

DIRECT TAX

News

Emails to taxpayers not a harassment: CBDT

Income Tax Department e-mails sent to assesseees to seek clarification on refund should not be construed as harassment.

Central Board of Direct Taxes (CBDT), the apex policy making body for personal income tax and corporate tax, has said that computer-generated emails have been sent to almost 1.72 lakh assesseees. These include all classes of taxpayers – from individuals to HUF to firms, big or small companies including start-up. This means no one has been singled out, it said.

These emails are auto-generated under section 245 of the I-T Act in refund cases where there is any outstanding demand payable by the assessee. In case the outstanding demand has already been paid by the taxpayer or it has been stayed by the higher tax authorities, the taxpayers are requested through these mails to provide the status update so that while issuing the refund, these amounts are not held back and their refunds are released forthwith.

Notifications

Notification No. 22/2020 dated 24th April 2020.

The Protocol, amending the Convention between the Government of the Republic of India and the Government of the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which was signed at Vienna on the 8th November, 1999, has been signed at New Delhi on 6th February, 2017, as set out in the annexure appended to this notification (hereinafter referred to as the said amending Protocol).

Notification No. 23/2020 dated 6th May 2020

Amendment of Mutual Agreement Procedure (MAP) procedure laid down in the Income-tax Rules, 1962

CBDT amends Rule 44G and Form 34F-Application to give effect to DTAA. Where an assessee, being a resident of India, is aggrieved by any action of the tax authorities of any country or specified territory outside India for the reason that, according to him, such action is not in accordance with the terms of agreement with such other country or specified territory, he may make an application to the Competent Authority in India seeking to invoke the mutual agreement procedure, if provided in such agreement, in Form No. 34F.

Notification No. 24/2020 dated 8th May 2020.

Central Government hereby notifies “SHRI RAM JANMABHOOMI TEERTH KSHETRA” (PAN: AAZTS6197B) to be place of historic importance and a place of public worship of renown for the purposes of the said section from the year F.Y. 2020-2021, relevant to the Assessment Year 2021-2022 for the purpose of Section 80G.

Circulars

Circular C 1 of 2020

Clarification in respect of option under section IISBAC of the Income-tax Act, 1961

Employee, having income other than the income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act.

It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year.

Circular No. 8/2020 dated 13th April 2020

The enhanced rates of surcharge were applicable from the 1st day of April, 2019 for previous year 2019-20 relevant to assessment year 2020-21. It is clarified a person responsible for deduction/collection of tax under any provision of the Income-tax Act will not be considered to be an assessee in default in respect of transactions where:

- a) such transaction has been completed and entire payment has been made to the deductee/payee on or before 5th July, 2019 and there is no subsequent transaction between the deductor/collector and the deductee/payee in the financial year 2019-20 from which the shortfall of tax could have been deducted/collected by the deductor/collector;
- b) TDS has been deducted or TCS has been collected by such deductor/collector on such sum as per the rates in force as per the provisions prior to the enactment of the Act;
- c) such tax deducted or collected has been deposited in the account of Central Government by the deductor/collector on or before the due date of depositing the same;

d) TDSITCS statement has been furnished by such person on before the due date of filing of the said statement.

Circular No. 9/2020 dated 22th April 2020

The Bill has since been passed by the Parliament and has also received the assent of the Hon 'ble President of India and has now been enacted as The Direct Tax Vivad Se Vishwas Act, 2020 from Direct Tax Vivad se Vishwas Bill, 2020. 55 questions contained in circular no 7 of 2020 are reissued under this circular with following modifications.

Circular No. 10 /2020 dated 24th April 2020

Difficulty in implementation of reporting requirements under clause 30C and clause 44 of the Form No. 3CD of the Income-tax Rules, 1962 in view of the Global Pandemic due to COVID-19 virus and requested for deferring the applicability of the above provisions. It has been decided by the Board that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2021.

Circular No. 11 /2020 dated 8th May 2020.

The Central Board of Direct Taxes (CBDT) via Circular No. 11 of 2020 dated 8 May 2020 (Circular), has decided to provide certain relaxations while counting the number of days' stay by such persons in India, for the purpose of determining their tax residency status for FY 2019-20. Individual has been unable to leave India on or before 31 March 2020- Period of stay in India from 22 March 2020 to 31 March 2020 will be excluded for determining residential status.

Case Law

When Assessee specifically challenged the service of Notice u/s 148 as well as u/s 142(1) since the stage of assessment. It is the duty of the Revenue to prove the service of the notice Merely producing the carbon copy of notice and dispatch register entry does not prove service of notice on the assessee.

