

**Highlights:****Corporate Brief**

- *MCA Notifies Companies (Specification Of Definitions Details) Amendment Rules, 2021;*
- *MCA Provides Relief To Companies With Listed Debt Securities;*
- *MCA Notifies Producer Companies Rules, 2021;*
- *MCA Notifies Companies (Compromises, Arrangements And Amalgamations) Amendment Rules, 2021;*
- *SEBI Releases Revised Disclosure Formats Under SEBI (Prohibition Of Insider Trading Regulations);*
- *SEBI Provides Extension Of Facility For Conducting Meeting(S) Of Unitholders Of REITs And InvITs Through Video Conferencing (VC) Or Through Other Audio-Visual Means (OAVM);*
- *RBI Circular On Remittances To International Financial Services Centres (IFSCs) Under Liberalised Remittance Scheme (LRS);*
- *RBI Circular On Investment By Foreign Portfolio Investors (FPI) In Defaulted Bonds-Relaxations;*

**RERA Brief**

- *Public notice dated 24.02.2021 issued by Kerala Real Estate Regulatory Authority to the Promoters of Real Estate Projects.*
- *Guidelines issued by Uttar Pradesh Real Estate Regulatory Authority regarding advertisements relating to promotion marketing and sale in Real Estate Projects.*

**Litigation Brief**

- *One sided and unreasonable clauses under the Apartment Buyers Agreement shall constitute unfair trade practice under Section 2(1) (r) of the Consumer Protection Act, 1986.*

Rupees Two Crore Only) from INR 50,00,000/- (Indian Rupees Fifty Lakh Only) provided under the SDD Rules.

- (ii) **Turnover:** Ceiling limit for turnover of a Small Company has been revised to INR 20,00,00,000/- (Indian Rupees Twenty Crore Only) from INR 2,00,00,000/- (Indian Rupees Two Crore Only) provided under the SDD Rules.

### ⇒ **MCA Provides Relief to Companies with Listed Debt Securities;**

**Ministry of Corporate Affairs (MCA) with aim to provide relief to companies with list debt securities vide gazette notification dated 19.02.2021, introduced the Companies (Specification of Definitions Details) Second Amendment Rules, 2021 ["SDD Second Amendment Rules"] to make the following key amendments to the Companies (Specification of Definitions Details) Rules, 2014 ["SDD Rules"] which shall be in effect from 01.04.2021:**

- By virtue of insertion of new Rule 2A under the SDD Rules vide SDD Second Amendment Rules, following class of companies shall not be treated and considered as listed company under the definition of 'listed company' as ascribed under Section 2(52) of the Companies Act, 2013;
  - (i) **Public Companies:** For public companies (a) who have not listed their equity shares with any stock exchange but have listed either (i) non-convertible debt securities on private placement basis in accordance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations"); or (ii) non-convertible redeemable preference shares on issue on private placement basis in accordance with SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; (iii) both categories of (i) & (ii) listed above; (b) whose equity shares are listed on stock exchange in foreign jurisdiction as provided under Section 23(3) of Companies Act, 2013 but not listed with stock exchange within India.
  - (ii) **Private Companies:** For private companies who have listed their non-convertible debt securities on private placement basis with a recognized stock exchange in terms of ILDS Regulations.

### ⇒ **MCA Notifies Producer Companies Rules, 2021;**

**Ministry of Corporate Affairs (MCA) vide gazette notification dated 11.02.2021, introduced the Producer**

## Corporate Brief

### ⇒ **MCA Notifies Companies (Specification of Definitions Details) Amendment Rules, 2021;**

**Ministry of Corporate Affairs (MCA) vide gazette notification dated 01.02.2021, introduced the Companies (Specification of Definitions Details) Amendment Rules, 2021 ["SDD Amendment Rules"] to make the following amendment to the Companies (Specification of Definitions Details) Rules, 2014 ["SDD Rules"] which shall be in effect from 01.04.2021:**

- For 'Small Company' as defined under Section 2(85) of the Companies Act, 2013 vide SSD Amendment Rules, ceiling limit for paid-up capital and turnover for such companies was amended.
  - (i) **Paid-Up Capital:** Ceiling limit for paid-up capital of a Small Company was revised to INR 2,00,00,000/- (Indian

**Companies Rules, 2021 [“Producer Rules”] which shall be in effect from the date of gazette notification, corollary to the insertion of Chapter XXIA related to Producer Companies under the Companies Act, 2013 vide Companies (Amendment) Act, 2020 [“Amendment Act”], in suppression of Producer Companies (General Reserve) Rules, 2003.**

