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ahead of the curve

prop digest

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Welcome to this issue of Prop Digest

The Prop Digest is a series of real estate update on the latest legal trends impacting the market and various stake holders. We welcome our readers, and hope that we continue to provide insight on the latest real estate updates.

There has been significant overhaul in the real estate market post Covid. This publication provides a quick snapshot on the crucial developments in the real estate sector brought forth by various judicial pronouncements. In this issue we have analysed key decisions of the Supreme Court, Bombay High Court and MahaRERA impacting the real estate sector.

This issue further dwells into providing its readers, key legislative updates at the Central and State levels, such as notification allowing affixation of digital signatures on documents conveying interest in immovable property, notification relating to the issuance of unique numbers for all land parcels in Maharashtra and MahaRERA's approval to model allotment letter and issuance of SOP for regular update on registered project under RERA.

Any feedback and suggestions would be valuable in our pursuit to constantly improve Prop Digest and ensure its continued success among readers. Please feel free to send them to cam.publications@cyrilshroff.com.

Regards,

Cyril Shroff

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JUDICIAL UPDATES

I. Supreme Court (SC)

A. A person cannot obtain relief indirectly, which otherwise he/ she cannot obtain in a suit for substantive relief: Supreme Court

In *Balram Singh Vs. Kelo Devi*¹, the Appellant (being the Seller and the original Defendant) and the Respondent (being the Purchaser and the original Plaintiff) entered into an unregistered and insufficiently stamped (being stamp of Rs. 10) Agreement to Sell. Thereafter, the Purchaser (**Respondent**) had filed a suit seeking permanent injunction to restrain the Seller (**Appellant**) from disturbing Respondent's possession in the suit property. Trial Court dismissed the suit whereas the first appellate court allowed the suit and thereafter Allahabad High Court confirmed the same. The Hon'ble Supreme Court quashed and set aside the orders passed by the first appellate court and Allahabad High Court, in turn restoring the judgement passed by the trial court. The observation set out was that, in a given case, an unregistered document may be used and/ or considered for collateral purpose. However, at the same time, the Respondent cannot obtain a relief indirectly, which otherwise he/ she cannot obtain in a suit for substantive relief, namely in the present case the relief for specific performance. The Apex Court further observed that in the instant case, the plaintiff by clever drafting prayed for a relief of permanent injunction only and did not seek for substantive relief of specific performance of the agreement to sell as the same was an unregistered document on which no decree of specific performance could have been passed.

B. No Objection Certificate (NOC) not required for registering flats built on land leased to the developer: Supreme Court

In *State of Maharashtra and Ors. vs. Aspi Chinoy and Ors*², in 1971, Maharashtra Government through

bids allotted certain lands to builder on lease for construction of the apartments, after construction, the builder sold them to individual purchasers, who in turn formed a co-operative society. In 2000, Aspi Chinoy (**Respondent**) had entered into an agreement to purchase and transfer rights of a particular flat and five shares in the society. When respondent tried to register the transfer of flat, he was declined registration and was asked to get a NOC from the Collector based on the Government Resolutions of 1983 and 1999. When the Respondent approached Bombay High Court, it held that, State Government is not entitled for any kind of premium as a condition for grant of permission for transfer of flats and ruled in Respondent's favour. Aggrieved by the judgement of the Bombay High Court, the State Government approached the Supreme Court. The Supreme Court has upheld the judgement of the Bombay High Court, that the Government Resolutions of 1983 and 1999, allowing the state to claim premium as a condition for grant of permission for transfer of flats on a land, would not be applicable to lands not allotted to a society, but to a builder on lease, who has constructed flats for private individuals, who have subsequently formed a Co-operative Society.