Shri Harish Bhasin versus ACIT, Central Circle 3, New Delhi. 2020 (4) TMI 847 - ITAT Delhi

No proof for service of notice u/s. 148. Further narration given by the AO as to issuance of service of notice u/s 148 shows that it does not contain facts if the notice were ever served upon the assessee, it just contains the fact that notices u/s 148 were issued on 05.06.2009. The record is altogether silent if the said notices were served upon the assessee or received back served/unserved nor copy of acknowledgement from the postal authority acknowledging the receipt of notice is there on the file. It is settled principle of law that when the assessee has specifically challenged service of notice u/s 148 as well as u/s 142 (1) since the stage of assessment it is the duty of the Revenue to prove the service of notice. Merely producing the carbon copy of notice and dispatch register entry does not prove service of notice on the assessee. Revenue has failed to prove the proper service of notice u/s 148, it is decided against revenue.

Merely because the PCIT does not agree with the opinion of the Assessing Officer, he cannot invoke the provisions of section 263 of the Act to substitute his own opinion.

M/s. Sunray Cotspin (P) Ltd. Versus Pr. Cit Gurgaon 2020 (4) TMI 845 - ITAT Delhi

The share application money has been received from very same persons from whom share application and share premium amount has been received in earlier years. No adverse inference has been drawn in earlier years in respect of money received from the very same persons. During the year also, in the course of assessment proceedings, the assessee has furnished copy of bank statements in respect of all allottees alongwith their tax returns details.

During the course of scrutiny assessment proceedings, the assessee has furnished a certificate from the CA justifying the valuation of shares and the certificate. This clearly shows that the Assessing Officer has examined the share premium received during the year which is supported by the fact that the return was selected for scrutiny assessment only for this limited purpose.

Assessing Officer, after considering the various submissions made by the assessee, has taken a possible view. Therefore, merely because the PCIT does not agree with the opinion of the Assessing Officer, PCIT cannot invoke the provisions of section 263 of the Act to substitute his own opinion.

Merely because the assessee is engaged in the construction business is not a ground that land and building should be treated as part of stock in trade.

The Commissioner of Income-Tax And The Dy. Commissioner of Income-Tax Circle-1 (1) , Versus Thirumala Venkateshwara Estate And Agencies 2020 (4) TMI 761 - Karnataka High Court

The assessee had earned income by way of rent and rental income so received by the assessee was offered for taxation as income from the house property. The assessee has shown the property in question as capital asset in its balance sheet. There is no material on record to hold that the aforesaid property was converted by the assessee as an item of stock in trade. On the other hand, the said property was treated as capital asset. It has further been held that merely because the assessee is engaged in the construction business is not a ground that land and building should be treated as part of stock in trade.

Thus, the income from the sale of property has been treated as long term capital gain. The aforesaid finding of fact is based on meticulous appreciation of evidence on record and in substance is a finding of fact.

There was no undisclosed income found during the course of search and no incriminating material was found, hence we hold that there is

no case for imposing penalty u/s 271AAB of the Act.

Lajwantiben M Manglani Versus The Deputy Commissioner of Income Tax Central Circle-1, Baroda 2020 (4) TMI 741 - ITAT Ahmedabad

No undisclosed income or the inflation of expenditure during the search/ assessment proceedings. Unable to accept the contention of the revenue that the loose sheet found during the course of search indicates any undisclosed income or asset or inflation of expenditure. The facts of the assessee's case shows that there was no undisclosed income found during the course of search and no incriminating material was found, hence we hold that there is no case for imposing penalty u/s 271AAB of the Act.

Trust has been given a certificate from the office of the Charity Commissioner after going through the Memorandum of Association and seeing the activities of the trust.

Rotary Club Social Securities Fund Bhavnagar Ayushya Cancer Hospital Versus Director of Income-Tax (Exemption), Ahmedabad 2020 (4) TMI 716 - ITAT Ahmedabad

Rotary Club is carrying out charitable activities for the public at large as organizing the blood donation camp giving books to poor students and doing charity for orphanage etc. If there trust registration is legal and valid, rejecting the application for registration of the Trust is amounting to miscarriage of justice.

Trust has been given a certificate from the office of the Charity Commissioner after going through the Memorandum of Association and seeing the activities of the trust and trust is meant for deceased member of Rotary Club Family Members. If there trust registration is legal and valid why Rotary Club Social Security fund cannot held to be legal and valid, rejecting the application for registration of the Trust is amounting to miscarriage of justice. DIT(E) ought to have allowed the registration application filed to the assessee .

No error in the order passed by the AO once sufficient enquiry was made to the true character of the subsidy received by the assessee. The order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of the revenue for invocation of section 263.

