

Real Estate Bytes

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✚ Mutation Entry Does Not Create Or Extinguish Title Over Land

-Riya Jain, Associate

The Supreme Court (SC) in the case of *The Commissioner Bruhath Bangalore Mahanagara Palike and Anr. v. Faraula Khan and Anr.*¹ held that the mutation entry by themselves do not confer title over property and the same needs to be established independently in a declaratory suit following due process of law.

In the instant matter, there was a title suit pending between Commissioner Bruhath Bangalore Mahanagara Palike and Lakshminarayana Charitable Trust in relation to the subject property and therefore it was pleaded that the High Court ought not to have issued a direction for mutation. However, SC noted that clarification on the same has been issued by the division bench of the High Court stating that the direction for mutation is subject to pursuit of any other remedy available under the Karnataka Municipal Corporation Act 1956 and it is open to the Bruhath Bengaluru Mahanagara Palike to establish its title by following due process of law. Pursuant to the same, SC held that the mutation entry by themselves do not create or extinguish title over the land.

Similar observations were made by the SC in the case of *Narasamma & Ors. Vs. State of Karnataka & Ors.*² and *Balwant Singh & Anr. Vs. Daulat Singh (dead) by L.Rs. & Ors.*³ wherein it held that a party is not divested of his title in the suit property as a result of mutation entry and it only

enables the person in whose favour mutation is ordered to pay the land revenue in question.

Conclusively, mutation entries in respect of any property on the revenue records do not create or extinguish title. These are maintained solely for fiscal purposes in order to ensure that the land revenue is paid by the concerned person.

✚ 'Possession' And 'Fit-Out Possessions' Discussed And Decided By MahaRERA

- Kinjal Gala, Associate

Terms such as 'possession' and 'fit out possession' were discussed at length in the case of *Mr. Suryakant Jadhav & others versus Bellissimo Hi-Rise Builders Pvt Ltd & others.*⁴

Two buyers had filed a complaint before MahaRERA on the basis of a registered Agreement for Sale. The Agreement for Sale with the builder was executed in the year 2014 who promised possession for fit-outs by February 2017 and within a year for final possession with occupancy certificate along with a grace period of a year. Since the project was incomplete when the Real Estate (Regulation and Development) Act took effect, the promoters registered the project under RERA. The buyers were not provided with possession of their flats and therefore, in May 2018, the flat buyers invoked Section 18(1) of RERA which provides for a refund with interest and compensation for the builder's failure to hand over possession of flats. It was held that Section 18 was not applicable to their case as the promoter obtained part Occupancy Certificate for the project in May 2018, before the complaint was filed. The authority said that, once the project was complete, Section 18 would not apply. Aggrieved by the order, the buyers went in appeal before the Appellate Tribunal. On January 12, 2021, the tribunal held that the MahaRERA order was not sustainable under law and stated as under:

- a. "Possession" as contemplated under Section 18 of RERA is not 'fit out possession'. There is no such concept under RERA or even Maharashtra Ownership of Flats Act.
- b. Section 19(10) of RERA mandates offering physical possession with Occupancy Certificate to a purchaser, who is then obliged to take delivery within two months. The tribunal noted that the builder offered possession with Occupancy Certificate to the buyers, June 2018, hence there was a "delay in handing over possession". Once it

¹ SLP (C) 5743/2020

² (1997) 7 SCC 137

³ (2009) 5 SCC 591

⁴ Appeal No. AT00600000021407 in Complaint No. CCO0600000056404 decided by MahaRera on 12.01.2021

is evident that promoters failed to give possession by the 'specified date as mentioned in the agreement', promoters are not entitled to extension" on the basis of any clause of 'grace period' in the Agreement for Sale.

- c. The tribunal directed refund of amounts be paid by the buyers with interest of 2% more than the SBI rate, as provided under RERA.