C. Ready Reckoner Prices cannot determine the Compensation for Land Acquisition: Supreme Court

In *Bharat Sanchar Nigam vs Nemichand Damodardas and Ors*³, Respondent's land was acquired by State Government for BSNL. The Land Acquisition Officer determined the total compensation at the rate of Rs. 13.32/- per sq. ft. On reference, the Reference Court enhanced the amount to Rs. 21/- per sq. ft. In further appeal, Bombay High Court enhanced the amount of compensation to Rs. 174/- per sq. ft. Aggrieved by the impugned judgement of the High Court, BSNL preferred an appeal in the Supreme Court. Supreme Court while quashing the judgment passed by the Bombay High Court and restoring the order passed by the Reference

¹ Supreme Court of India, Civil Appeal No. 6733 of 2022

² Supreme Court of India, Civil Appeal No. 5809 of 2011

³ Civil Appeal No. 3478 of 2022

Court, observed that the rates mentioned in the Ready Reckoner, which are uniform for all lands in the area and which are basically for stamp duty collection, cannot be the basis for determining compensation of lands acquired under the Land Acquisition Act. Accordingly, the Supreme Court held that the High Court has committed a serious error in enhancing the amount of compensation by 800% from Rs. 21/- per sq. ft. to Rs. 174/- per sq. ft., relying upon and/ or considering the rates mentioned in the Ready Reckoner.

II. Bombay High Court

A. Part Occupation Certificates not to be acted upon until connections to Municipal water mains are demonstrated to be ready: Bombay High Court

In *Subodh M Joshi vs. MCGM & Ors.*⁴, Petitioner was offered possession of a flat in the rehabilitation building on the basis of a part occupation certificate issued by Municipal Corporation of Greater Mumbai for that building and the Petitioner was being forced to give up his transit accommodation. The builder further claimed that the building is complete and ready for occupation. As the building was not fit for being occupied, the Petitioner filed this petition and refused from taking possession of the flat. On questioning, the High Court was informed that the building did not even have a municipal portable water supply and the only water connection available was for construction work. High Court further expressed its concern over how an occupancy certificate was issued to a structure that was totally unfit for human habitation. The Bombay High Court while suspending the Part Occupation Certificate issued to the builder, held that none of the Part Occupation Certificates issued to the builders for any of the buildings are to be acted upon until connections to Municipal water mains are demonstrated to be ready to the court. While observing that the word “occupancy” indicates habitability; and an essential requirement of any habitable premise is the provision of basic amenities, the High Court refused to accept an interpretation that a building without a regular water supply can be considered habitable and eligible for an occupancy certificate.



III. MahaRERA

A. Mutual Arrangements once agreed upon by parties cannot be reversed by using RERA as an instrument: MahaRERA

In *Mohinesh Advani vs. Ekta Housing Pvt. Ltd.*⁵, there was a delay in handing over the possession of the flat and the Developer (**Respondent**) admitting the delay, as a part of the mutually agreed settlement paid an amount by way of compensation to the Allottee (**Complainant**) for three years after which inspite of the Respondent having offered the possession of the flat, on account of financial difficulties the Complainant did not take possession of the same and chose to file a complaint seeking refund of the amount paid by it. MahaRERA has observed that, when two parties who enter into a mutual arrangement, comply with their respective obligations under it, then both the parties are bound to continue with the arrangement, and either party cannot suddenly withdraw from the arrangement after having enjoyed the benefits arising from the same and seek relief from MahaRERA to unjustly breach the arrangement. Dismissing the complaint and fining the Complainant, MahaRERA has held that mutual arrangements once agreed upon by parties cannot be reversed by using MahaRERA as an instrument.

⁴ Writ Petition (L) No. 21683 of 2022

⁵ Complaint No. CC001000000000110

B. MahaRERA allows de-registration of Project by Promoter

In Turf Estate Joint Venture LLP vs. Kesari Realty Venture LLP & Ors.⁶, Turf Estate (**Applicant and Promoter**) was appointed as the new promoter in October 2021 with the acceptance of two-thirds of the allottees for change of promoter. In January 2022, Applicant (Promoter) had filed an application for de-registration/cancellation of the project citing his inability to complete the project and refunded the part consideration along with 9% of the interest to 21 allottees and the remaining 5 allottees have returned the refund and challenged the termination of allotment. MahaRERA has held that it has powers to accept application for deregistration of project and allow the same. MahaRERA, while allowing the application of the Promoter, observed that Real