Fortuna Engineering Pvt. Ltd. Versus The Pr. Commissioner of Income Tax-1, Nashik. 2020 (4) TMI 648 - ITAT Pune

AO had made adequate enquiry for the purpose of finding the true character and nature of the subsidy received by the assessee i.e. whether the same was capital in nature or revenue in nature. After making sufficient enquiry, AO allowed the claim of the assessee and held the subsidy to be revenue in nature. It is correct that the AO has not written voluminous order accepting the contentions of the assessee. AO is not required to

write detailed order accepting the contentions of the assessee, once the same is in accordance with law. AO is only required to write decision on contentious issues placed before him and not to write decision on the issues on which sufficient enquiry was made and the AO and after enquiry AO is satisfied that the issue is covered in favor of the assessee in accordance with the provisions of law.

No error in the order passed by the AO once sufficient enquiry were made to the true character of the subsidy received by the assessee. The order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of the revenue.

GST

News

GST applicable on sublet accommodation, rules Karnataka AAR

- While renting of accommodation is exempted from the goods and services tax (GST), the authority has ruled, "The exemption prescribed cannot be sought and the lessors have to charge GST while issuing invoice for the lease services.
- The applicant is not providing the service of leasing in individual capacity to the company but as a part of the group of lessors. It is seen from the agreement that lessors are providing the service of leasing or renting of immovable property for a consideration.

[Source- Economics times]

March GST collection sinks to Rs 28,309 cr vs Rs 1.13 lakhs crore last year.

These collections are for March and business activities were normal till March 24. People had started hoarding essentials during March in anticipation of a lockdown. The lockdown came into effect only from March 25 and thus these numbers are worrisome.

Both the revenues from the central government and states are under huge pressure as per the breakup of the GST numbers. Both Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) collections are at record lows of around Rs 5,000 crore.

[Source- CNBCTV 18]

Govt not cutting GST on PPEs, masks, to save local cos from cheap imports

The government is holding back on any GST rate reduction for items like PPE, ventilators, test kits, and sanitisers, as this could end up encouraging 'sub-standard imports' from China.

GST exemption would make prices fall leading to hardships and distortion for domestic manufacturers without much cost-benefit to the consumers. They said such a step would ensure imports get an advantage on domestic supplies, especially in PPE where the hardship on account of GST exemption would be "severe" for domestic units as basic customs duty on the item is nil up to September 30, 2020.

[Source- Economics times]

CBIC clears Rs 10,700 cr GST, customs duty refund in 16 days

The Central Board of Indirect Taxes (CBIC) has cleared over Rs 10,700 crore worth refunds in GST and customs duty between April 8-23. In the 'Special Refund and Drawback Disposal Drive', the CBIC officers have cleared over 1.07 lakh Goods and Services Tax and IGST refund claims worth Rs 9,818.12 crore.

The Finance Ministry had on April 8 said that to provide relief during COVID-19, it has been decided to issue all pending GST and custom refunds which would benefit around 1 lakh business entities, including MSME.

[Source- Economics times]

Notifications

Notification No. 30/2020 – Central Tax dated 3rd April 2020.

Registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 up to the 31st day of July, 2020.

Application of the condition in rule 36(4) for the months of February 2020 to August 2020 allowed to be applied on cumulative basis.

Notifications No 31/2020 – Central Tax dated 3rd April 2020.

Relaxations in filing of GSTR-3B for the tax periods of February 2020 to April 2020.

A lower rate of interest of NIL for first 15 days after the due date of filing return in FORM GSTR-3B and @ 9% thereafter is notified for those registered persons having aggregate turnover above Rs. 5 Crore and NIL rate of interest is notified for those registered persons having aggregate turnover below Rs. 5 Crore in the preceding financial year, for the tax periods of February 2020 to April 2020. This lower rate of interest shall be subject to condition that due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.

Notification No. 32/2020- Central Tax, dated 03.04.2020

Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing returns in FORM GSTR-3B for the tax periods of February 2020 to April, 2020 provided the return in FORM GSTR-3B by the date as specified in the Notification.

Notification No. 33/2020- Central Tax, dated 03.04.2020

Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing the statement of outward supplies in FORM GSTR-1

for taxpayers for the tax periods March 2020 to May, 2020 and for quarter ending 31st March 2020 if the same are furnished on or before 30th day of June, 2020.

Notification No. 34/2020- Central Tax, dated 03.04.2020.

Extension of due date of furnishing statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 for the quarter ending 31st March 2020 till the 7th day of July 2020 and filing FORM GSTR-4 for the financial year ending 31st March 2020 till the 15th July 2020.

Notification No. 35/2020- Central Tax, dated 03.04.2020.

Notification under section 168A of CGST Act for extending due date of compliance which falls during the period from the 20th March 2020 to the 29th June, to 30th June 2020.

The taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons- have been allowed to furnish the respective returns specified in sub-sections (3), (4) and (5) of section 39 of the said Act, for the months of March 2020 to May 2020 on or before the 30th June 2020.

