Real Estate Bytes

Major fortunes in India "were" made on Land! Now?

-Rhea S Verghese, Associate

The **2019 outbreak of Wuhan, China** paved the way into India thereby creating havoc, especially in the real estate sector. One will wonder how? But, drawing into the simplest would show that the articles India uses for construction activities come from China be it iron and steel products, electronic equipment, solar panels or plastic, and fiber elements. The fall in production in China would automatically lead to an increase in production prices in akin industries. This would directly affect costs and reduce the profit margins of real estate makers in India.

Real Estate Investment Trusts (**"REITs"**) will take a backseat for the time through the pandemic sustains. Fund-raising through REITs is now farfetched, more because investors have stopped investing and everything has come to a standstill. Now, the question that arises is how will REITs suffer? The first of the noticeable impacts being the dividend amount that was non-taxable is now a taxable amount i.e. the government has now declared that tax will be charged on any profits or dividends of investors of infrastructure and REITs. Another issue in consideration would be the important key decisions in relation to real estate investment that cannot be done in physical absentia. And, also for the known everything at halt means delayed timelines in fundraising activities.

As for real estate stocks, the same is a direct consequence of the Indian stock markets which has been a bear territory for some time now. The most important stock market for real estate is the Bombay Stock Exchange ("**BSE**") and the same has seen the steepest dip in a long time. In minutes of trading, a ginormous amount of investor wealth was sacrificed.

In a nutshell, the impact of **COVID-19** has not been too good and has seen a steep decline in terms of visits for property purchases and buyer interest. An increase in production and aboriginal innovation can pave a way out in positivity for the real estate sector if done rightly.

Is the Coronavirus Pandemic a "Force Majeure" as defined under the RERA

- Ujjal Chattopadhyay, Senior Consultant

In the light of the Coronavirus outbreak that has loomed large as a pandemic and hit globally, the real estate sector is cloistered with so many speculations and apprehensions like construction halt, sales slow-down, economic jostle, etc. and this can be a haunting moment to make a thorough introspection as to whether or not this Coronavirus situation can be legally tenable and tangibly correct to be held as "Force Majeure" under the Real Estate Regulatory Authority ("**RERA**"). The ground reality for Indian real estate is witnessing several non-compliances and irregularities in respect of new project launches that are being postponed, Sales Pavilions on the weekends not being organised and constructions work in most of the project sites getting hampered and facing of virtual lockdown resulting in a delay in completing the projects and subsequent handover.

The real estate controlling authority, the Confederation of Real Estate Developers' Associations of India ("**CREDAI**") has approached the Central Government for declaring the Coronavirus situation as a Force Majeure as defined under Section 6 of the RERA. But the question that remains is that, can the outbreak even if it substantially affecting the construction pace and sales velocity, be logically termed as "Force Majeure" or not.

For coronavirus pandemic to be termed as force majeure the Government must declare it as an "emergency shutdown" which has not been the case so far. Moreover, the financial impact of an emergency shutdown would wreak havoc on the Indian economy.

The opinion on the issue is divided and a class of realtors believes that it is legally tenable to contest this situation as force majeure. But, keeping in view the settled principles that for events to constitute as force majeure and for parties to seek relief for non-performance of a contract, due to any force majeure event under the law the event must be: beyond reasonable control; should

affect the ability of the performance of the parties and reasonable steps taken by the parties to mitigate the loss arising from the occurrence of such events.

However, beyond CREDAI seeking justice from Central Government by way of notification towards declaring the situation as force majeure, the fact of the matter is that the constructions works has not fully banished in most of the states during this situation and therefore, in the truest sense of the term, the situation cannot be described and defined as "**Force Majeure**" under RERA. The same can certainly be an exception in the Real Estate waiver letter.

Treatment of Token Money under Income Tax Act If A Property Deal Is Cancelled

- Ujjal Chattopadhyay, Senior Consultant

In the Real Estate industry, one of the most relevant questions is that how is the money refunded when a property deal is cancelled and what are the financial and Income Tax consequences that follow such circumstances?

