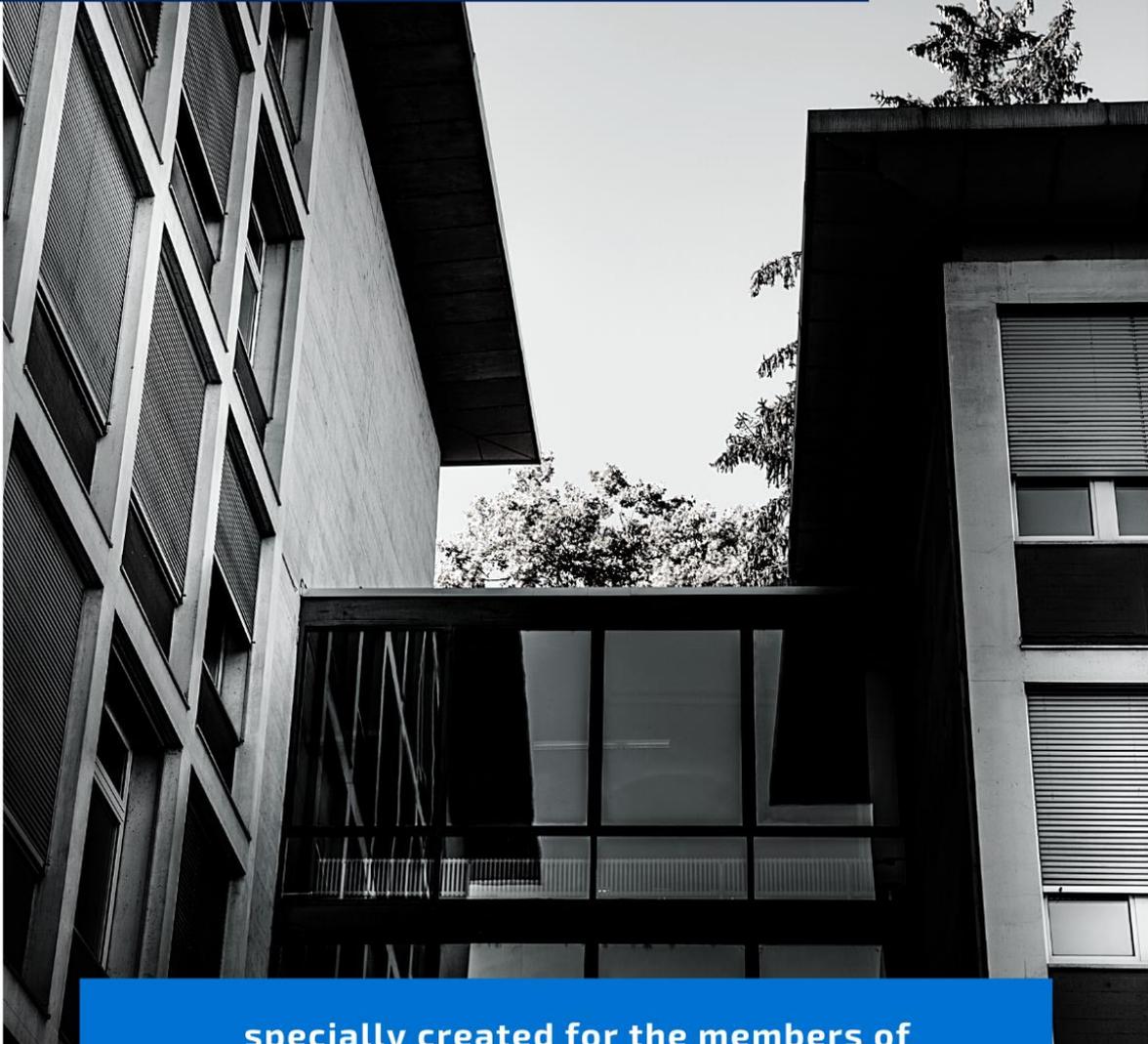


GROUND REALITY

MONTHLY
REAL ESTATE UPDATE
BY FOX MANDAL



specifically created for the members of
CREDAI CHENNAI



INFORM



Real Estate Updates

February 2021

GOVERNMENT ORDERS/NOTIFICATIONS

AUTOMATIC PATTI NAME TRANSFER

Normally, upon purchase of a property, the revenue records including Patta had to be mutated in the name of the new owner as it is a pre-requisite to get the property details updated in the revenue records maintained by the Government Body. However, the Patta transfer was considered to be a cumbersome process as an application had to be made to the Tahsildar concerned with all the required title documents, and upon perusal of the said application, a surveyor was deputed to inspect the said property, pursuant to which, the Patta was mutated in the name of the new owner.

