

BREATHER FOR REAL ESTATE



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The World Health Organization (WHO) on March 11, 2020 declared COVID-19 a pandemic. While the adverse effects of the pandemic are already being felt across the world and it is the crisis which touched almost all the sectors and the real estate sector is not an exception. The Government of many countries including Government of India have imposed complete lockdowns. Lockdown has been part and parcel of the overall strategy, along with physical distancing and complementary decision for mobilising state governments and people at large. This big decision to shut down for a finite period of time was taken to make sure that the transmission chain of virus is controlled and hammered to the extent possible and that time is gained to respond in upcoming times with much higher level of preparedness.

The Ministry of Finance vide an office memorandum dated February 19, 2020 clarified that disruption of supply chains due to spread of COVID-19 should be considered as a case of natural calamity and accordingly, force majeure clause may be invoked wherever appropriate, subject to compliance with due procedure. Similarly, the Ministry of Housing and Urban Affairs (MoHU) issued office memorandum dated May 13, 2020 while taking note of the situation created by pandemic Covid-19, consequent nation-wide lockdown w.e.f March 25, 2020, reverse migration of labourers to their native places and break in the supply chain of construction material advising the State Governments /Union Territories/Real Estate Regulatory Authorities (“**Authorities**”) to invoke Force Majeure clause which is defined under section 6¹ of the Real Estate (Regulation and Development) Act, 2016 (“**RERA**”) to extend the timelines for (i) completion of the real estate projects for which the completion date or revised completion date of extended completion date as per registration expires on or after March 25, 2020 and (ii) for various statutory compliances under the provisions of RERA in exercise of the powers conferred to Authorities under section 37² of RERA.

The key highlights of the office memorandum are outlined below:

- a) Authorities may issue suitable orders/directions to extend the registration/completion date or revised completion date or extended completion date automatically by 6 (six) months due to outbreak of covid-19 by invoking Force Majeure clause;
- b) Authorities may consider further extension of completion for another 3 (three) months, if the situation in their respective states, for reasons to be recorded in writing, needs special consideration for invoking force majeure in view of the current pandemic;

¹ Section 6: The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority: 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: Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation-For the purpose of this section, the expression "**force majeure**" shall 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.

² Section 37: The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned

- c) Authorities may issue fresh Registration Certificates with revised timelines in each such registered real estate project at the earliest; and
- d) Authorities may extend concurrently the timelines of all statutory compliances in accordance with the provisions of RERA and rules and regulations made thereunder.

The Telangana Real Estate Regulatory Authority (“**TSERA**”) in exercise of its powers conferred under section 5,6,34(f) of RERA read with Rule 6 of Real Estate (Regulation & Development) Rules, 2017 on the same date issued relaxation order restricting its applicability to the registered projects whose date of completion is on or after March 15, 2020 (“**Relaxation Order**”). The Relaxation Order provides that the period of validity for registration of such project shall be extended by six (6) months) i.e. from March 15, 2020 to September 14, 2020 and that no fee is payable for such extension as it is a consequence of Covid-19 i.e. a force majeure situation of special nature.

The advisory of MoHU and the Relaxation Order of TSERA provides breather to all registered projects which could not be completed due to the pandemic as non-completion of the project would attract penalty which may extend up to 5% (five percent) of the estimated cost. Further, the Relaxation Order may pose as a disentitlement to the allottees from claiming interest caused on account of delay in handing over the possession. Needless to say while force majeure benefit was extended to real estate companies, however, it is silent on the interest of home buyers. There has been demands from the home buyers that government should consider complete waiving off the interest portion on the principal loan amount during the Covid-19 force majeure period, however, nothing is heard from the government/RBI as on date.

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