Notification No. 37/2020 – Central Tax dated 28th April 2020.

Rule 87(13) and Form GST PMT-09 made effective w.e.f 21st April 2017 • Rule 87 (13) of CGST Rules, 2017: A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.

Instruction No. 2/1/2020-GST dated 9th April 2020.

Decision to process pending refund claims has been taken with a view to provide immediate relief to the taxpayers in these difficult times even though the GST Law provides 15 days for issuing acknowledgement or deficiency memo and total 60 days for disposing off refund claims without any liability to pay interest, all pending refund applications must be taken up for processing immediately.

• Due diligence, however, may be done before granting the refunds on merits, considering all the relevant legal provisions and circulars

Circulars

Circular No. 137/07/2020-GST dated 13th April 2020

Clarifications in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws on account of the measures taken to prevent the spread of Novel Corona Virus (COVID-19) related to Refund of GST paid on advance consequent to cancellation of order and many cases.

RERA
DELHI RERA
News

Crores lost in property tax, Delhi civic bodies crippled further

- With property tax collection adversely affected in the past few months due to the novel coronavirus-induced crisis, the already financially crippled municipal bodies have suffered losses worth hundreds of crores.
- This will not only impact development work, but also make the salary distribution difficult in future, say officials. [Source: Economic Times]



NCLAT directs NBCC to implement Jaypee resolution plan till further orders

- The National Company Law Appellate Tribunal (NCLAT) directed NBCC India to implement the approved 'resolution plan' of Jaypee Infratech subject to outcome of the appeal.
- NBCC had appealed against the order of National Company Law Tribunal (NCLT) on March 20, 2020 because of the modifications made by the adjudicating authority in the 'Resolution Plan' submitted by it and as approved by the committee of creditors to the extent it allows objections of ICICI Bank and Yamuna Expressway Industrial Development Authority and directs payment to unclaimed Fixed Deposit Holders.
- The company in its appeal had said that the Adjudicating Authority could not intercede the business decision of the committee of creditors taken by the prescribed voting shares and it exceeded its jurisdiction in making such modifications.
- NCLAT has issued notices to all the respondents including ICICI Bank, IRP and IDBI Bank. They have to file their reply affidavits within two weeks. Rejoinders, if any be filed within one week thereof. The court has also directed the Interim Resolution Professional to constitute 'Interim Monitoring Committee' comprising of the 'successful resolution applicant', i.e. NBCC and the three major Institutional Financial Creditors, who were Members of the 'Committee of Creditors' i.e., IDBI Bank, IIFCL and LIC.



[Source: Economic Times]

Construction can't be allowed on open space in approved building layouts: SC

- The Supreme Court said open spaces left for garden areas in approved building layout plans cannot be allowed for construction, and upheld a Bombay High Court verdict disallowing



constriction on two plots at Juhu in Mumbai that were earmarked as open area by a government body in 1967.

- Dismissing the appeals filed by Anjuman E Shiate Ali and others against the high court verdict of July 19, 2017, the bench said: "It is fairly well settled that in an approved layout, the open spaces which are left, are to be continued in that manner alone and no construction can be permitted in such open spaces."
- As per the approved layout plan for JVPD scheme, two different plots of 2,500 and 1,687.18 sq yards were shown as open spaces/garden in the approved layout of 1967 situated on 9th Wireless Road, JVPD Scheme, Juhu.
- The apex court was faced with the question whether the plots, earmarked as open space in 1967, can be allowed to be utilised for constructions in view of the subsequent development plan prepared by MHADA (Maharashtra Housing and Area Development Authority) in 1999. It held that the subsequent plan will not come into effect.
- A bench of Mohan M Shantanagoudar and R Subhash Reddy said, "As rightly held by the High Court, we are also of the view that the two plots, which are shown as open spaces/garden, in the approved layout, cannot be allowed to be used for the purpose of construction."

[Source: Economic Times]

Sebi comes out with guidelines for encumbrance on REITs, InvITs

Markets regulator Sebi put in place a framework for invocation as well as encumbrance on units of real estate and infrastructure investment trusts. In a separate circular, Sebi has also extended the regulatory due date for filing and compliance for real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) for the financial year ending March 31, by one month over and above the timeline in the wake of coronavirus pandemic.



With regard to encumbrance, Sebi said entities required to hold units of REITs and InvITs may create encumbrance on such units during the mandatory holding period wherein encumbrance will include pledge, lien, negative lien, non-disposal undertaking or any other covenant, transaction, condition or arrangement in the nature of encumbrance.

This is subject to the conditions that for creation and invocation of encumbrance are also included in the agreement executed for the purpose of creation of such encumbrance, the Securities and Exchange Board of India (Sebi) said in two circulars.

