

Real Estate Bytes

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📌 The ongoing winter of discontent for Homebuyers!

-Rhea S Verghese, Associate

The COVID 19 pandemic is a 'force majeure' event owing to the disruption of supply chains worldwide and consequently the disruption of business, thus offering relief to several companies with central government contracts or otherwise who have been forced to suspend operations. Force Majeure ("FM") encompasses a variety of events including Acts of God, wars, riots, and the current pandemic, etc. FM is a contractual feature and is not defined under the Indian Contract Act, and thus the language of the specific contract in question is of absolute importance, as some contracts give a narrower, restrictive interpretation of the clause as it permits contractual non-performance.

Impact on construction and insurance:

The impact of FM in the present circumstances is that developers and builders now have legal sanction to delay the completion of their projects. Finance minister, Nirmala Sitharaman recently announced that under construction, real estate projects can invoke the FM clause and postpone project completion by a period of 6 months.¹ With delays in construction projects being a persistent problem to homebuyers, FM now gives the delay a legal backing, and would thus affect buyers. People with an under-construction house, and who are discharging EMIs will not be given any leeway with this official sanction.

¹<https://haryanarera.gov.in/login/viewPdf/NTk4> (Developers have the legal sanction to postpone project completion)

²https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf&ved=2ahUKEwjT9I3h6-npAhVozjgGHeCsBDwQFjACegQIARAC&usq=AOvVaw2jllFlqwC7XXU5GHdLl3Mq (MHA Order of March 29, 2020 PDF) Clause iv and v

The Insurance Regulatory and Development Authority of India ("IRDAI") has directed health insurance companies to settle COVID 19 related claims quickly, and health policyholders won't be affected by the FM clause unless a pandemic is specifically mentioned as an exclusion to the contract. Further, it has been clarified that FM will not apply to COVID 19 death claims much to the relief of insurance holders.

Thus, the FM clause has an impact on contracts in every sector, and while homebuyers (with an under-construction project) would be negatively affected, there seems to be a respite for policyholders. It remains to be seen, what the future holds in store.

📌 Is rent reduction or waiver a tenant's prerogative during these COVID times?

- Ujjal Chattopadhyay, Senior Consultant

The Union Ministry of Home Affairs in an order² dated 29th March, 2020 said, "**Wherever the workers, including the migrants, are living in rented accommodation, the landlords of those properties shall not demand payment of rent for the period of one month.**" Further, it said that "**If any landlord is forcing labourers and students to vacate their premises for non-payment of rent, they will be liable for action under the Act,**" invoking measures under the Disaster Management Act, 2005.

While this stands true for workers and students, it is most certainly to help the economically backward, who have to sustain far more pressure than people with regular jobs and a decent lifestyle.

The timely payment of the monthly rental or license fees as amicably and mutually agreed between the landlords and tenants is the essence of any tenancy agreement. Further, both the landlords and the tenants represent and warrant their respective capacities to rent out the premises on the part of the landlords and fulfil all financial obligations by the tenants which also include the payment of rental amounts as well. Secondly, the law presumes that every person creates or tends to create some contingency funds or saves for a rainy day, and therefore if a person has no income during a particular month then he is expected to pay out of his said savings or emergency funds. Thirdly, the dominant

purpose of a residential rental agreement is to give the premises on a residential usage basis and whether the tenants are working or not would not create a ground constructive to avoid eviction. Him occupying and using the premises would be sufficient to make the case liable for eviction.

The parties can take recourse to novation of contract under Section 62 of the Indian Contract Act, 1872 where under the parties can ask for an alteration of existing contract on the ground of non-performance or impossibility to perform with a new executable contract. This recourse is applicable only when the landlords and the tenants do not prefer eviction and want to take a U-turn in their understandings.

Who Are Eligible for Rent Waiver?

Economically depressed sections can seek relief under the Disaster Management Act, 2005. This includes construction workers, migrant labourers. However, financially-strained sections of the society are at the core. But, all tenants can ask for the refund of the Security Deposit due to the COVID-19 before moving or shifting into the premises on rent as the status of the contract is called the “Executable Contract” and not “Executed Contract”.

Will property prices in India crash due to COVID-19?

- Ujjal Chattopadhyay, Senior Consultant

Those anticipating any slump in the property prices might be disappointed as the property values are likely to show an upward movement in the post coronavirus world based on several deciding factors.

A clash and controversy between the observations and opinions are also divided owing to the volatile feature of the Indian residential market which has been thrown out by the sudden COVID rampage. A section of negative minded and conservative people holding that if the demand slowdown has been keeping price growth in India’s residential real estate market in check, the sudden COVID outrage, threatens to drastically impact the global economy growth. The nations extended country-wide lockdown to contain the spread, would wipe off any chances of value appreciation in the property market.

³https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.naredco.in/notification/pdfs/Real%2520Insight%2520Q4%2520FY19.pdf&ved=2ahUKEwjE0u_ZxujpAhX_6nMBHeiQAqQQFjAAegQIAhAB&usg=AOvVaw1JLgGQymTbB6WKI3aSIldg&cshid=1591336429977 (PDF Link for tabulated data)

If we take a quick survey on property prices in India’s nine major residential markets then it would certainly bring out the fact that property market is maintaining stability in price graph.

