

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Bihar State Building Construction Corporation Campus, Shastri Nagar, Patna – 800023

00.N. 123

Dated 08-08-2023

Office Order

Sub: Standard Operating Procedure (SOP) for dealing with the Projects where the date of completion as mentioned in the application for registration has been exceeded and hence the project has come under lapsed category as application for extension of registration was not submitted within time.

There have been instances, where a Promoter failed to submit application for extension of their project during the prescribed period before the validity of registration is over. In cases where the promoter applies for extension of completion date, the Authority has been exercising its power judiciously considering the progress of the project and in the overall interest of the allottees. Given that promoters could not apply for extension of the registration of the project during the prescribed period due to their ignorance and consequently the registration of the project had lapsed, the Authority had offered a General Amnesty Scheme to safeguard the interest of allottees of such projects and allowed the Promoters to apply for extension with additional amount of fees up to a maximum period of delay of two years.

The validity of the Amnesty Scheme is now over. It is, therefore, necessary to outline the procedure to be adopted by the office for dealing with such applications that are received for extension.

The Authority is of the view that the association of allottees may give their proposal to carry out the remaining development work on lapse of registration as the promoter ceases to carry out further work of the project, after which it consults the State Government. The critical question here is that if the allottees through their association have not filed complaint cases against the promoter and have not requested for action as per Section 8 to carry out the remaining development work, denial of giving the promoter an opportunity for extension would not be in the interest of allottees, probably delay the work and increase the financial cost/burden of the project.

Clause 108 of judgement passed in Neelkamal Realtors Suburban Pvt. Ltd. V/S... The Union of India by Hon'ble Bombay High Court states "Considering the extent of power conferred on the authority under Section 7, we need to put up a harmonious construction on the provision of Section 6 of RERA. The law confers powers under Section 7 on the competent authority, in the larger public interest to regulate the real estate sector. The authority shall be entitled to take into consideration reasons and circumstances due to which the project could not be completed within the extended aggregate period of one year as prescribed under Section 6. We, therefore, find that a balanced approach keeping in view the object and intent of the enactment and the rights and liabilities of promoter and allottees in larger public interest is to be adopted. The Authority would exercise its discretion while dealing with the cases under Sections 6, 7, 8 read with Section 37 of RERA. We do not find that on the plea of the petitioners and for the reasons set out by the petitioners, first proviso to Section 6 needs to be declared as unreasonable, arbitrary, violating constitutional mandate of Articles 14, 19(1)(g) and 300-A of the Constitution of India. A harmonious and balance construction of the provisions shall suffice the purpose."

Clause 109 of the above said judgement states that "In case the promoter establishes and the Authority is convinced that there were compelling circumstances and reasons for the promoter in failing to complete the project during the stipulated time, the authority shall have to examine as to whether there were exceptional circumstances due to which the promoter

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failed to complete the project. Such an assessment has to be done by the authority on case-to-case basis and exercise its discretion to advance the purpose and object of RERA by balancing rights of both, the promoter and the allottees. In such exceptional cases, the Authority would be entitled to allow the same promoter to continue with the subject project for getting the remaining development work complete as per the directions issued by the authority. It shall not be interpreted to mean that in every case a promoter who fails to complete the project under the extended time under Section 6 would get further extension as of right.”

Under the circumstances mentioned above, the Authority has decided that it would take decision on case-to-case basis in the larger public interest and exercise its discretion to advance the purpose and object of the Act by balancing rights of both, the promoter and the allottees in order to complete the remaining development work of the Project.

The Authority has laid down the following SOP to deal with such matters.

1. Promoters need to submit the application for extension in Form 'E' online with the prescribed fees of Rs. one Lac with requisite documents as prescribed in office order no 111 dated 26/10/2022 of this office. All applications received from Promoters for such of their Projects for extension would invariably contain the consent of two third of allottees of the project that they want to get the remaining development work to be carried out by the same Promoter and they have no objection if the period of completion is extended.
2. Promoter would explain the compelling circumstances and reasons for failing to complete the project during the stipulated time and also satisfy that the progress of the project has reached to a level where completion is possible in the near future.
3. Such matters would be first referred to the Legal Section for examining whether any complaint cases are pending against that project. In case complaint case has been filed against the Promoter, Presiding Officer of the concerned bench would give her/his opinion whether the project needs to be extended further or not based on the antecedents.
4. If there is no complaint case pending:
 - a. The matter would be referred to compliance wing to check whether the obligations are being met by the promoter and the QPRs and other reports are being uploaded regularly. The matter would be further processed only after the status of compliance is found satisfactory and penalty amount, if any, has been deposited.
 - b. The Authority would examine the exceptional circumstances due to which the promoter failed to complete the project within the stipulated period.
 - c. The office would examine whether the conditions and application and documents as prescribed under relevant sections of the RERA Act,2016 and Rules of Bihar RERA Rules,2017 and other related provisions has been submitted.
 - d. Availability of a valid map of the project would be essential. However, in cases where Promoter has applied for revalidation or approval, as the case may be, and evidence of the same has been submitted, Authority may write to the concerned competent authority to facilitate the process of revalidation / approval at earliest as per Rules.
 - e. The period of delay, which was limited to two years under the General Amnesty Scheme may be extended if the above conditions are satisfied. For

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delay of every quarter promoter needs to submit additional fees for delay at the rate of fifty percent of the registration fees.

5. The Authority would finally decide on the application after taking a view on whether the time period of sought by Promoter to complete the Project is reasonable to complete the remaining development work, balancing the interests of the project and that of the allottees. It shall not be interpreted to mean that in every case a promoter who fails to complete the project under the extended time under Section 6 would get further extension as of right to complete the remaining development work.

This comes into force with immediate effect.

This issues with the approval of Competent Authority.

Sd-
Secretary
RERA, Bihar

Memo No.- नि/598/2021-REG-RERA/286
Copy To;

Patna, Dated; 08-08-2023

1. All the Promoters and Home buyers.
2. Presidents of CREDAI and BAI, Patna
-For information and needful please.


Secretary
RERA, Bihar