**Following highlights of the Producer Rules:**

- A Producer Company [as defined under Section 387(l) of the Companies Act, 2013] is entitled to make investments from and out of its general reserves in any one or in combination of the following:
  - (i) in approved securities, fixed deposits, units and bonds issued by Central or State Governments or co-operative societies or scheduled bank; or
  - (ii) in a co-operative bank, State co-operative bank, co-operative land development; or
  - (iii) with any other scheduled bank; or
  - (iv) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882;
  - (v) in the shares or securities of any other inter-State co-operative society or any co-operative society; and/or
  - (vi) in the shares, securities or assets of public financial institutions specified under Section 2(72) [Public Financial Institution] of the Companies Act, 2013.

### ⇒ **MCA Notifies Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021;**

**Ministry of Corporate Affairs (MCA) vide gazette notification dated 01.02.2021, introduced the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 [“CAA Amendment Rules”] to make the following key amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 [“CAA Rules”] which shall be in effect from the date of gazette notification:**

- Under Rule 25(1) [Merger or amalgamation of certain companies of certain companies] of CAA Rules, vide CAA Amendment Rules, Rule 25(1A) was inserted stipulating that:

A scheme of merger or amalgamation under Section 233 [Merger or amalgamation of certain companies of certain companies] of the Companies Act, 2013 may be entered into between any of the following class of companies-

- (i) 2 (two) or more start-up companies; or
- (ii) 1 (one) or more start-up company with 1(one) or more small company.

Under the above proviso, ‘start-up company’ shall mean a private company incorporated under Companies Act, 2013 or Companies Act, 1956 and as recognized under gazette notification-G.S.R 127(E) dated 19.02.2021 issued by Department for Promotion of Industry and Internal Trade (DPIIT).

### ⇒ **SEBI Releases Revised Disclosure Formats under SEBI (Prohibition of Insider Trading Regulations);**

**Securities and Exchange Board of India (“SEBI”) vide Notification No. SEBI/HO/ISD/CIRP/P/2021/19 dated 09.02.2021, in exercise of powers conferred under Section 11(1) of SEBI Act, 1992 read with Regulation No. 4(3) (Trading when in possession of unpublished price sensitive information) and Regulation No. 11 (Power to remove difficulties) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) revised disclosure formats under Regulation 7 of PIT Regulations.**

- Vide circular no. CIR/ISD/01/2015 dated 11.05.2015 and CIR/ISD/02/2015 dated 16.09.2015, SEBI had specified formats under Regulation 7 (*Disclosures by certain persons*) of PIT Regulations which mandates an obligation on initial disclosure, continual disclosure by the directors, promoters, key managerial person of every company whose securities are listed in recognized stock exchange to disclose their holding of security(ies) in the said company.
- By the virtue of amendment introduced vide CIR/ISD/02/2015 dated 16.09.2015, effecting the inclusion of the member of the promoter group and designated person in place of employee, Form B to Form D (*particulars provided below*) under PIT Regulations have been revised by the current circular.
  - (i) Form B (Disclosure on becoming a Key Managerial Personnel/Director/Promoter/Member of the promoter group);
  - (ii) Form C (Continual Disclosure); and
  - (iii) Form D (Indicative Form for transaction by other connected persons as identified by the company)

### ⇒ **SEBI Provides Extension Of Facility For Conducting Meeting(s) Of Unitholders Of REITs and InvITs through Video Conferencing (VC) or through Other Audio-Visual Means (OAVM);**

**Securities and Exchange Board of India (“SEBI”) vide Notification No. SEBI/HO/DDHS/DDHS/CIR/P/2021/21, dated 26.02.2021, in exercise of powers conferred under Section 11(1) of SEBI Act, 1992 read with Regulation No.33 of SEBI (Infrastructure Investment Trust) Regulations, 2014 (“InvIT Regulations”) and Regulation No. 11 of SEBI (Real Estate Investment Trust) Regulations, 2014 (“REIT Regulations”) has provided ease to unitholders of REITs and InvITs for conducting meetings.**

