

6 rules in RERA that will stop builders from delaying delivery of your dream home

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Promoters promise

There are six important provisions in RERA that may prevent the builders from delaying the projects and stick to deadlines rather than making a default.

1. Written affidavit: The promoter's promise will now have a legal standing to it. Along with all the required documents, the promoter has to give a declaration, supported by an affidavit stating the time period within which the project or the specific phase will get completed.

2. Possession date will be sacrosanct: Further, the 'agreement of sale' will have to specifically carry the date of possession and the rate of interest in the case of any default. Remember, the time period could differ amongst builders. "For new projects, the committed date of delivery is the choice of the developer and so the customers will need to take a decision if they find that the committed date of delivery is too distant they can opt to not purchase the apartment," says Rohit Gera, Managing Director, Gera Developments.

3. Clear title of the land: At times, the land on which the project is supposed to be built gets involved in disputes leading to a delay in construction and delivery. A written affidavit has to be provided by the promoter that the legal title to the land on which the development is proposed has legally valid documents with authentication of such title if such land is owned by another person.

4. Free from encumbrances: Often, it has been seen that several projects get delayed due to encumbrances which can restrict the promoter's ability to transfer title to the property. A written affidavit has to be provided by the promoter that the land is free from all encumbrances.

5. Maintaining separate account: Diversion has been the most common concern across the industry. Now, as per RERA, 70 percent of the amount realised for the real estate project from the buyers, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

The withdrawals from the account will be according to the extent of the work completed after it is certified by an engineer, an architect and a chartered accountant and will be subject to an audit every six-month. Such measures to a large extent are expected to minimise the diversion of funds, if not fully.

6. Making it an offence : In case of not adhering to the rules, the builder stands not only to lose the registration of the project too but may also be punishable by imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or both. Some states have, however, compounded the offence to avoid imprisonment of the developers.

"The biggest deterrent to delay in delivery is the clause that allows for [compensation](#) to the flat purchaser in the event of delay in delivery. In addition going beyond the committed date of delivery as mentioned in the registration of the project entails going back to the authority and answering questions justifying the delay, says Gera.

What if still there are defaults?

RERA has taken steps to not only make the promoter accountable but also make them pay compensation and penalty in cases of default of any provision of the rules. The enforcement of these could still be a question unanswered and will depend on the state RA to get them implemented.

In case the builder defaults and delays the possession of the property as per the 'agreement of sale', the buyer has the right to claim the refund of the amount paid along with interest. Even in the case, the promoter's registration is cancelled, the buyer will have the right to a refund.

And, in case the buyer does not want to withdraw from the project and do not want a refund, the promoter has to pay interest for every month of delay, till the handing over of the possession. Even though these could be an existing practice but taken together with the option for a refund amount under the aegis of a regulator, the delay process could be curtailed to a large extent.

Delayed period interest

In a case of default, both buyer and the builder have to charge the same rate of interest. So, if the buyer defaults in making payments on time to the builder or if the builder defaults in giving possession within the agreed period, the rate of interest payable for both will be the same.

Any delay in possession will lead to raising a grievance with the state RA. "The grant of compensation is through an adjudication process involving the regulatory authority and an adjudicating officer who will be appointed by the state government, hence, it will be decided on a case by case basis," informs Kalpesh Maroo, Partner, Direct Tax, BMR & Associates LLP.

How much of interest rate

Many states fixed the rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the State Bank of India highest Marginal Cost of Lending Rate plus two percent.

The interest percentage and the compensation amount (to be mentioned in the agreement of sale at the time of booking) in the case of any default could differ state-wise. Maroo says, "The state governments are vested with the powers to fix the rate of interest in the case of any defaults by the builders. Each state government is required to notify the applicable rate of interest in the case of defaults in its rules and regulations under the Act. Hence, the rate of interest may differ from state to state."

Conclusion

Its important that the Act does not get diluted by the states. And if need be, even the center should intervene in the matter. Even though the rules are in place, the state RA's are expected to keep a strict vigil on their implementation and take suo moto action (under section 5 of the RERA Act, they can do so) against builders doing any unfair practice or not adhering to the provisions of the Act. May not the homebuyer suffer anymore by running around and be at the mercy of the builders.

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