In respect of conditions for invocation during the mandatory holding period, Sebi said such

encumbrance will not be permitted to be invoked during the holding period unless the person invoking the encumbrance - directly or through any trustee or agent acting in his behalf - will get itself or its nominee to become re-designated sponsor.

This condition will not be applicable in case the person invoking such encumbrance is already a member of sponsor group.

[Source: Economic Times]

Delhi RERA Authority adjourns hearings from 21.04.2020 to 06.05.20 to subsequent dates as a precaution to COVID-19:

As a suitable precaution to pandemic corona virus and to ensure parties are not required to appear personally unless such appearance becomes indispensable, Delhi authority directed to adjourn various cases till subsequent dates.

MAHARASHTRA RERA News

Maharashtra RERA extend the project registration validity and other time limits of statutory compliances, in view of Covid-19 pandemic

Maharashtra Real Estate Authority via its order no. 13/2020 on 02.04.2020 decided as follows:

- For all MahaRERA Registered projects where completion date, revised completion date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months.
- MahaRERA Authority shall accordingly issue project registration certificates, with revised timelines for such projects.
- Further all the other time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made there-under, which were due in March/April/May, are extended to 30th June 2020.

[Source: MahaRERA]

Case Law

Mrs. Sushma Santosh Shinde through Yashstar realty and Starformation realty LLP Vs Mr. RohidasKokate and Mr. KalidasKokate (Complaint No. CC0500000023119)

Promoter is liable to be penalised for contriving section 4 by not disclosing the name of the real estate agents, even if the real estate agent is not registered under the act

Maharashtra Real Estate Regulatory Authority on **02nd March 2020** during proceeding of a case through its order impose penalty of Rs. 5,00,000/- on the real estate agent for not registering themselves under section 9 of the RERA Act and the same penalty on the promoter for entering into an agreement with non-registered real estate agent and paying brokerage.

The brief facts of the case are as follows: -

The Complainant was a real estate agent and had entered into a brokerage agreement with respondent on 21.04.2018. The validity of the

agreement was 3 months from 21.04.2018 to 21.07.2018. During the period of agreement, the complainant, on behalf of respondent, sold 2 units and claimed brokerage of Rs. 12,68,177/-. Respondent deducted Rs. 4,72,212/- by saying that one unit was later on cancelled. Complainant argued that to avoid the brokerage, the respondent purposely cancelled the booking of the unit holder and immediately thereafter rebooked the same flat to the same unit holder and therefore respondent is guilty of unfair practice.

The Maha RERA authority during proceeding of the case observed as under: -

- That the complainant in the capacity of LLP entered into brokerage agreement with respondent whereas registration under Section 9 has been taken in individual capacity.
- That the said LLP is not even registered under Limited Liability Partnership Act, 2008.
- That respondent entered into an agreement of brokerage on 21.04.2018 but has not put this fact on web-page of their project.

By considering the above facts and after giving the opportunity to both the parties Maha RERA Authority decided as follows: -

- Since complainant entered into an agreement with the respondent on 21/04/2018 without registering their firm (LLP) as real estate agent under Section-9 of the RERA Act, the agreement is against the provisions of law and hence it is illegal. It cannot be enforced under the law. Therefore, the complainants cannot seek any relief on the basis of the said agreement for brokerage against the respondent.
- The complainant has contravened Section-9 of the Act by acting as a real estate agent without registering themselves as such. Hence they are liable to pay penalty of Rs. 5,00,000/- under Section-62 of the Act.

The respondent has contravened Section 4(2)(f) of the Act by not disclosing the name and address of the real estate agent engaged for the proposed project. Hence they are also liable to pay the penalty of Rs. 5,00,000/- under Section-60 of the Act.

UP RERA News

UP-RERA appoints CRISIL to grade builders and projects:-

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has appointed CRISIL for setting up of a system for grading of developers and projects in measurable parameters.

UP-RERA, after inputs from development authorities, industrial development authorities, home buyers associations, promoters associations and other stakeholders, in consultation with CRISIL has designed a grading framework for the projects registered in RERA and the promoters.

The proposed grading framework has been made available for feedback by the stakeholders by May 13, 2020.

The grading would be on a scale of I to V, I being lowest and V being highest. Key parameters of promoter grading are financial quality, organizational structure & certifications, track record, compliance adherence and very importantly customer feedback. The grading evaluation for projects will essentially involve assessing the promoter's track record in executing projects as per the stipulated schedule along with adherence to timelines and analyzing the organizational, legal and financial risks associated with it.

[Source:- ET Reality]

UP RERA extends deadline of real estate projects by three months:-



UP RERA on April 14 extended the validity period of registration of real estate projects in the state by three months on account of COVID-19.

“In view of the dislocation of the construction activity under the real estate projects, CREDAI and NAREDCO have requested the Authority to extend the completion date of the projects as done by some other state RERAs,” UP RERA said in a statement.

