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Legal Effect of a Pandemic on the Real Estate Sector

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ABSTRACT

The Article encompasses the Legal effect on the Real Estate Sector by the Coronavirus Pandemic. The Real Estate has seen numerous changes in Policy, structure even after it has been regulated since 2016. The Paper shall deal with how the Pandemic will affect the sector post all three phases of unlocking India. Different measures by the states to save the sector have also been laid down by the Paper.

I. INTRODUCTION

What the world has not anticipated is here, the Black Swan of 2020 for the common man, a Global Pandemic as declared by the World Health Organization.³ As of 30th Jan, 2020 the WHO declared the same as a Public Health Emergency of International Concern.⁴ The virus that started in Wuhan China has a number of theories on how the actual spread occurred. It created maddening panic in the world with Countries declaring Indefinite Lockdown. The virus at this time is spreading from one Country to another and there is no end near at sight.

The global economy could shrink by up to 1 per cent in 2020 due to the coronavirus pandemic, a reversal from the previous forecast of 2.5 per cent growth, the UN has said, warning that it may contract even further if restrictions on the economic activities are extended without adequate fiscal responses.⁵ “Millions of workers in these countries are facing the bleak prospect of losing their jobs.⁶ Governments are considering and rolling out large stimulus packages to avert a sharp downturn of their economies which could potentially plunge the global economy into a deep recession. In the worst-case scenario, the world

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³WORLD HEALTH ORGANISATION (Apr. 19 2020,12:50 AM), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

⁴*Id.*

⁵THE ECONOMIC TIMES ((Apr. 19 2020,12:50 AM), https://economictimes.indiatimes.com/news/international/business/global-economy-could-shrink-by-almost-1-in-2020-due-to-covid-19-pandemic-united-lanations/articleshow/74943235.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

⁶INTERNATIONAL LABOUR ORGANISATION (Apr. 20, 2020, 1:50 AM), <https://www.ilo.org/global/topics/coronavirus/lang--en/index.htm>.

economy could contract by 0.9 per cent in 2020,"⁷ the DESA said.

Real estate Sector over the years from being an unregulated sector, to seeing numerous policy changes, reforms, is now facing the Pandemic. The Paper shall deal with how the Pandemic will affect the sector post all three phases of unlocking India.⁸In addition, in India the Government had taken a number of initiatives like cabinet approval on Partial Credit Guarantee Scheme to NBFCs and HFCs, and giving affordable housing scheme. Now it has become nearly impossible to see the fruits of the labor of the Government. One simply needs to wait and see how this pans out.

II. THE TIMELINE AND WHEN INDIA WAS UNDER THREAT

January 20, 2020 saw the first case of Corona Virus which was confirmed in the district of Thrissur after a student who had returned home for a vacation from Wuhan University in China, was tested positive.⁹Soon after this Kerala declared the disease a state calamity when a third case also was tested positive.

Mid February, The World Health Organization named the novel Coronavirus disease COVID-19. WHO said it did not want the name of the disease to refer to a geographical location, an animal, an individual or group of people. It also needed to relate to the disease and be pronounceable.¹⁰

All public gatherings banned in Kerala and classes up to class 7 suspended as 8 new cases reported. Kerala CM Pinarayi Vijayan reported six fresh cases in Pathanamthitta, all of whom were linked to the five previously confirmed cases from the town.¹¹

On March 11, 2020, the WHO declared the Coronavirus as a pandemic. WHO Director-General Dr. Tedros Adhanom Ghebreyesus said that WHO is deeply concerned by the alarming levels of spread and severity, and by the alarming levels of inaction. He also added that Pandemic is not a word to be used lightly or carelessly.¹²

When the cases were steeply rising in India, the Modi Sarkar observed a Janata Curfew on March 22nd. The Prime Minister soon a day after the Janata Curfew declared a 21 day lock

⁷*Id.*

⁸Times of India, *First of 3 phase 'unlock' plan begins today: What's open and What's not*, TIMES OF INDIA (Apr. 20, 2020, 2:00 AM), <https://timesofindia.indiatimes.com/india/lockdown-5-guidelines-whats-open-and-from-when-in-mha-phase-wise-reopening-plan/articleshow/76109536.cms.html>.

