

Does RERA empower home buyers to complete stuck projects themselves?

Section 8 of RERA empowers the authority and buyers to execute remaining development work but experts say arranging funds to complete the project and cooperation among allottees are the biggest challenges

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Setting a precedent, the Uttar Pradesh Real Estate Regulatory Authority (RERA) for the first time has decided to consider a proposal by defrauded homebuyers to take over and complete a project in Noida that has been delayed by several years. While this is a great move and may set the trend for other homebuyers in stuck projects, arranging funds to complete construction could still pose a challenge, say real estate experts.

UP RERA for the first time has asked over 700 home buyers of Subhkamna Tech Home to come up with a proposal to complete the project they had invested in and get the consent of at least 60 percent buyers within 10 days, Balwinder Kumar, Member of UP RERA bench told Moneycontrol.

The project was due for delivery in 2014. Almost 70 percent of the work on the towers is complete and buyers have claimed they have paid about 80 percent of the amount. The project is located in Sector 137, Noida.

“If the homebuyers are able to get about 60 percent members of their association to agree to the proposal, we will get it examined by the financial consultant of Noida Authority Currie & Browne. The consultant will then discuss it with the concerned stakeholders such as Noida Authority. Once the financial consultant gives its approval and agrees that the homebuyers have the capacity to complete the project and arrange for finances, then we will have no problem in giving them permission,” Kumar said.

“Homebuyers are yet to pay Rs 40 crore. Almost Rs 50 crore is required to complete the project. Homebuyers have told us that they can arrange for the money. We have asked them to get the consent of 60 percent of buyers. We have given them 10 days and then the financial consultant will take another 15 days to do a due diligence after which we will hear the case in detail,” Kumar said.

“Through this, we also want to convey a message to other homebuyers that if they can form associations, arrange for funding to complete the projects, we are willing to consider their proposal,” he added.

Gap funding to complete unfinished projects the biggest challenge

In this case, some buyers have paid 80 percent, some have paid more. But all buyers have to pay some remaining amount. “They will have to show the receipts that they have so far paid and the balance money that is due from them to the committee. These amounts will be kept in a separate account and the committee will have to work with a corpus,” say experts.

“Arranging for deficit funding will continue to be a challenge. Recovering the said amount by selling other assets of the promoters may not be an easy task either,” says Sunil Tyagi of Zeus Law.

In April this year, Madhya Pradesh Real Estate Regulatory Authority (RERA) in another first, had come to the rescue of as many as 800 allottees of a project located in Indore whose promoter has been absconding for over three years. It had planned to facilitate completion of the project by constituting a committee of buyers who will get the “finishing work” done by pooling in the amount due from them.

“We are planning on taking up only such towers where work is more than 80 percent complete. In most towers for this particular project, last mile work is left,” Madhya Pradesh RERA Chairman Anthony DeSa had then told Moneycontrol.

When approached for his comment, DeSa said while it is a “good start,” there are several challenges, the foremost being that of funding. In the Indore matter, the promoter has been arrested and served summons to be heard. The High Court too has passed a few orders and formed a committee to deal with the project. In a similar matter in Gwalior, “we were unable to get all allottees on board,” he says.

RERA Section 8 provides an indication that the Authority can provide a platform to take up stressed projects and bring them to completion. However, greater clarity is required because the provisions as they stand at the moment seem restrictive and can be implemented only under certain circumstances, he said.

Clarity is required on what percentage of homebuyers need to come together and even if they do, there has to be complete agreement among them because there is always a danger of the remaining not cooperating or not making payments.

If a stressed project is to be taken up and completed, all three parties have to agree to take a haircut – the buyers may have to give up all claims for compensation, builders have to agree to no profits and financial institutions whether banks or NBFCs have to take a haircut in order to save their NPAs. And for this, RBI’s instructions may be required as no bank would voluntarily agree, he said.

At the conference on RERA held in Chennai recently, “I had suggested that a national conference be held on the issue of stressed assets and we should have all stakeholders such as RBI coming on board. The suggestion was positively received by the government of India,” he said.

Homebuyers welcome the move. “Prima facie, this appears to be an excellent move and will also set a very good precedent. But it is also very important to know (a) how the project will be funded and (b) if the builder has taken more money than what work has been done by him and how RERA plans to recover excess money from him,” says Abhay Upadhyay, President, Forum For People's Collective Efforts.

Section 8 of RERA empowers the authority to execute remaining development work

“Upon lapse of registration or on revocation of registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works,” the Act says.

Difficult for RERA to undertake a project from scratch

RERA can step in, provided a project has reached its completion stage. “Doing something from scratch is very difficult. We will not advise it. It all depends on the size of the project and should be taken up on a case-to-case basis. It is not something that can be applied across the board,” says an expert.

“If the project is 80 or 90 percent complete, something can be done about it. In its early stages, half complete, half structure, it may become very difficult for the committee of buyers to take over. Then it is a complex construction. Important for the whole structure to be in place. If only finishing work is left, the committee can take over and complete it. The committee cannot do any structural work,” the expert says.