In view of the slow pace of construction work due to the need for social distancing and movement restrictions and stoppage of the work following the national lockdown in March, the Authority has decided to extend by three months the date of completion of the projects with the date of completion between March 15, 2020 and December 31, 2020, it said.

The revised registration certificate of such projects will be issued separately and send to the concern promoters, the authority said in a statement.

[Source:- Moneycontrol]

HARYANA RERA

News

Haryana Government [Notification No. 2/3/2020-1IB-II] :

In view of the difficulties faced by Industries and commercial establishments, the Government of Haryana announces the following allowances-

- (i) Waiver of rent due against all Government/Panchayati Raj Institutions/Urban Local Bodies buildings and shops including Start-ups in the Start-up incubators of the Department of Information Technology for the period from 15.03.2020 to 15.05.2020.
- (ii) 50% waiver of simple interest and extension of deferment period from the present limit of 30th April to 15th May, 2020 for all dues to Government Departments, Boards, Corporations and Authorities.

(iii) Waiver of two months of Motor Vehicle Tax for Commercial Vehicles.

(iv) Extension of the validity period of all the Government contracts entered into by various departments/ agencies, up-to-the the last date of the lockdown period i.e. 03.05.2020 or any other date further notified by the Government. In the wake of the epidemic, the standard “Force-Majeure” clause is being made applicable in all Government contracts covered under this notification. However, it will not include contracts entered into by the Government department/agencies for medical infrastructure/ facilities, the supply of items including Drugs, Pharmaceuticals, Medical Devices, their raw materials and intermediaries, Disaster Management items, Food and Food products etc. required to fight against COVID 19 and other flood/emergency related activities. The Administrative Secretaries of concerned departments are authorized to effect changes in their contracts awarded by their departments accordingly.

Haryana Government [Notification No. Leg. 10/2020.]

THE HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS (AMENDMENT) ACT, 2020

This Act may be called the Haryana Development and Regulation of Urban Areas (Amendment) Act, 2020.

Further sub-section (4) of section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975, the following sub-section shall be substituted, namely:—

“(4) The license so granted shall be valid for a period of five years and shall be renewable from time to time for such period, as may be prescribed not exceeding five years at a time and on payment of such fee, as may be prescribed.”.

Case Laws

MC Mittal and ors V/s Shree Vardhman Township Pvt. Ltd. (Complaint No: 359 of 2018)

While Section 18 of RERA Act clearly states that a homebuyer can seek refund and ought to be compensated for ‘undue’ delays in a project, but a withdrawal by a handful should not jeopardise completion of an entire project. Haryana Authority has refrained from allowing refund in cases where greater than 40% of the overall work on the project has been completed.

Facts: Complainants had booked plots and floors in respondent's plated colony named 'Shree Vardhman City'. They have already paid amounts to the respondent. As per terms of sale purchase agreement executed between the parties, respondent was to offer possession within 36 months and said period had already lapsed in all these cases but the respondent has yet to deliver possession. So, complainants are now praying for refund of already paid amounts along with interest and compensation.

On the other hand, respondent in his reply pleaded that his project is at an advance stage of completion in as much as ninety percent development work has already been completed. He further stated that the demarcation plan and zoning plan of the project were approved by the concerned department in February, 2012 and 21-08-2012 respectively.

But due to occurrence of some errors in numbering of plots by the department at the time of approving the zoning plan, he took up the matter with the department for making necessary corrections in the zoning plan. The department had finally corrected the zoning plan on 05.02.2016, meaning thereby that almost four years lapsed in getting a corrected zoning plan and by the time original license lapsed on 28.02.2016. Respondent got renewal of license in September 2018. In nutshell, respondent pleaded that he was not able to complete the project due to extra ordinary delay in getting the corrected zoning plan which was beyond his control So, he's not liable to pay interest for delay in offering possession. However, he is proposed to offer an undertaking 10 per the infrastructural services of the project and accordingly hand over to order within five months

Held: The Authority has weighed in favour of interest of the Allottees who wish to continue in the project, and upholding that the cases of refund entail withdrawal of funds from the account kept for finishing the work on a project. And taken a view that its not a fit case for allowing the refund. Repondent directed to complete the project in next six months and the case was dismissed.

HRERA Panchkula VS TIDCO (Complaint No. 1219 of 2019)

Rights of allottees prevails over the financial and operational creditors Provisions of RERA Act has precedence over any other law of the land.