⁹AkankshaUpadhyay, *Covid 19 : A comprehensive timeline of Coronavirus pandemic Iin India*, TIMESNOW NEWS (Apr. 19, 2020, 12:30 PM), <https://www.timesnownews.com/india/article/covid-19-a-comprehensive-timeline-of-coronavirus-pandemic-in-india/579026.html>

¹⁰World Health Organisation, (Apr.19, 2020, 1:30PM), [https://www.who.int/dg/speeches/detail/who-director-general-s-remarks-at-the-media-briefing-on-2019-ncov-on-11-february-2020\).html](https://www.who.int/dg/speeches/detail/who-director-general-s-remarks-at-the-media-briefing-on-2019-ncov-on-11-february-2020).html)

¹¹AkankshaUpadhaya, *Supra* Note 5.

¹²*Id.*

down. All transport services – road, rail and air, - were to remain suspended during the lockdown. Centre also made an allocation of Rs 15,000 crore to strengthen health infrastructure in order to contain COVID-19.¹³

With over 12,759 people have been infected with the novel Coronavirus in India while the death toll in the country has crossed the 400-mark. PM Narendra Modi in a live address to the nation, extended the lockdown till May 3.¹⁴

The Lockdown saw further extension of over the two months till the 1st of June where the Country has entered the Unlocking Phase 1. Different laws has been brought forward by the Government which deals with Migrant Crisis, Company Laws and IBC Laws, Employment Sector, Salary and laying Off, amendment to the Disaster Management Act to name a few during this entire Lockdown Period.

Presently the Country is going through Phase 1 of the Unlocking, where reviving the Economy can be seemingly seemed to be the major Interest. During the Phase I, all religious sectors, restaurants, malls were allowed to be opened subject to the State Government's Restriction.

(A) IMPACT ON THE INDIAN REAL ESTATE SECTOR

Globally Speaking, almost 28 percent of the total investment in Indian real estate came from Singapore, Hong Kong, and China in 2019. In fact, the United Nations (UN) is predicting that India is at risk of facing an immediate trade loss of approximately Rs. 2,510 crore. "Prices of real estate have to come down, and will come down," Deepak Parekh, Chairman of mortgage lender Housing Development Finance Corporation said in an address to real estate developers.¹⁵ Real Estate Prices in the Country would come down by 20 percent in the wake of the Pandemic.

1. LEGAL IMPLICATIONS

The legal implications in the real estate sector are the impact on contracts/agreements due to COVID-19, which are currently in motion/existence.¹⁶ Force majeure clause acts as a protection to parties wherein due to any unforeseen circumstances; either of the parties are

¹³*Id.*

¹⁴*Id.*

¹⁵Ami Shah, *Real estate prices may crash up to 20% post COVID 19*, Economic Times, (https://economictimes.indiatimes.com/markets/stocks/news/real-estate-prices-may-crash-up-to-20-post-covid-19-deepak-parekh/articleshow/75136953.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited April 20, 2020).

¹⁶Taher D Mandivwala, *COVID 19: Impact on Real Estate*, Cyril AmarchandMangaldas, (<https://corporate.cyrilamarchandblogs.com/2020/04/covid-19-impact-on-real-estate/>) (last visited April 20, 2020).

unable to fulfil their commitment as per the agreed terms and conditions of the contract.¹⁷Promoters are expected to resort to this for extension of registration of their projects under S. 6 of the RERA.¹⁸

The burden of proof rests on the party invoking the force majeure clause. The said burden can be effortlessly discharged where force majeure clause in the contract explicitly provides for events like epidemics, pandemics or government restriction.¹⁹Under the Office Memorandum dated February 19, 2020 issued by Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division, force majeure is characterised as a natural calamity. It further clarifies that, “a force majeure clause does not excuse a party’s non-performance entirely, but only suspends it for duration of the *force majeure*” and it cannot be an ex-post facto event.²⁰Therefore force majeure clauses mean that there can be a delay in performance of the contract and not absolving the party’s obligations.