Therefore, in order to simplify the process, the Revenue and Disaster Management Department, Survey and Settlement Wing vide G.O (MS) no. 84 dated 04.02.2020 proposed automatic mutation and conclusive titling, where, in respect of online Patta transfer which does not involve any subdivision, automatic mutation will be invoked.

The same has been implemented now in Tamil Nadu for cases where the full extent in the survey number has been sold and if the name of the Pattadar matches with that of the seller, consequently, Patta will be mutated in the name of the new owner without any manual intervention.

LAYOUT APPROVAL SIMPLIFIED

As per Tamil Nadu Combined Development and Building Rules, the Planning Authority, prior to the sanction of the layout, must ensure that certain public spaces are gifted to the local body as

detailed under Rule 47.

Earlier, on an application for layout approval to the Planning Authority, a drawing of road/OSR patten of the layout was to be provided to the Applicant. After laying the road/other amenities in his own costs as required, the Applicant had to approach the local body to complete the registration of gift deed and further, reach out to the planning authority with the certificate from the local body regarding the gifting for obtaining sanction of layout. After obtaining the said sanction, the Applicant was required to approach the local body again to obtain license for layout, therefore, it was evident that the Applicant was required to approach the local authorities twice for obtaining layout approval which was causing undue delay.

In light of the above, the Housing & Urban Development Department vide G.O (Ms) Nos.181 and 18, Notification dated 02.02.2021 and Letter dated 18.02.2021, simplified the procedure to an extent that it would be sufficient for the applicant to approach both the departments (i.e Planning Authority under Town and Country Planning dept and the local body) once in order to obtain the layout approval.

At present, the District Level Planning Authority, through a letter along with the drawing of road/OSR pattern would advise the said Applicant to approach the Sub-Registrar directly in order to register the Gift Deed in favour of the concerned local body and to further submit the original Gift Deed to District level Planning Authority or the Directorate of Town and Country Planning, thereby making the process simpler.



REAL ESTATE REGULATORY AUTHORITY (RERA)

COMMON AMENITIES IN ONE PROJECT CANNOT BE SHARED WITH EXTENDED PROJECT IF NOT PRESENT IN MASTER PLAN – TN REAT

The Tamil Nadu Real Estate Appellate Tribunal (TN REAT) has held in *Ms. Anjali Iyer vs Ananya Shelters Private Ltd and 92 Ors.* [Appeal No. 38 & 63 of 2020/ C. No. 214/2019] that the common amenities and facilities forming part of an original project cannot be shared/integrated by the Promoter with other independent projects.

The issue handled in this complaint pertained to the right of a Promoter to integrate two independent projects developed adjacent to each other. The Complainant had purchased a villa and the possession of the same was handed over by the Promoter in the year 2015 ('Original Project'). Subsequently, the Promoter developed two additional projects (obtaining separate plan sanction) on either side of the Original Project. However, in consultation with the majority of the homebuyers of the Original Project, the Promoter desired to share the common amenities of the Original Project with the subsequent project developed adjacent to the Original Project. Aggrieved by the same, the Complainant approached TN RERA to restrain the Promoter from integrating the common amenities with the adjacent development.



The questions before the Authority were two-fold:

Firstly, whether the complaint was maintainable under RERA as the Project was completed and handed over prior to RERA coming into force?

Secondly, whether the amenities/facilities of one project could be integrated with the adjacent independent projects subsequently developed by the Promoter?

On the locus standi of the Complaint:

The Authority for the first issue analyzed the Preamble of the Act and observed that the Act was mainly incorporated to bring more efficiency and transparency in the Real Estate Project to protect the interest of the consumers. Further, the Authority also analyzed the word "Complaint" as used in Section 7 (Revocation of Registration) and 31 (Filing of Complaints) of the Act and observed that the said two provisions stipulated that "any person" who is aggrieved by the acts of the Promoter can file a Complaint and since the Promoter was still having control over the maintenance of the Original Project, the Complainant would fall within the category of the aggrieved person, for this reason, the Authority held that the Complaint was maintainable. Further, the "privity of contract between the complainant and the Promoter as 'Allotee' and 'Promoter' was not detached".