Facts: A Suo-motu complaint No 1219 was lodged against the respondent developer M/s Triveni Infrastructure Development Co. (TIDCO) for having not registered their ongoing project in Sector-89, Faridabad. It is mandated by Section 3 of the Real Estate (Regulation & Development) Act, 2016 that the promoters of all ongoing projects should file an application for registration within a period of 3 Months of coming into force of the RERA Act. Admittedly, the said project of the respondent has been launched, partly sold and partly developed, even though construction work has stopped for sometime Therefore, it comes within the ambit of Section 3 of the Act.

Briefly stated, M/s Maximal Infrastructure Pvt. Ltd. was granted a license for development of a Group Housing over land measuring an area of 48.038 acres in 2007. Instead of developing the project themselves, the licensee executed an agreement with five developer companies to whom the licensee sold out the entire project. This agreement for division of project into five parts and its sale to five different developers was in contravention of the prevalent law of the land and

rules and instructions of the Town & Country Planning Department Sale of the licensed land in five parts has not been recognised by the State Govt. in town & Country Planning Department even now.M/s TIDCO respondent developer in this order is one of the five developers

The respondent in this case M/s Triveni Infrastructure Development Co. (TIDCO) had acquired rights to develop a housing colony over land area measuring 10.335 acres with FAR equivalent 14.80 acres. This company has partly developed the project but for reasons not brought on record they went into financial difficulties. As per the information available with the Authority, liquidation proceedings are going on against the company before Delhi HC and Liquidator has been appointed in the matter.

Some representatives of a 'BSF Welfare Housing Society' appeared before the Authority. This Association is of about 250 allottees who are former BSF Jawans. Shri Azad Kataria, a representative of the association argued that members of their Association have invested their life's savings in the project. Moreover, their apartments are possible to be completed by handing it over to the. Accordingly, a way out should be found to handover requisite number of apartments towers to them as they are willing to complete them at their own level.

Held: Few Principles were decided:

1. This Authority has held the view that the projects of which registration is cancelled and the project which do not get registered despite being registerable as on-going projects under Section-3 of the RERA Act should be treated on similar footings.
2. The right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.
3. The allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owner of the proportionate piece of the land and assets alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions.
4. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act 2016

The claims of the financial and operational creditors can be satisfied from any assets of the company facing liquidation proceeding which includes assets other than the assets of the housing projects in question. The Allottees on the other hand have their claim only against the assets of the project because they are essentially interested in getting their dream houses, which is one of the fundamental needs of a human being.

Getting a house and getting a debt repaid are two very different kinds of claims which must be given different treatment. Recovery of debt may not be a fundamental right whereas getting a house by innocent people like the BSF Welfare Society, is certainly a fundamental right which must be protected by law getting their dream houses, which is one the law and must be enforced by all enforcement agencies including this Authority.

MADHYA PRADESH RERA

MP Rera Authority vide its order no. 2956/Project/Secy/2020 dated 06.05.2020 determining COVID-19 a force majeure situation under section 5 took a common decision rather on case-to-case basis on individual applications regarding the extension of the registration as follows:

- (i) For all registered projects where completion/ revised completion/ extended completion date is on or after 15th March, 2020 shall be automatically extended by 6 months.
- (ii) For projects the registration of which has lapsed prior to 15th March, 2020 and for which application for extension has been made and are under consideration, the period for validity of registration shall be extended by 6 months in addition to the extension period that would normally be granted on processing of application.
- (iii) For projects the registration of which has lapsed prior to 15th March, 2020 and for which application for extension has not been made, the period for validity of registration shall be extended by 6 months in addition to the extension period that would normally be granted on processing of application, provided they apply for extension after paying for necessary late fee. In calculation of late period from 15th March to 15th June shall be excluded.
- (iv) Time Limit of all statutory compliances (quarterly and annual reports, including that of agents), which were due by 31st March and thereafter are extended up to 30th June, 2020.
- (v) 6 months extension is provided to buyer-seller agreements entered into prior to 15th March for which completion date is 15th March, 2020 or thereafter.
- (vi) The extension is not applicable to cases for determination of compensation. They shall be determined by AO on a case to case basis bearing in mind the spirit of the order.

Case Laws

Judgment by MP Rera Authority as on 05.05.20 for Sahara Prime City Limited vs Subhadra Chaurasia:

Facts: Allottee being the complainant claimed that she though has paid the full amount of property and also additional charges for water, electricity etc., still neither has obtained the possession nor the registry is being done in her favor by the promoter, hence appropriate compensation should

be provided. Promoter argued that allottee has already been given possession in 2015. To support his fact he submitted a picture of the apartment showing the name plate of the allottee's husband along with picture of sticker on grill making it clear that the apartment is possessed by allottee and is in use.

After investigating into the facts and documents the most crucial evidencing document "Agreement for Incomplete House" notary registration dated 03.08.2015 was found, which clearly states that no work is left to be done in the apartment and due to technical reasons the registry of the apartment couldn't be done in the favour of allottee and by mutual agreement the possession was given to allottee.

