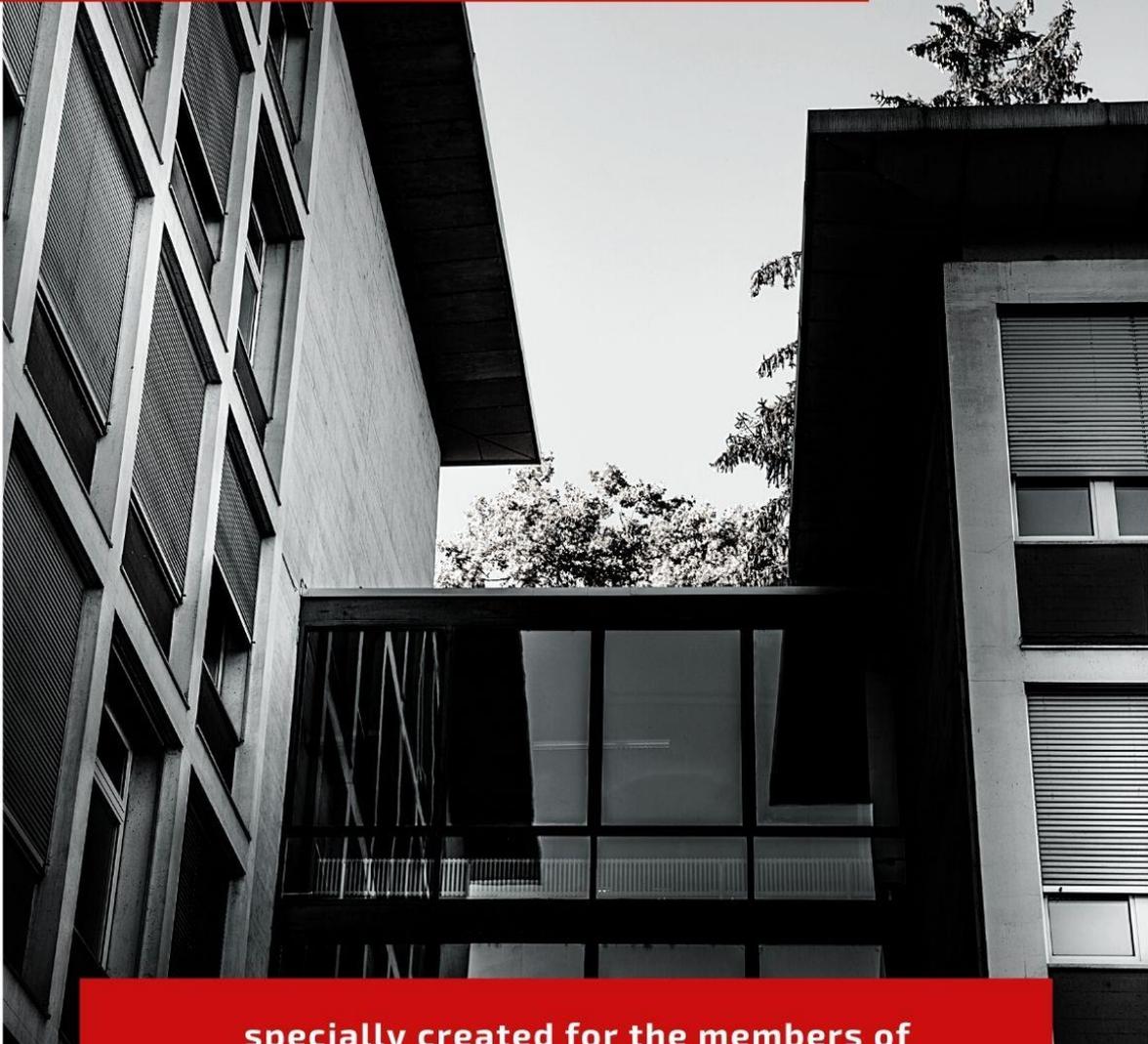




# GROUND REALITY

MONTHLY  
REAL ESTATE UPDATE  
BY FOX MANDAL



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Real Estate Updates



January 2021

## GOVERNMENT ORDERS/NOTIFICATIONS

### *TAMIL NADU GOVERNMENT ALLOWS INDUSTRIAL UNITS TO POSSESS LAND NOTWITHSTANDING VIOLATION AND NOTIFIES DOUBLED CEILING AREA*