On sharing the common amenities of the Original Project with adjacent project:

The Authority for the second issue relied on Section 12 (Obligations of Promoters regarding the veracity of advertisements) and 14 (Adherence to sanctioned plans) of the Act and observed that 2/3rd majority of Homebuyers were required in case of any modification or deviation in the sanctioned plan, however, the same was not obtained by the Promoter while demolishing the compound wall. Further, the Authority also observed that the brochure of the subsequent project highlighted the common amenities as available in the Original Project when such amenities were not available in the plans sanctioned for the subsequent projects, which demonstrated that the Promoter intended to share the common amenities of the original project. Apprehending the integration, the Authority held that "the facilities/amenities available for the original project

could not in any manner be used/utilized by anyone other than the residents of the original project and further directed the Promoter to restore the compound wall.”

Ratio decidendi

- Authority has jurisdiction to adjudicate complaints on unregistered projects.
- Common amenities available in one project cannot be integrated with an adjacent project even if it is developed by the same promoter. However, this restriction/limitation may not be applicable for projects developed in phases under the same approved master plan.

FM recommendation

- If the Project is to be developed in phases, the common amenities that would be delivered as part of a specific phase needs to be clearly mentioned in the brochure.
- It is essential to categorically capture the intent of developing the project in phases in all customer contracts including Brochure, Allotment letter, and Booking Form.
- It is important to capture specific covenant in the customer agreement that amenities provided in all phases would be common to homebuyers of all phases.

REHABILITATION OF STALLED PROJECTS

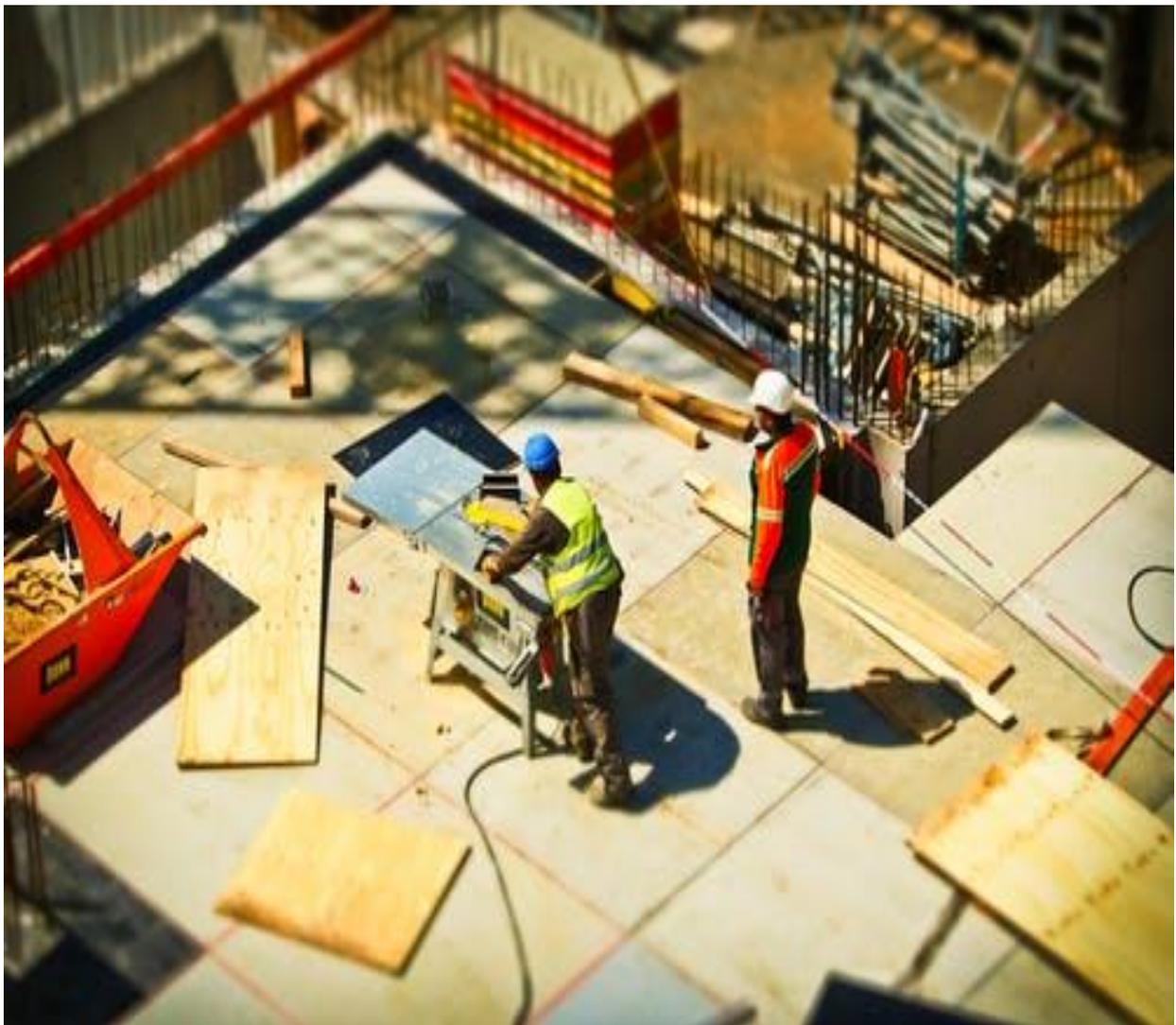
Ordinarily, when a project is stalled/unfinished, the Authority under the Real Estate (Regulation & Development) Act, 2016 would order to refund the money deposited by the homebuyers. However, recently, the UP RERA, instead of ordering for a refund, used its powers under Section 8 of the Act and instituted a collaborative model by bringing new or original promoters together with the Association of homebuyers to revive incomplete projects.