✚ Original Housing Project's Facilities Not To Be Shared With Others- Tamil Nadu Real Estate Appellate Tribunal

-Ujjal Chattopadhyay, Senior Consultant

The Tamil Nadu Real Estate Appellate Tribunal (**TNREAT**) observed that amenities and facilities that exclusively belong to a particular project cannot be shared or integrated with others.

The order, in the case of *Anjali Nair vs. Ananya Shelters Pvt. Ltd.*⁵ assumes significance as it prevents promoters and developers in India from opening up facilities exclusively meant for and ascribed to one phase of homebuyers to annexes that come up in the future.

The issue pertains to Ananya's Nana Nani Homes Phase III at Thaliyur in Coimbatore. While the housing project with villas has common facilities such as a temple, indoor games, gym and swimming pool, a resident moved to the TNREAT accusing the promoter of violating the construction agreement by promoting these amenities and facilities of the original project to homebuyers of Annexe I and II of Phase III. The complainant also claimed that a compound wall was demolished.

In its order, the tribunal made it clear that they (promoters) will not allow facilities and amenities duly given for the original project to be utilised or enjoyed by anyone other than the residents/owners of the said specified original project and should not annex the other projects or other parts and phases of the same project that will come up in the future to avoid violation of principles of law.

However, the developer stressed that the vision of the promoter was to be a 'caretaker' of retired/senior citizens. The demolition of the compound wall of the original project would not affect the complainant nor any of the residents

⁵ Appeal no. 38 and 63 of 2020

as it would only help in achieving the very purpose behind the project-delivering services to the elderly residents within a short span of time. Further, according to the promoter, most residents of the original project had suggested demolishing the wall for easy delivery of services. The promoter added that residents of the original project also suggested using the entry/exit gates of the annexe projects as the original Phase III project has only one entry/exit gate.

The appellate tribunal finally directed the involved promoter to reconstruct the compound wall of the original housing project in its verdict in favour of the complainant.

✚ H-RERA takes action against Unregistered Real Estate projects

-Aanchal Gujrani, Associate

Haryana Real Estate Regulatory Authority (**H-RERA**) in Gurugram has recently issued notice dated January 29, 2021 to a builder company namely Adani M2K Projects LLP in Sector 102A for their ongoing project being Adani M2K DDJAY to refrain them from selling any units, either apartments or plots without registering them with the real estate regulator.⁶

The builders did not seek any permission from the regulatory authority nor did they register the project before launching it in the market and opening units for booking, violating rules on each front. This action was taken after the authority planted a decoy customer to interact with a property dealer, with whose help, the customer was able to book a unit in the unregistered project. The customer paid the booking amount in a combination of cash and cheque and his booking was successfully completed.

The authority has also directed for initiation of penal proceedings against the said developer. The penalty towards these violations are estimated to go beyond ₹ 12 crores against the promoter and ₹ 2.7 crores against the real estate agent. Further, a show-cause notice has been issued to the promoter and it is mandated from them to produce all records pertaining to the units booked and sold thus far.

"This is illegal as the project has no registration, no permission and is only on papers of the developer. Such practices would not be tolerated and a heavy penalty will be

⁶ Public Notice being Appeal regarding illegal sale dated January 29, 2021, issued by H-RERA.

imposed on the violators”, said Dr. KK Khandelwal, Chairman, H-RERA, Gurugram.

This omission is in direct violation of **Section 3 Sub-clause (1)** of the Real Estate (Regulation and Development) Act, 2016, stating as follows:

“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder shall apply to such projects from that stage of registration.”⁷

A Homebuyers Hand In Project Completion - UP RERA Authority

-Namrata Shah, Associate

Real Estate Regulation Act, 2016 (“**Act**”) was enacted to regulate and promote the real estate sector to ensure the sale of apartments, plots or a building efficiently and transparently. The Act aims to protect the interest of consumers.

As per Section 18 of the Act, if the promoter fails to complete or is unable to give possession of an apartment, plot or building-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration

under this Act or for any other reason, he shall be liable on demand to the allottees.