The Tamil Nadu government has now allowed industrial units to possess lands irrespective of any violation of provisions of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 by the seller. Industrial units were not allowed to possess lands beyond a slab and had to declare excess land to the government. Further, if the excess lands were sold wholly or partly, the transaction would not be allowed. The ceiling area was doubled from 15 to 30 standard acres of dry land by amending the act in 2018. This amended ceiling has also been notified now. One can therefore hold 120 acres of dry land and 60 acres of wetland without permission. Earlier, even if industrial units had bought the land unaware of the violation, they had no right to possess, now they at least have the right to apply for possession although the application may not be necessarily granted. However, if the authorised officer has already taken steps to recover the land to the government, this will not apply.

[Source: [G.O. \(Ms.\) No. 596, Revenue & Disaster Management Department, Land Reforms Wing](#)]

## *NEW NORMS FOR GRANTING LAYOUT APPROVAL IN TAMILNADU*

According to the Government Order issued by the State Housing Department, the developers under Chennai Metropolitan Development Authority (CMDA) jurisdiction have been approaching the local bodies twice for getting layout approval. The State Government has issued the G.O to simplify the process, wherein the developers will approach the local bodies only for its final assent on giving approval to layouts. In case of high rise, non- high rise, institutional and industrial buildings the gifting of road, park spaces are taken over by the CMDA authority and transferred to local bodies. According to G.O, CMDA and Director of Town and Country Planning (DTCP) should finalize the layout rules under the Tamil Nadu Combined Development and Building Rules (TNCDBR), 2019 and the lands earmarked for road, OSR and public purpose to be gifted by the applicant. The applications would be forwarded to local bodies or Chennai Corporation who would take over the lands for road and Open Space Reservation (OSR) and after collecting necessary fees for amenities like road, storm water drain, streetlights etc., the final layout approval sketch, planning permission along with approval from local body shall be issued to the applicants directly.

[Source: [G.O. \(Ms\). No. 181, Department of Housing & Urban Development](#)]



### SUPREME COURT

#### *MERE OFFER OF REFUND BY DEVELOPER DOES NOT DISENTITLE FLAT BUYERS FROM CLAIMING COMPENSATION FOR DELAY IN HANDING OVER POSSESSION*

The Supreme Court has observed that flat purchasers who obtained possession or executed Deeds of Conveyance are not disentitled from claiming compensation merely because the developer offered an exit option of refund of consideration together with interest.

For a genuine flat buyer, who has booked an apartment in the project not as an investor or financier, but for the purpose of purchasing a family home, a mere offer of refund would not detract from the entitlement to claim compensation, the bench comprising Justice DY Chandrachud, Indu Malhotra and Indira Banerjee observed while disposing of an appeal against an order passed by National Consumer Disputes Redressal Commission (NCDRC).

An association representing flat purchasers had filed a complaint before the Commission alleging that there was a substantial delay on the part of the developer in handing over possession of the apartments which were contracted to be sold. The commission allowed their complaints and directed the developer to pay compensation in the form of simple interest @ 7% per annum from the expected date for delivery of possession till the date on which the possession was actually offered to the allottees.

The Developer, challenged this order before the Apex Court, raising two grounds (1) as a result of force majeure conditions, they were prevented from achieving timely completion of their contractual obligations (2) exit offers were given to the flat buyers on two occasions when the developer became aware of the fact that there was a delay beyond the contractual period of thirty-six months and the purchasers were offered refunds of the consideration together with interest at the rate of 9% per annum and 45% of the flat buyers in the project have sold away their apartments.