Once a stalled project is identified or brought to the notice of the Authority, a technical or financial study is taken up by the Authority to devise a suitable plan to facilitate the completion by taking both the Promoter and the homebuyers of the particular project on board. However, if that is not possible, the Authority is even ready to send an open invitation and select a co-developer to

complete the pending work.

In fact, the Authority has also advertised this approach in order to encourage the Promoters or Association of Homebuyers to come forward to complete their stalled/unfinished projects in a collaborative model.

This significant move by the UP-RERA Authority has ignited positive responses as this approach ensures a quick and lasting solution to all the unfinished/stalled projects and is a win-win situation for both the Promoter and the Homebuyers.



MISCELLANEOUS

GST PAYABLE ON NON-REFUNDABLE ONE-TIME MAINTENANCE DEPOSIT COLLECTED BY PROMOTER

The Gujarat Authority for Advance Ruling recently held that Goods and Services Tax ("GST") will apply to the non-refundable one-time maintenance deposit collected by the Promoters.

A Promoter usually charges a one-time maintenance deposit which is generally computed based on the rate per square foot of the property purchased. However, the applicability of GST on this deposit and the time of such levy has always been a contentious issue.

In the case of M/s. The Capital Commercial Co-op. (Service) Society Ltd., the Applicant contended that the Common Maintenance Deposit collected from each occupant is to be refunded to them as and when they cease to become members or are being transferred to a new occupant who is coming in. The Authority observed that Section 7(1) of CGST act, 2017 defines 'Supply' as any goods or services made for a consideration, and Section 2(31) of CGST act, 2017 defines 'Consideration' as any payment made in respect of the supply of goods or services. However, the proviso of the said section stipulates that the deposit made for such supply shall not be considered as 'Payment', unless the supplier appropriates it as consideration for the said Supply.

It is clear from the above that the Common Maintenance Deposit which is non-refundable will be subsequently used for an unforeseen event/circumstance and usage of the same will be considered as a supply of service and hence, taxable at the time of actual supply of Service. However, in cases where the deposit is refunded, the transaction will not qualify as a supply, therefore, GST is not applicable as per the proviso.

However, the Authority in the above case held that since the Applicant has stated that sometimes they transfer the deposit of the member who is leaving the society to the new member coming in his place, thus, the deposit is "not refunded" but is "transferred", therefore, the said deposit cannot

be considered as “Refundable Deposit” and is liable to be taxed under GST and the tax will be levied at the time of actual supply of service.

Ratio Decidendi

- Advance Maintenance Deposit, as long as it is refundable in nature and not utilized/adjusted as part of service rendered, such deposit shall not be subjected to GST.
- Incidence of tax liability is on the date of utilizing/adjusting such deposit as payment for the supply of services, till such time the deposit shall not be subjected to GST.

