



REGISTRATION OF JOINT DEVELOPMENT ARRANGEMENTS UNDER RERA

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RERA applies to all real estate projects, i.e. both residential as well as commercial projects irrespective of whether these are in the nature of building projects, or plotted development by a developer provided that (a) the land area of the project exceeds 500 sq. mtrs. **or**, (b) in case of a building project, the number of apartments to be constructed exceed eight, and a completion certificate is yet to be obtained for the project at the time of commencement of the relative provisions of RERA, i.e. as on May 1, 2017. Accordingly, the developer of a project covered under RERA, as above, shall register the said project with the concerned authority as mandated by section 3 of RERA. This raises the question as to whether, nowadays commonly executed, property owner and developer joint development or collaboration agreements would also be covered under RERA's ambit, if the aforesaid conditions are met.

PSA view: Presently, RERA does not answer this question, and the developer or the property owner, as the case may be, tends to choose the interpretation favourable to them. In other words, while the land owner, party to a joint development agreement, will assume that the project falls within the ambit of RERA (given the aforesaid conditions are met), the developer will argue otherwise, and would avoid initiating registration of the project as mandated by RERA by suggesting that RERA applies only to large scale developments, be it plotted developments or otherwise.

RERA's impact on ongoing projects

The other prong determining applicability of RERA to a project, i.e. whether the project is an ongoing project, is also a matter that is fraught with ambiguity. It is pertinent to note that while RERA stipulates that projects that are ongoing on the date of commencement of RERA are those where a completion certificate has not yet been obtained, State rules promulgated for the NCR region, such as Haryana and Uttar Pradesh have deviated from this position by diluting this trigger event. For instance, under the Haryana RERA rules, if only an application for a completion certificate had been made on or before the date of publication of Haryana rules, the concerned project would not be an ongoing project covered under the Haryana RERA rules and thus, outside the purview of RERA. The Uttar Pradesh RERA rules have gone one step further and allowed projects where 60% of a project has been sold or leased by the developer, to be exempt from the Uttar Pradesh RERA regime. Further, developers have also caused confusion and concern in the minds of consumers, allottees, and land owners by claiming that obtaining a completion certificate for *part* of the project entitles them to be exempt from the RERA regime for the whole project, whilst the reality is that a completion certificate obtained for a *part* of the project does not exempt the developer from RERA vis-a-vis

the remaining parts of the project where the completion certificate is yet to be obtained. RERA treats each *part* of the project as a project in itself.

PSA view: It is imperative that States ought to be prohibited from diluting provisions in the central legislation through their State rules, as RERA is meant for the protection of consumers, allottees, and land owners while dealing with unscrupulous developers. Inaction on this front shall defeat one of the main objectives of RERA, i.e. “to protect the interest of the consumers in real estate sector”.

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