On Force Majeure aspect, the bench observed:

"It is evident that a delay in the approval of building plans is a normal incident of a construction project. A developer in the position of the appellant would be conscious of these delays and cannot set this up as a defense to a claim for compensation where a delay has been occasioned beyond the contractually agreed period for handing over possession. As regards the stop-work orders, there is a finding of fact that these were occasioned by a succession of fatal accidents that took place at the site and as a result of the failure of the appellant to follow safety instructions. This is a pure finding of fact. There is no error of law or fact. Hence, the court finds no substance in the force majeure defense.

On the developer's exit option, the bench observed:

The court, while rejecting the second ground observed that merely because the developer offered an exit option with interest at 9% would not disentitle the flat purchasers from claiming compensation. The developer cannot assert that a buyer who continues to remain committed to the agreement for the purchase of the flat must forsake recourse to a claim for compensation occasioned by the delay of the developer. Mere refund of consideration together with interest would not provide a just recompense to a genuine flat buyer, who desires possession and remains committed to the project. It was for each buyer to either accept the offer of the developer or to continue with the agreement for the purchase of the flat. Similar is the position in regard to the submission on the appreciation of the value of the flats. Undoubtedly, this is one factor which has to be borne in mind in considering whether and, if so to what extent, compensation for the delay should be awarded. Having regard to the principles which have been enunciated in the earlier two decisions which have been noted above, we are unable to subscribe to the submission that the flat buyers are not entitled to any payment whatsoever on account of delayed compensation. The court awarded compensation at the rate of 6 percent simple interest per annum to each of the appellants. The court noted that the flat buyers had to suffer on account of a substantial delay on the part of the developers and thus they cannot be constrained to the compensation of Rs.10 per square foot provided by the agreements for flat purchase.

[Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt Ltd  
(now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors., Civil Appeal No. 6239 of 2019]

## MADRAS HIGH COURT

### *REGISTRATION OF SALE AGREEMENT NO BAR TO SELL PROPERTY TO THIRD PARTY*

Registration of sale agreement, expressing willingness to sell a property to a particular person on receiving full payment in the future does not bar a property owner to go ahead and sell or transfer the property to a third party without getting the sale agreement annulled through a Civil Court decree, the Madras High Court has ruled.

A Division Bench of the Madras High Court held that the law does not empower registration department officials to insist upon court orders annulling sale agreements, if there were any, before registering sale deeds, gift deeds, settlement deeds or any other property transfer documents executed by the owner. It was further held that it is for the buyer or subsequent transferee to make a reasonable inquiry to verify the title of the property and the doctrine of Caveat Emptor (let the buyer beware) applies to every transfer. Merely because a sale agreement is registered, subsequent transfer and registration cannot be prohibited on the ground that a decree of declaration that such agreement was void has not been obtained.

Necessary directions to sub registrars were given to register subsequent documents on the basis of an agreement to sale in respect of the same property. It was observed that the registration department officials are empowered to refuse registration only in a limited number of circumstances and the law does not accord them any omnibus power.

*[N. Ramayee v. The Sub-Registrar, Valapady, Salem District and Anr. Writ Petition No.674 of 2020 -*

*5th November, 2020]*

## *FRESH APPLICATION NOT NEEDED FOR LAPSED BUILDING PERMISSION*

The owners (Petitioners) of residential property had obtained licenses for construction on their plot in the years 2014 and 2007 for a period of one year from the municipality (Respondent). However, they were unable to undergo construction within the said period due to financial constraints and subsequently the licenses expired. The cause of action arose when the Respondent via order rejected petitioners' application dated 09.09.2019 for renewal of licenses on the ground of exorbitant delay.