- Vide circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated 22.06.2020 read with vide circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/201 dated 26.02.2021, permitted REITs and InvITs to conduct annual meetings and other meetings of unitholders through Video Conferencing (VC) and through Other Audio Visual Means (OAVM) for a period up to 31.12.2020.
- Basis the representation received from unitholders pertaining to extension of using the aforesaid facility for conducting meeting which become due to held in the year 2021 and issuance of MCA circulars dated 31.12.2020 and 13.01.2021, permitting companies to conduct Extraordinary General Meetings (EGM) and Annual General Meetings (AGMs) for a period up to 30.06.2021 through VC or OAVM.
- It was decided that:
  - (i) REITs and InvITs shall be permitted to conduct meetings through VC or OAVM mediums.
  - (ii) Annual meetings of unitholders as required under Regulation No. 22(3) of REIT Regulations and Regulation No. 22 (3) of InvIT Regulations and becomes due in the year 2021, shall be permitted to be conducted through VC or OAVM mediums for a period up to 31.12.2021.
  - (iii) For meetings apart from annual meetings, the same shall be permitted for a period up to 30.06.2021.

**⇒ RBI Circular On Remittances To International Financial Services Centres (IFSCs) Under Liberalised Remittance Scheme (LRS);**

Vide RBI/2020-21/99 A.P (DIR Series) Circular No. 11 dated 16.02.2021, with the aim to provide opportunity to resident individual to diversify their portfolios and to deepen financial markets in International Financial Services Centres (IFSCs), on review of the current guidelines on Liberalised Remittance Scheme (LRS), it was decided by the Reserve Bank of India (RBI) that:

- Resident individuals will be permitted to make remittances under LRS in IFSCs incorporated in India under the Special Economic Zone Act, 2005, amended from time to time. The authorised dealer banks will permit resident individuals to make such remittances subject to following conditions:
  - (i) The purpose of remittance should only be for making investments in IFSCs in securities other than those entities/companies resident (outside IFSCs) in India.
  - (ii) Resident individuals will also be permitted to open a non-interest bearing Foreign Currency Account (FCA) for making investments in IFSC under LRS. Any funds towards investment if lying idle in such account for more than 15(fifteen) days from the date of remittance of funds, the same shall immediately be repatriated to domestic INR Account of the investor in India.
  - (iii) Resident individuals shall not settle any domestic transactions with other residents through FCAs held in IFSC.

**⇒ RBI Circular On Investment By Foreign Portfolio Investors (FPI) In Defaulted Bonds-Relaxations;**

Vide A.P (DIR Series) Circular No. 12 dated 26.02.2021 issued in reference to A.P (DIR Series) Circular No. 31 dated 15.06.2018 related to Investment by Foreign Portfolio Investors (FPIs) in Debt-Review (“**Directions**”), it was decided by RBI that:

- Investments made by FPIs in Non-Convertible Debentures/corporate bonds which are under default, either fully or partly, for the repayment of principal on maturity or principal instalment in the case of amortising bonds will be treated as an ‘Exempted Security’ under

the Directions and be exempted from the requirement of maintaining minimum residual maturity and investment limit prescribed under the Directions. Prior to the current circular dated 26.02.2021, FPI investment in corporate bonds were subject to maintain minimum residual requirement of 3 (three) years and investment limit not exceeding 50% (fifty percent) of the issue of a corporate bond.

- The said exemption had been introduced by RBI in consideration with the exemptions provided under the Directions to FPI in security receipts and debt instruments issued by Asset Reconstruction Companies and debt instruments issued by an entity under the Corporate Insolvency Resolution Process (CIRP) as per the resolution plan approved by the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 ("IBC") and the announcement made under Para 12 of Statement on Development and Regulatory Policies dated 05.02.2021 related to providing exemptions from maintaining short term limit and minimum residual maturity requirement under Medium Term Framework (MTF) for FPI investment in defaulted corporate bonds.

### **Real Estate Brief:**

#### **⇒ Public Notice issued by Kerala Real Estate Regulatory Authority (K-RERA) to the Promoters of Real Estate Projects.**

- K-RERA vide its public notice dated 24.02.2021 announced that it has developed its web based online system for submitting application and uploading documents and information for registration of projects as per the provisions of the Real Estate (Regulation and Development) Act, 2016.
- Promoters are directed to upload the information and documents on the said website on or before 25.03.2021.
- K-RERA also specified that it is the responsibility of the promoter to ensure that all information submitted by the promoter and uploaded in the website of K-RERA, are

correct and genuine. As also provided under Section 17(4) of the Kerala Real Estate (Regulation and Development) Rules, 2018, the authenticity of the details and documents uploaded on the website shall be the sole responsibility of the promoter concerned.

- Further, if it is discovered that the details and documents uploaded and furnished by the promoter are incorrect and deficient, the same will amount to contravention of Section 4 of the Real Estate (Regulation and Development) Act, 2016 and promoter shall be liable to pay a penalty which may extend up to 5% of the estimated cost of the real estate project under Section 60 of the act.