FM recommendation

- Ensure to include a necessary covenant in the customer contract so that the nature of the advance deposit remains unchanged. Maybe the promoter can create a lien over such a deposit so that it can be used as collateral to recover the actual maintenance dues from the defaulter.
- Do not create any assignment right of the maintenance deposit to the subsequent transferee, in case of transfer of the homebuyer, the advance deposit may be refunded to the owner simultaneous to the subsequent purchaser replenishing such deposit directly to the promoter or the custodian of such deposit.

IMPACT OF BUDGET 2021 ON REAL ESTATE SECTOR

Budget 2021 aims to provide every opportunity for economic growth that the country needs, besides the setback caused by an unprecedented pandemic. Budget 2021 envisions AtmaNirbhar Bharat which means self-reliance and equally, a business epicenter for the world.

The Budget proposals mainly rest on 6 pillars viz., 1. Health and Wellbeing, 2. Physical & Financial Capital, and Infrastructure, 3. Inclusive Development for Aspirational India, 4. Reinvigorating Human Capital, 5. Innovation and R&D, 6. Minimum Government and Maximum Governance.

Proposals for Real Estate Sector:

- Allotted Rs.54581 crores to the Ministry of Housing and Urban Affairs.
- Under Physical & Financial Capital and Infrastructure, budget enables Debt Financing of InvITs (Infrastructure Investment Trust) & REIT (Real Estate Investment Trust) by Foreign Portfolio Investment by suitable amendment, which augments funds for Real Estate and Infrastructure sector.
- Reconstruction Company Limited and Asset Management Company would be set up to take over the existing stressed debt and dispose of the assets bring a substantial land supply
- Direct Tax:
 - Dividend payment to REIT/InvITs is exempted from TDS. Further, advance tax liability to dividend income arises only after the declaration of dividend (Section 194 of the Income Tax Act, governs the provisions for deduction of TDS on payment of dividends).
 - Tax incentive for Affordable Housing and Affordable Rental Housing
 - Extend the eligibility period for a claim for an additional deduction for the interest of Rs.1.5 lakh paid for the loan till 31st March 2021 (Section 80 EEA)
 - Tax holiday for Affordable Housing project till 31st March 2021 (Section 80 IAC)
 - New tax exemption for notified Affordable Rental Housing
 - Increase in safe harbor limit for the primary sale of residential unit - to incentivize home buyers and real estate developers, it is proposed to increase the safe harbor limit from 10% to 20% for the specified primary sale of residential units (Section 43 CA)
 - To incentivize investment in a start-up, it is proposed to extend the eligibility period of claiming capital gains exemption for the investment made in the start-ups by one more year to 31st March, 2022 (Section 54GB of Income Tax Act)

ENCUMBRANCE CERTIFICATE VERIFICATION MADE EASIER

While purchasing a property, it is essential to do a thorough verification of the crucial title documents, revenue records and most particularly the encumbrance certificate. An Encumbrance Certificate ('EC') helps us scrutinize the previous property transactions and the existing liabilities

or encumbrances created on the property. Only through an EC, a purchaser can ensure the property is a freehold and does not have subsisting encumbrances.

Generally, an encumbrance certificate can be viewed and downloaded online via <https://tnreginet.gov.in/portal/> based on the survey number, SRO and village of the property proposed to be purchased, however, thousands of entries of all the flats/plots pertaining to the particular survey number will be reflected, therefore, identifying the relevant entries is a cumbersome process.

To circumvent this issue, flat/plot number search has been introduced, thereby reducing the reflection of irrelevant entries by half as only the entries pertaining to the particular plot or flat searched for would be reflected rather than all the entries pertaining to a survey number. Therefore, homebuyers will now find it easier to verify if the property in question is free from encumbrances.

Authors: Jayaprakash Padmanabhan | Partner | p.jayaprakash@foxmandal.in
Lakshmi Kandasubramanian | Associate | lakshmi.k@foxmandal.in

The contents of this publication are for general information only and should not be relied upon as a substitute for professional legal advice, which should always be sought in relation to any specific matter prior to acting in reliance upon any such information. The opinions, estimates and information given herein are made in best judgment, utmost good faith and as far as possible based on data or sources, which are, believed to be reliable. Notwithstanding we disclaim any liability in respect of any claim which may arise from any errors or omissions or from providing such advice, opinion, judgment or information.

Copyright © 2021 Fox Mandal &
Associates
www.foxmandal.in