The central issue in the matter was whether petitioners were entitled to be granted renewal of building license or were they required to apply for a fresh license to continue with their construction? To answer this, the court referred to S. 204 of Tamil Nadu District Municipalities Act, 1920, which said that fresh application had to be made if permission lapsed without completing construction. Further, a differentiation was made between 'fresh application' and 'new application' and order in Golden Homes Private Ltd. Vs. The Secretary to Government Writ Petition No. 3946 of 2017, dated 17.04.2017, was cited to define the meaning of 'fresh application' which said that "an application seeking renewal is nothing but a fresh application and not a new one." Court took into hand two other similar orders WP Nos. 13696 and 11432 of 2017 where Madras HC had set aside the order of the respondent and directed it to process the petitioner's application for renewal.

Relying on the above, the court opined that once building license was granted and construction was not completed within the license period, a fresh permit had to be given on application under S. 204 for the site plan already approved and there was no question of once again going through the entire process afresh. Therefore, the court directed the respondent to renew the building license of the petitioners after collecting fee and payments.

[\[Mistair Realty's Pvt. Ltd. and Anr. v/s Commissioner, Udhagamandalam Municipality, W.P. Nos.](#)

[13874 & 13777 of 2020\]](#)

*THE SETTLEMENT OF PROPERTY DEED IF REGISTERED FRAUDULENTLY SHALL STAND VOID*

In a significant move, the Madras High Court has declared a fraudulently registered settlement deed of a property as void, while passing a direction for the sub-registrar office to register the court order so that such fraud entries in the future are automatically reversed. The order further stated that there was no provision in the Registration Act that enabled officials to cancel any document or any entry made in the property records. The only remedy for the property owner was to approach the jurisdictional civil court.

In a situation like this expecting the parties to go before the civil court every time an illegal document is registered, makes it almost impossible for the real owner to deal with his property. It is a known factor that proceedings initiated before the civil court is long drawn journey.

The ruling can set a precedent to end years of litigation to remove such disputed entries made in the property records.

[\[J.Jayaniithaa Vs. Inspector General of Registration & Ors., W.P.No.18721 of 2020\]](#)

**TAMIL NADU REAL ESTATE REGULATORY AUTHORITY (TNRERA)**

*LIFE CERTIFICATE NOT NEEDED TO EXECUTE DEED IF POA GIVEN, RULES TNRERA*

In an order relating to a housing project, where three original owners of a Joint Venture were refusing to issue life certificate, TNRERA directed the sub-registrar office to execute the undivided share of land (UDS) based on the power of attorney issued to the developer without insisting on life certificate.

It was held that the power of attorney executed by the owners had not been revoked and notices were duly served to the owners insisting to provide life certificate and the same showed that they