Estate (Regulation and Development) Act, 2016 (**RERA**) deals with revocation, however, remains silent on cancellation of registration. It further observed that the privilege of seeking project registration and its extension is within the purview of the Promoter, and thus the Allottee (as in the present case) cannot insist on registration or its continuation when the Promoter does not intend to avail this privilege. Thus, once the project is sought to be abandoned, the registration as envisaged itself becomes infructuous. RERA does not provide for a third party, namely the buyer, forcing the Promoter to take or continue with the registration, even when the purpose for which it was sought is being abandoned, especially when (as in the present case) neither of the allottees have objected that their interest is not being protected.

⁶ Regulatory Case No. 01 of 2022

LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Digital signatures can now be affixed on documents conveying interest in immovable property

The Ministry of Electronics and Information Technology vide notification dated September 26, 2022⁷, has amended the First Schedule of Information and Technology Act, 2000 (**IT Act**). With this amendment, the provisions of the IT Act, including the provision for affixing digital signature will now be applicable to all contracts for sale or conveyance of immovable property or any interest in such property, thereby allowing these documents to be electronically used and signed under the IT Act.

II. Key State Legislative Updates

A. Issuance of ULPIN (Unique Land Parcel Identification Number) to the lands by Maharashtra Government – a step forward towards Digital India Land Records Modernisation Programme

The directions issued by the Maharashtra Government, vide Government Resolution dated July 28, 2022⁸, to the Department of Land Resources to provide a 11-digit Unique Land Parcel Identification Number (**ULPIN**) through an algorithm for every plot of land in the state under the Digital India Land Record Monetization Program (**DILRMP**), has been implemented with effect from September 19, 2022. ULPIN will be used for interconnectivity of various systems (i.e. data sharing) and will assist in checking the location of the land. This ULPIN will be assigned to all existing city survey numbers and will not change even on transfer of ownership of land, unless the land undergoes amalgamation or subdivision (in which case a new city survey number will be allocated). This is a major step towards increasing transparency and reducing the instance of fraud prevailing in the land registry. Now, all property documentation can mention the ULPIN (attributed to the land in question) in the description of property.

B. Standardised form of Allotment Letter: MahaRERA

Further to the objective of transparency and fair dealing in order to ensure information symmetry for the allottees, vide an order dated June 3, 2022⁹, MahaRERA has approved the model allotment letter, which has been further amended vide an order dated August 12, 2022¹⁰. The model allotment letter requires the developer to mention, inter-alia, the details of the unit, car parking spaces, payment of part consideration in full or in stages, disclosure of information, details of encumbrance, the date of possession and amount to be deducted on cancellation of allotment. The Order further directs the Promoter to upload the proforma of allotment letter and proforma of agreement for sale when applying for the registration of the project and in the event there are any deviations/ modifications in the proforma of the allotment letter and/or the agreement for sale then the same has to be highlighted in different colour and has to be accompanied along with a deviation sheet mentioning/ indicating the deviations/ modifications therein.

C. SOP for regular updates on registered projects by promoters: MahaRERA

Giving effect to RERA's key objective being sale of real estate project in a transparent manner, MahaRERA has issued a Standard Operating Procedure vide its order dated July 5, 2022¹¹. Vide the said Order, MahaRERA has categorized all the updates to be provided by the promoter in different categories being quarterly updates, annual updates, updating forms for withdrawal of money, other regular updates, updates on completion of project and updates on conveyance of project. This Order ensures regular disclosure of information for public viewing and is a step forward towards citizen empowerment. The home buyers can now track and evaluate the progress of their real estate project on a regular basis.

⁷ [F. No. 1(3)/2022-CL]

⁸ Government Decision No. Sankirna-2022/P.No.177/L-1

⁹ MahaRERA/Secy/File no. 27/136/2022

¹⁰ MahaRERA/Secy/File no. 27/221/2022

¹¹ MahaRERA/Secy/ File No. 27/174/2022

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