The court ruled that the nominees have only momentary rights and their responsibility is to warrant that the share or property does not remain in an ownerless void until disputes of succession are settled permanently.

#### ✦ What is the Real Estate Sector expecting from the Union Budget 2020?

*- Aanchal Gujrani, Associate*

Real estate sector which has been witnessing slowdown since many years, was expecting vast changes from the Union Budget 2020. Experts think the roots of the slump in this sector lie in

both demand and supply. The real estate sector went into major slowdown after demonetisation in 2016 and has not quite recovered.

As the Finance Minister had announced over the last 6 months a Rs 25,000 crore fund to rescue stalled projects, similarly more such funds were expected from the upcoming budget as well.

"We need to see that demand side is given a kick beyond imagination. So the first suggestion is a 25% haircut in GST should be given immediately. While it will bring about a deficit in the financing of more than Rs 1.2 lakh crore if it is done for a period of six months as a rebate, it will bring about double-digit growth in economy", said Niranjan Hiranandani, one of Mumbai's top developers and head of NAREDCO.

However, reality did not meet high rising needs and expectations of the Real Estate sector. "Apart from the affordable housing push and personal tax relief, no major benefits came in for resolving the current housing mess. For instance, a hike in the INR 2 lakh tax rebate on housing loan interest rates under Section 24 of the Income Tax Act could have kick-started healthier demand for housing, especially in the affordable and mid-segment categories. But there was no announcement in this regard", said Anuj Puri, Chairman – ANAROCK Property Consultants.

The removal of exemptions under the new personal tax regime will make it simpler to file taxes, but that would mean all the deductions on principal and interest, which includes the Rs. 2 lakh tax rebate on housing loan will have to be foregone, which will not help in increasing any demands in the realty sector.

"Although the extension of benefit for affordable housing for the developers as well as home buyers by one year is a step in the right direction. As far as the funding constraint for the real estate sector is concerned, the government spoke about enhancing the partial credit guarantee scheme for NBFCs, which again may not suffice for the ailing real estate sector", says Shishir Baijal, Chairman & Managing Director, Knight Frank India

<sup>2</sup> Indrani Wahi v. Registrar of Co-operative Societies and Others, (2016) 6 SCC 440

<sup>3</sup> Shakti Yezdani v. Jayanand Jayant Salgaonkar, APPEAL NO.311 OF 2015

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