The cancellation of property deals halfway is a very common feature and therefore, such an issue is viewed from a common legal perspective.

It is not necessary or feasible that every property deal should culminate through the execution and registration of a document and the deal might be called off midway. The deal may be rejected by either the seller or the buyer for any reason whatsoever.

In the selling-purchasing activities, the buyer pays a certain amount as token money when other terms and conditions for the transfer of the property are agreed upon and this earnest money may vary from being merely a token to a substantial percentage of the value of the property. If the seller backs out from his commitment to selling the property, then there is no immediate financial implication except the buyer gets a right to file suit for specific performance in the courts of law. However, these are not generally resorted to.

If the deal is cancelled for the buyer taking the backseat then the seller gets every point and reason to forfeit the token money paid by the buyer in that deal. With respect to such forfeited token money, the buyer cannot claim any benefit under income tax as this is treated his capital loss. However, the advance money or the earnest money that is forfeited becomes taxable in the hands of the seller as this is considered as his income in the year in which the deal is called off and such income is taxed under the head "**Income from other sources**" and not under the head "**Income from Capital Gains**" even though the income is accrued and received from a capital asset.

Before the amendment of the law in 2014, the amount of forfeited earnest money was required to be deducted from the cost of acquisition of the asset with respect to which it was received, which is technically the subject matter of the deal sold.

Developmental plan, zonal plan, and town planning schemes are different from each other

-Aishwarya, Associate

The allotment of plots to individuals or any person by authorities is always based on a development plan, zonal plan, and town planning scheme of the authorities. However, these terms were misconstrued to be synonymous with each other although they have different meanings. The recent judgement of the Supreme Court affirmed this fact in the case of Madhya Pradesh Housing and Infrastructure Development Board and another vs. Vijay Bodana and others.[1]

The Madhya Pradesh Housing and Infrastructure Development Board ("**Board**") has developed a colony on 32 hectares of land in Ujjain and named it as "Indiranagar" on September 11, 1981, out of which 1.52 hectares was earmarked for the establishment of shopping and commercial complexes. However, after 23 years i.e. in the year 2004 the Board made an application with respect to the land measuring 1.52 hectares regarding the change in land use originally earmarked for the establishment of shopping complex to be used for residential

[1] CIVIL APPEAL NO. 1998 OF 2020(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.26834 OF 2017. https://indiankanoon.org/doc/147344738/

accommodations. This application was rejected by Deputy Director, Town and Country Planning("**T&CP**"). So, the Board filed for an appeal before the Commissioner, Ujjain under **Section 31** of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973("**Adhiniyam**") which was also dismissed. Therefore, it filed a revision petition before State Government under **Section 32** of Adhiniyam wherein an order approving the modification dated September 28, 2006, was issued stating that application was only with respect to modification of layout and not land use. Thereafter, an order dated May 12, 2008, directing the Deputy Director, T&CP to consider the modification made in layout plan was issued by Commissioner, Ujjain. Accordingly, an order approving the same was issued by Director T&CP on September 24, 2008.

This order for modification was challenged by Vijay Bodhana and Ravindra Bhati by filing a writ petition for quashing and setting aside the order dated May 12, 2008, and September 24, 2008. The Indore Bench of High Court, Madhya Pradesh allowed the writ petition stating that the authority is bound by the Principle of Promissory Estoppel. Further, it also held that the lease deed executed by the Board in favour of the third party is null and void thereby directing the Board to put the land in use as per the original layout.

So the Board filed for an appeal before Supreme Court challenging the order of Indore Bench of High Court of Madhya Pradesh. The Supreme Court set aside the order of High Court and held as follows:

i. Development plan, Zonal plan, and Town planning schemes are different from each other since they have a different objective.

ii. The change or modification in the plan cannot be struck down on the grounds of promissory estoppel since the change in plan is allowed if it is as per development norms as prescribed by the Adhiniyam.