Property prices in India’s nine prime residential markets

City	Average rate PSF as on March 2020	Annual change
Ahmedabad	Rs. 3,032	6%
Bengaluru	Rs. 5,275	3%
Chennai	Rs. 5,184	<u>No change</u>
Gurugram	Rs. 4,893	-1%
Hyderabad	Rs. 5,434	9%
Kolkata	Rs. 4,134	3%
MMR	Rs. 9,472	2%
Noida	Rs. 3,922	1%
Pune	Rs. 5,017	4%

Source: PropTiger DataLabs³

Keeping in view the above stagnant and flat graphic trivia the Economic Survey 2019-2020 suggested that the promoters should allow the prices to drop, by taking a haircut as a remedy to reduce their inventory burden as the promoters should sell their inventories at whatever prices they get to resolve their liquidity issue. However, a number of issues are at play which makes accepting this proposition difficult.

A general presumption can be drawn on the increase of cost of supply of building and construction materials which will increase the bottom prices of the property. Reserve Bank of India’s (“RBI”) latest quarter policy suggests and implements a heavy cut in the REPO and Base Rate unburdening the Home Loan EMIs considerably. Therefore, such a relief measure of the RBI would make the Indian Real Estate Market more buyers’ driven. Last but not the least, the industry has already been reeling under a slowdown for the past eight years and as such there is very limited scope to cut the prices.

³https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.naredco.in/notification/pdfs/Real%2520Insight%2520Q4%2520FY19.pdf&ved=2ahUKEwjE0u_ZxujpAhX_6nMBHeiQAqQQFjAAegQIAhAB&usg=AOvVaw1JLgGQymTbB6WKI3aSIldg&cshid=1591336429977 (PDF Link for tabulated data)

✚ Invoking Force Majeure by MahaRERA during Covid-19 pandemic

-Aanchal Gujrani, Associate

“Force Majeure” is a general principle that comes into play when included as a clause that provides temporary reprieve to a party from performing its obligations under a contract due to any circumstances beyond the said party’s control.

Under the provisions of RERA, the Force Majeure clause covers natural calamities or acts of God but not a pandemic. Therefore, a final order was promulgated by MahaRERA secretary Vasant Prabhu on 18th May, 2020 invoking force majeure for Covid-19 in line with the advisory order⁴ issued by the Ministry of Housing and Urban Affairs (“MoHUA”) and MahaRERA as dated 02 April, 2020, regarding extension of registration of real estate projects and concurrently extending timelines of all Statutory Compliances, due to ‘Force Majeure’ during the Covid-19 pandemic. MahaRERA’s move is significant as MahaRERA has the highest number of real estate ventures registered with it in the country.

The circular states that in view of the pandemic and consequent nation-wide lockdown with effect from March 2020, reverse migration of labourers to their native places and break in supply chain of construction material, the construction activities of real estate projects across the country have been severely impacted.⁵

The MahaRERA had earlier provided an extension for all projects and registrations for three months till June 31st, 2020. It stated that the Force Majeure period will be treated as a “moratorium period” for the purpose of calculating interest under Sections 12, 18 19(4) and 19(7) of the Act, also that any registration of agreement for sale which becomes due during the same six month period can be extended till the expiry of the force majeure period. Similarly, any amounts accruing under Section 40 of the Act can be recovered after the force majeure period is over.⁶

The force majeure period invoked shall be of six months, starting from 15th March, 2020 to 14th September, 2020. For

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

⁵ MahaRERA Order No :- 14 /2020 dated 18/05/2020

⁶ Supra

⁷ WRIT PETITION NO. 2737 OF 2017

⁸ Ibid 1

further extension beyond the said six months, for adversely affected projects, concerned promoters will have to apply in accordance with provisions of Section 6.

In the *Neel Kamal Realtors Suburban Pvt. Ltd. and Anr. Vs Union of India and Others*⁷, the Hon’ble Bombay High Court division bench has observed that the object and purpose of the Real Estate (Regulation and Development) Act, 2016 is to complete the development work within the stipulated timeline. **“Keeping in view the spirit of this order and to ensure that the available liquidity in the designated RERA Accounts get utilized, on priority, for completion of the project, any refund, which under rule 19 of MahaRERA Rules becomes due during the Force Majeure period is allowed to be executed in a period extending up to one month after the expiry of the Force Majeure period”**.⁸

✚ Circle rates remain unchanged for current fiscal in Maharashtra!

-Dhivya UT, Senior Associate

The minimum rate at which a property can be registered in the state is known as circle rate and also popularly known as Ready Reckoner Rate. Buyers have to pay the stamp duty, registration charges, and other taxes on their property purchases based on the circle rates. This rate varies from state to state. Revenue department of each state determines the circle rate or ready reckoner rate each year as per market movements, which are periodically revised on 1st April of that year.

Due to the outbreak of COVID 19 pandemic, the government had declared complete lockdown in the State of Maharashtra till May 31, 2020. Further orders were given to observe an extended lockdown in the state till June 30, 2020, and in given circumstance the revenue department could not assess the value of the property whereby rates were kept unchanged for the period from April 1 till May 31, till further orders. Maharashtra government on May 26, 2020 vide circular⁹ stated the circle rate shall be unchanged for the current financial year 2020-21 as the assessment of the annual statement rate (ASR) could not be carried out.

⁹ Circular dated May 26’2020, as noted by PTI (Yet to be released)

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