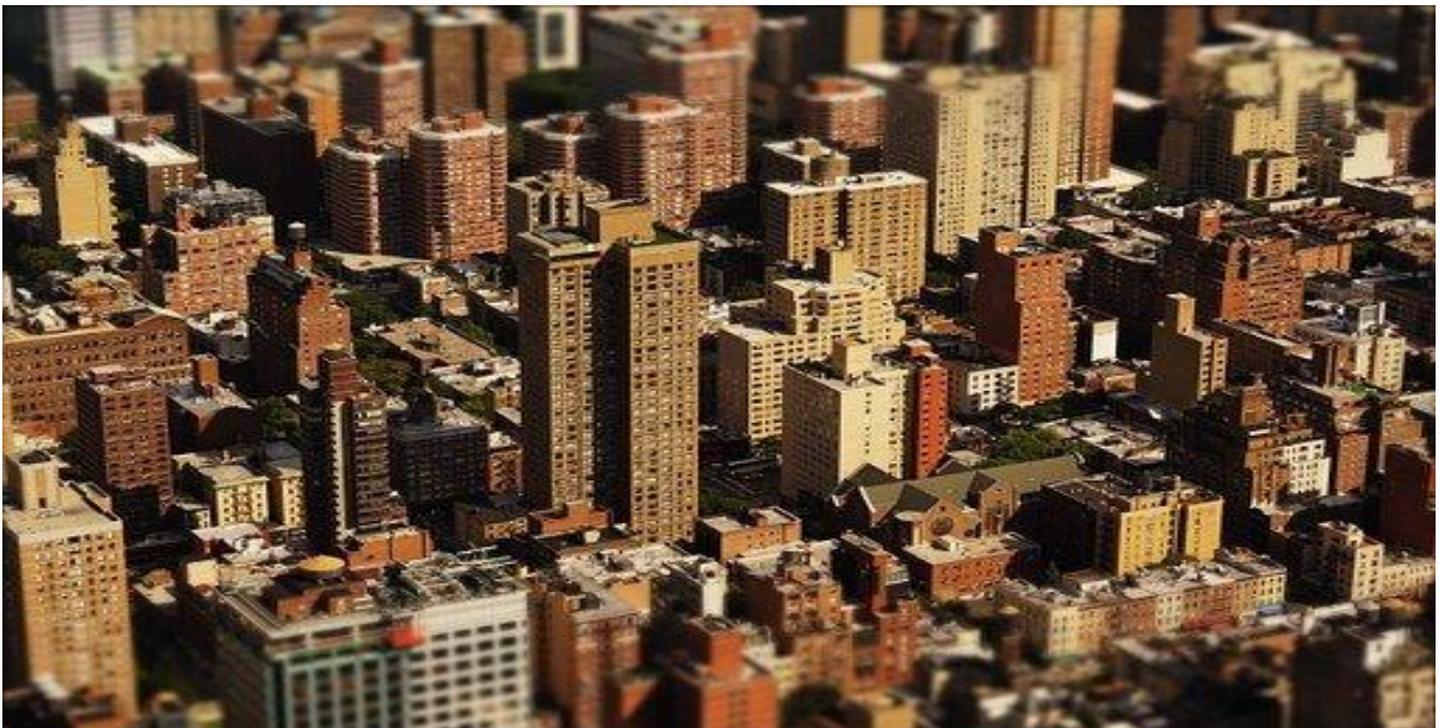
were alive. Also, public notices had been published in newspapers. Citing an order of the Madras High Court, the authority directed that having executed the agreements and power of attorney in favour of the promoter, the sub-registrar shall accept the execution of UDS registration without insisting on a life certificate.

[Click Here to read the order](#)

### *TAX CANNOT BE DEDUCTED WHILE REFUNDING A HOMEBUYER*

A developer cannot deduct any amount on taxes while refunding payment to a homebuyer for an apartment not handed over. TNRERA also penalized the promoter for causing mental agony to the home buyer. In a recent order related to the unregistered project Prestige Bella Vista at Ayyappanthangal near Porur the TNRERA said Prestige Estate Projects Ltd had not filed any document to prove the amount was paid to tax authorities for the flat booked by the complainant. The flat allotted was sold to another purchaser. When the sale of the flat was not complete and the same was sold to some other person who is bound to pay the tax, the developer cannot deduct any amount towards tax from the amount payable to the complainant.

[\[Munish Malhotra vs. M/s. Prestige Estate Project Ltd. \(CCP No. 258 of 2019\)\]](#)



## MISCELLANEOUS

### *PLANNING PROCESS UNDER CMDA TO GO DIGITAL BY 1ST WEEK OF JANUARY 2021*

The planning process under Chennai Metropolitan Development Authority (CMDA) has gone digital from the first week of January 2021. The State Government had been working towards a comprehensive construction portal to integrate the permission given for planning and building by the Directorate of Town and Country Planning (DTCP), (CMDA) and local bodies. The CMDA has completed a trial of the layout and completion certificate.

The portal is a single window portal and contains online planning permission application, building permission application, layout application along with completion certificates. Apart from these, the Chennai Metropolitan Development Authority was also working on bringing reclassification and enforcement processes online. The citizen-oriented web portal is created in order to maintain transparency, ease in filling forms and for digitalization of records. The building plans, including applications for multi storied buildings are to be submitted and processed online.

The website can be accessed here: <http://www.cmdachennai.gov.in/>

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