Decision: Allottee is not entitled to any compensation and ordered promoter to get the registry done within 30 days.

GUJARAT RERA

News

Gujarat Real Estate Regulatory Authority, vide order dated April 13, 2020, provided some relief to real estate developers to help the realty sector mitigate the impact of the current lockdown to contain the COVID-19 pandemic.

The state regulator has allowed realtors to apply for a one-time extension in the project completion deadline (end date). The extension will be provided to all registered projects having their project end date on and between April 1, 2020 and March 31, 2021.

Gujarat RERA has also waived the fee for application to extend the date. The measure will give projects having end date within one year from now additional time for their completion.

"Projects having their end date one year from today would be in position to realign their construction schedules to address the disturbance caused by Covid-19 lockdown," Gujarat RERA said in the order. As many as 1,570 or 32% of the ongoing projects are going to benefit from this relaxation.

Apart from this, the application fee for alterations has also been waived.

"Projects with multi-block development plans would be in a position to revisit their development plan and may consider de-registration of a portion of their inventory through an alteration application i.e. bringing down the size of the registered project by converting the project into a phase of the approved layout plan," the regulator added. With these measures, Gujarat RERA has granted relief to more than 80% of the ongoing projects across the state which are likely to be completed in next four years. [Source: Gujarat RERA]

PUNJAB RERA

Chandigarh civic body extends deadline to pay property tax till April 30



In a relief to more than 1 lakh property owners, the municipal corporation is set to extend the deadline for the payment of property tax arrears for the current financial year from April 15 to 30.



Self-assessment of tax for the coming financial year will be from May 1 to June 30. This is for a rebate of 10% on commercial property and 20% on residential property. The official order will be out in a few days. [Source: Economic Times]

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

Govt. extends expiry of names reserved by companies for incorporation

Companies may be taking on a lot of losses due to the disruption of Covid-19 and the lockdown, but a loss of name will not be one of them. The ministry of corporate affairs (MCA) extended the expiry of names reserved by companies for incorporation or changes that were due during lockdown 2.0.

[Source: Economic Times]

Government streamlines e-voting norms for companies

The government issued a set of clarifications to make it easier for various classes of companies to seek shareholder approval for decisions by streamlining the rules related to



electronic voting. The Ministry of Corporate Affairs said in a statement that the clarifications allow companies, which are required to offer e-voting facility to shareholders to also intimate them about general meetings by way of an e-mail rather than by post. [Source: Livemint]

Corporate affairs ministry eases compliances for passing special resolutions

The government on Wednesday further eased the compliance norms for Indian Companies as they move to pass ordinary and special resolutions amidst the lockdown to limit the spread of Covid-19 outbreak. The MCA in a circular issued on Wednesday, said that companies can take urgent decisions without convening a general meeting and ratify them through the e-voting process.

Filing under section 124 and 125 of the Companies Act, 2013 read with IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016

As per General Circular No. 16/2020 dated 13th April 2020, it has been clarified that, the Ministry has already allowed filing in MCA Registry without additional fees till 30th September, 2020. These relaxations apply to IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4, IEPF-7) and e-verification of claims filed in e-form IEPF-5 as well.

[Source: MCA]

Holding of AGMs by companies whose financial year has ended on 31st December, 2019

MCA has clarified vide its General Circular No. 18/2020 dated 21st April 2020 that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months



from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. [Source: MCA]

IL&FS case: Bombay HC dismisses MCA plea to ban Deloitte and KPMG for five years

The bench upheld the constitutional validity of section 140 (5), it held that the provisions of the section did not apply to former auditors who had resigned.

The bench also quashed a criminal complaint filed against the two firms by Serious Fraud Investigation Office (SFIO), a Central agency, in the above case of financial irregularities.

[Source: Livemint]

Govt. to offer faceless adjudication of company law breaches

Corporate affairs ministry will upgrade its online services to companies offered through its MCA21 portal so that certain breaches under the Companies Act can be adjudicated remotely through electronic means.



[Source: Livemint]

ABOUT SRNG ADVISORS LLP

SRNG Advisors is a LLP providing advisory services catering to the needs of its clients across the country. SRNG offers a wide range of specialized, multidisciplinary professional services that meet immediate as well as long term needs of any business. Our multidisciplinary team of dedicated professionals is well equipped with the requisite business and technical skills, experience and knowledge base to deliver customized solution to our clients across industries.

FOR SUBSCRIPTION OF NEWSLETTER AND REGULAR UPDATES, CONTACT:

☏ : DC -2, 8th Floor, Signature Tower, Tonk Road, Lalkothi, Jaipur -15 (Raj.)

☎ : +91-9358812012

✉ : info@srngadvisors.com

🌐 : www.srngadvisors.com

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, SRNG, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.