The question the Courts will have to address is also whether the circumstance is a force majeure to start with. While the impact of the calamity on the real estate sector is not fully clear and due to the fact that usual fluctuations in economy does not lead to a force majeure event.²¹There is not a clear interpretation, identifying this crisis as one of the categories of force majeure.²²This in fact has to be addressed by the Court and thus would give some kind of clarity in this sector.

2. BUSINESS MODELS

Transportation and Mobility has been difficult with the social distancing rules at place. With this, most of the Real Estate Services. Companies will have to make changes in their business Model by bringing in online Transactions as the Primary way of business. Adaptation to Technology will be the most fruitful method.²³Business ideas can also include virtual methods of visiting properties. India is second to China as far as terms Internet Users as per the Internet and Mobile Association of India (IMAI). Therefore, Indian Services should take advantage of by investing in technology and make changes to their business models if not done already.

¹⁷*Id.*

¹⁸Real Estate (Regulation and Development) Act, 2016, § 6, No. 10, Acts of Parliament, 2016(India).

¹⁹COVID-19 – A Force Majeure Event Or Simply A Pandemic? 06 April 2020 by Nishant Menon and RaheelKohli

²⁰Taher D Mandivwala, *Supra* note 13.

²¹*Id.*

²²*Id.*

²³Prashant Thakur, *COVID-19 Impact on the Indian Real Estate Sector*, ANAROCK (Apr. 22, 2020, 3:33PM),https://api.anarock.com/uploads/research/ANAROCK_Covid-19%20Impact%20on%20Indian%20RE%20Sector.pdf

3. EMPLOYMENT

Work is getting affected by Covid-19. Real Estate and Infrastructure are one of the biggest Employment Sectors in India. The Sector gives due regards to skilled and unskilled workers. In addition the workers mostly working in construction and Development are mostly immigrants. Balancing out the rights of the Migrant workers and the interest of the sector is something that needs to be carefully woven by the Government. The recent outrage over the Karnataka Government cancelling the Special trains²⁴ over concerns of shortage on Labour is an apt example of how Government need to come with innovative solutions, at the same time respects the right to Life of a Migrant Worker.

With the Unlocking of the Country in phases, there is a surge in the number of cases per day.²⁵ The country of 1.3bn people now has the fifth highest number of confirmed cases in the world, at 286,579.²⁶ This reinstates the fact that even though the Sector wants to go back to its original wavelength, the importance of health will slow down the development.

(B) MEASURES TAKEN BY THE GOVERNMENT OF INDIA TO PROVIDE RELIEF TO THE REAL ESTATE SECTOR

Indian real estate sector, which was already struggling in India in recent times due to low consumer demand due liquidity crisis in the market, is set to suffer again due to the outbreak of the COVID – 19. This outbreak is set to cause disruption in completion of projects and will cause a major cash crunch as economy is heading towards a recession. COVID-19 has resulted in the stoppage of work, non-availability of labour, delayed possession, restrictions on travel and movement of goods and postponement of physical meetings about crucial decisions etc. It is estimated that this could trigger lay-offs, salary cuts. However, it is expected that prices of the properties won't go up as there is no demand even though the costs might go up.

To mitigate the damage caused by the outbreak, regulatory bodies and government have come up with certain measures to provide much needed relief to the affected parties in the real estate sector. Real Estate Regulatory Authority (RERA) of each state has come up with a specific notification to provide some relief.

²⁴BS Web Team, *Migrant Crisis Deepens: Outrage after Karnataka stops special trains*, BUSINESS STANDARD (May 10, 2020, 4:30PM), https://www.business-standard.com/article/current-affairs/trains-cancelled-jobs-offered-how-states-are-dealing-with-migrant-exodus-120050700314_1.html

²⁵*Global Report: India reports surge in COVID 19 cases as lockdown eased*, THE GUARDIAN (May 22, 2020, 5:30PM), <https://www.theguardian.com/world/2020/jun/11/global-report-india-reports-surge-in-covid-19-cases-as-lockdown-eased>

²⁶ Id.

1. MAHARASHTRA

Maharashtra RERA by an order dated 2nd April, 2020²⁷, where the completion date, revised completion date or the extended completion date expires on or after the 15th March 2020, the period of validity for registration of such projects shall be extended by three months. Further, the time limit for statutory compliances has also been extended to 30th June 2020.