In case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

In case when an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Also, the promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

However, in the case of the project known as “Jaypee Kalypso court” (Phase II) (RERA registration No. UPRERAPzu4695), out of the 15 towers, 7 towers (Towers - 1,2,3,4,14,15,16) had been completed and handed over to allottees before the commencement of the RERA Act and the remaining 8 towers (Towers - 5,6,7,8,9,10,11,12) were registered with U.P. RERA at the above-mentioned registration id. Out of the 8 towers in this project, tower nos. 5,6,9,10 have been completed and handed over to allottees while the remaining four towers - 7,8,11,12 are yet to be completed.

The completion date of the project, as given during registration with UP RERA (**Authority**) lapsed on 1st July 2018 and the period of extension of one year permissible under Section 6 of the RERA Act would have ended on July 01, 2019 had the promoter sought an extension. The promoter Jaiprakash Associates Ltd failed to complete the project, within the specified period

Progressive Welfare Society, an association of allottees approached the Authority with a request to facilitate the remaining development and construction work so that the allottees would get possession of their allotted units.

Facilitation of project completion in a time bound manner and protection of interests of allottees was reiterated vide order dated July 29, 2020⁸. The Authority, using the powers conferred on it under Section 8 r/w Section 37 of the Act,

⁷ Real Estate (Regulation and Development) Act, 2016.

⁸ no.450/U.P.RERA/Project/Rehabilitation/NCR/2020-21

other enabling provisions of the Act, the Rules and the Regulations made thereunder, the Hon'ble Bombay High Court in the *Neelkamal Realtors and others vs the Union of India and the Others*⁹ and in conformity with the government order dated 26-06-2020 stipulating the guidelines to be followed in such matters, authorized the promoter, with the consent of AoA, to undertake the completion of the remaining development and the construction work of the project as per terms and conditions mentioned.

✚ Supreme Court Disposes Of Article 32 Petition Filed By Commercial Real Estate Buyers

-Dharmi Jilka, Intern

Recently, the Supreme Court disposed of a petition¹⁰ filed by commercial real estate buyers in Noida sector 62 against Premia Structures Limited. Amount of around Rs. 49 crore was collected by the developer to construct office spaces and deliver the possession by 2018-2019. However, the construction never happened nor was the amount returned to the buyers. Aggrieved with this, the buyers had approached the Supreme Court under Article 32 of the Constitution.

Suggesting the petitioners to pursue remedies under the Consumer Protection Act 1986, Real Estate (Regulation & Development) Act 2016 and the Insolvency & Bankruptcy Code 2016, the Court remarked, *"It's a huge burden on the court. We are an adjudicating body. Should the Supreme Court begin monitoring, there will be hundreds of projects of this nature spread across the country. We will be bogged down by these cases. Let's not get into policy matters and start running industries. Just because the real estate industry is not running, should Article 32 be the remedy?"*

The Court's observations are in sharp contrast to previous cases, those of Amrapali projects, involving 47000 homebuyers wherein the Court monitored the progress of construction by NBCC every week, after Amrapali's registration was cancelled. Also, the Court had previously entertained Article 32 petitions filed by Chitra Sharma against Jaypee group in 2016 and petitions in Unitech which came in appeal against the National Consumer Disputes Redressal Commission in 2017. However, it is important to note that when these sagas happened, RERA's full-fledged functioning was still in progress and IBC amendment giving

the status of financial creditors to homebuyers and commercial real estate buyers was also made only in 2018.

In this light, the Court's decision of disposing of the petition with the liberty to pursue other remedies signifies judicial restraint from entertaining matters for which different authorities and legislations already exist.

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⁹ Writ petition 2737 of 2017

¹⁰https://main.sci.gov.in/supremecourt/2020/26040/26040_2020_35_24_25261_Order_07-Jan-2021.pdf