RERA Registration can be legally done even without RERA Authority and Website

"It is not a question of applying for RERA registration by filling prescribed forms, it is thoughtful exercise to be done with UTMOST caution through in depth analysis and aligning the mindset of people and processes of Real Estate Business" Pankaj Jain, Founder & CEO, IRE CFO Services.

There was much hue and cry among developers after issue of clarification from Ministry of Housing and Urban Poverty Alleviation (MHUPA), last month regarding advertisement and sale of ongoing real estate projects. This clarification clearly mandated to prohibit any advertisements or sale under all ongoing and future real estate ongoing projects without the registration under Real Estate (Regulation & Development) Act, 2016.

Further, the above clarification made the reference of section 3 sub section 1 of the Act which says that "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" and also mandated the effective date of such prohibition as 1st May, 2017.

It became more important and noticeable since it came in response to the query raised by NAREDCO, an apex body of developers. In its query to Ministry, the NAREDCO also made reference of same section i.e. section 3 sub section 1 of the Act which further says "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"

In its query, NAREDCO opined that as per above provisions for ongoing projects, three months period need to be considered as grace period and meanwhile developers can sell their ongoing real estate projects which otherwise would affect the project progress of sizeable number of ongoing projects across the country which are at various stages and also adversely affect the national economy as a whole. On one hand, where this stand is very logical from real estate business perspective, lacks the clear ground from legal perspective on other. The above provision has inbuilt ambiguity on allowing sale without registration of ongoing projects.

Also, one very important ground of query as made by NAREDCO was absence of effective regulatory mechanism which primarily means non availability of RERA Authority and Website. However, if we carefully study the Act and Rules together, an alternate mechanism is available in the absence of RERA Authority and Website. The registration formalities can be completed even without RERA authority and website.

Therefore, it is in the interest of developers to find the options under legal framework to resolve such complex and unclear issues, in order to avoid contradictions and adverse consequences from regulatory bodies at later stage.

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