2. KARNATAKA

Karnataka RERA vide a circular dated 4th April, 2020²⁸, extended the period for validity of registration of such projects by three months where completion date, revised completion date or the extended completion date expires on or after 15th March, 2020.

3. TAMIL NADU

Tamil Nadu RERA vide its circular dated 6th April, 2020²⁹ extended the registrations to 30th June 2020 and completion period of all the registered projects is extended by five months.

4. GUJARAT

Gujarat RERA vide its order dated 13th April 2020, has allowed the promoters of projects having end dates between 1st April 2020 and 31st March 2021, to apply for an extension for completion of their projects.

Apart from the regulatory bodies, some ministries in India are also taking measures to help out the general public by issuing guidelines via circulars regularly. Recently, SEBI has extended the timelines for filing of all the compliances obligation of REITS and infrastructure investment trusts for one month³⁰.

RBI in March 2020, issued a set of measures for relaxing the repayment pressures and improving the access to working capital. As per the guidelines issues by the RBI, all the commercial banks, co-operative banks, all- India Financial Institutions, and NBFCs are being permitted to allow a moratorium of three months on payment of instalments in respect of all the term loans. In respect of the working capital facilities sanctioned by the banks in terms of cash overdraft, institutions are permitted to allow a deferment of three months of payment

²⁷Maharashtra RERA circular no. MahaRERA/Secy/25/2020 dated Apr. 2, 2020, <https://maharera.mahaonline.gov.in/Site/Upload/PDF/Final%20Order%20for%20Revision%20of%20Duration%20v4.pdf>

²⁸Karnataka RERA circular no. Sec.CR. 04/2019-20 dated May 16, 2020, <https://rera.karnataka.gov.in/reraDocument?DOC=IM5P4c6kqO2K9ahEQcvAuw%3D%3D>

²⁹Tamil Nadu RERA circular dated Apr. 6, 2020, <http://tnrera.in/Downloads/CircularsAndOrders/TNRERA-Circular-06042020.pdf>

³⁰SEBI Circular No. SEBI/HO/DDHS/CIR/P/2020/42 dated March 23, 2020, available at https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-to-reits-and-invits-due-to-the-covid-19-virus-pandemic_46398.html

and interest with respect to such facilities. Apart from this, RBI has lowered the repo rate to make credit attractive and cause infusion of liquidity into the market. It has also lowered the reverse repo rate to discourage banks to park their excess funds with the RBI. It is hoped that these measures will help in reviving the economy and provide a much needed relief to the stakeholders in real estate sector as well.

The Real Estate Developers' Associations of India ("**CREDAI**") had demanded that "Loans by real estate developers should also not be classified as NPA in case they default on interest or principal repayment due to COVID-19". The RBI *vide* press release dated March 27, 2020, also clarified that moratorium/deferment provided will not result in asset classification downgrade. Timely and effective measures are much-needed lifeline at this juncture. It is hoped that the government continues to be vigil and quick in tackling issues arising out of the pandemic and tide over the real estate sector over the economic fallout from COVID-19.

III. CONCLUSION

There is no doubt that that we are in the middle of an unprecedented crisis. It is believed that there is perhaps an enormous economic pain ahead of us. Policy and politics will have to go hand in hand if we aim to alleviate the damage to the economy. Well timed decisions with proper implementation will help us to save the economy and at the same time bad policy decisions will derail the economic revival.

If the real estate sector is affected it could create another huge unemployment crisis as real estate is the highest employer after agriculture. It provides employment opportunities to skilled and unskilled workforce. If that were to happen, Indian economy could take a long time to recover. There is a lot uncertainty in the market right now and It all depends on how long does the pandemic lasts. If history is any indication, the world is bound to recover sooner than later. Every sphere of the economy, including the real estate sector, will face constraints such as reduced demand and delayed business decisions.

Although, government along with the regulatory bodies have taken certain measures to lessen the effect of this pandemic on the real estate sector but these are short term measures to provide the stakeholders i.e. real estate developers and buyers with an immediate relief. These short term measures are important as it boosts the public morale but at the same time these measures are not enough in the long run. We need long term measures that are focused on reviving the real estate sector, boosting the employment and mitigating the impact of the pandemic