#### **⇒ Guidelines issued by Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) regarding advertisements relating to promotion marketing and sale in Real Estate Projects.**

- UP-RERA issued guidelines on 11.02.2021 relating to promotion marketing and sale in real estate projects. These guidelines require strict compliance from Real Estate Promoters/ Agents, Property sites showcasing advertisements, Media Organizations i.e., Print Media or Electronic Media and Advertising Industry Intermediaries.
- Guidelines lays down that newspapers, magazines, brochure, leaflets, social media, digital media and outdoor publicity should clearly mention the RERA registration number as mentioned in the registration certificate issued by the authority.
- All audio-visual media and audio announcements should also mention in clear and audible manner and in slow pace the RERA registration number as mentioned in the registration certificate issued by the authority.

It is the responsibility of the media houses to ensure compliance with these guidelines. In case of non-compliance appropriate action will be taken by Ministry of Information and Broadcasting and UP-RERA will take suitable penal action against such media house.

**Litigation Brief:****One sided and unreasonable clauses under the Apartment Buyers Agreement shall constitute unfair trade practice under Section 2(1) (r) of the Consumer Protection Act, 1986.**

**IN THE MATTER OF:** Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Mittal and Others (Decided by Hon'ble Supreme Court of India on 11.01.2021)

**Issues:**

- Whether the due date of possession shall be calculated from the date of issuance of the fire NOC as argued by the Developer or the date of sanction of the building plans as contended by the allottees?
- Whether the terms of the Apartment Buyers Agreement were one-sided and unreasonable and the allottees are not bound by the same?
- Whether the allottees are entitled for refund along with interest for the inordinate delay in handing over the possession and are entitled to terminate the Agreement?
- Whether the provisions of the Real Estate (Regulation and Development) Act ("RERA Act"), 2016 shall prevail over the Consumer Protection Act, 1986?

**Facts:**

- The Department of Town and Country Planning ("DTCP") granted license to Respondent No.3, namely, Precision Realtors Pvt. Ltd and Respondent No. 4- Blue Planet Infra Developers and Madeira Conbuild Pvt. Ltd to develop a group housing project called "The Corridors", Sec-64, Gurgaon ("Project"). Subsequently the license was transferred to the Appellant Developer for construction of the Project.
- The DTCP sanctioned the Building plans for the Project which consisted certain preconditions wherein the Developer was mandated that the Fire NOC shall be submitted within 90 days of the issuance of the sanctioned building plans as well obtain environmental clearance. Clause 17(iv) of the Building Plans stipulated that the Developer shall obtain no objection certificate from the

Ministry of Environment & Forests before the commencement of construction.

- The Developer started booking for the apartments in the year 2013 and the Respondent No. 1 was allotted a 2BHK apartment in tower-C of the Project and similar allotment letters were issued to various apartment buyers in the same Project.
- The Developer obtained the Environmental Clearance on 12.12.2013 and was required to obtain the Fire NOC before the commencement of the Project. However, the Commissioner, Municipal Corporation vide letter dated 30.12.2013 raised objections with respect to the proposed Fire Fighting Scheme. Thereafter, the Developer received the "no objection" certificate for the scheme on 27.11.2014 after the defects were cleared.
- On 12.05.2014, the Developer executed the Apartment Buyer's Agreement ("ABA") in favour of Respondent No. 1. The terms of the contract provided that (a) 20% of the sales consideration will constitute the earnest money which the allottee has to pay within 45 days of the booking; (b) on every delayed payment the allottee shall pay 20% per annum from the date it is due for payment till the date of actual payment; (c) in case the Allottee fails to take the possession then the buyer shall be liable to pay Rs. 7.5 per sq. ft per month as Holding Charges; (d) if, the Developer fails to offer possession by the end of grace period i.e 42+6 months then the Developer would be liable to compensation at R. 7.5 per sq. ft. which works out to be approx. 0.9% to 1% interest p.a; (e) the delay compensation would be only payable to the allottee only if the termination was "validly opted"; (f) the allottee shall be deemed to have waived all its claims in respect of the area, specifications, construction etc. against the Developer upon taking the possession; (g) upon termination of the agreement the Developer shall be under no obligation to refund the money along with interest and other amounts payable; (h) in the event of clear and unambiguous failure of the warranties of the Developer Company, the allottee shall be entitled to refund of the instalments actually paid,



along with interest @8% p.a within 90 days from the date of determination to this effect and no other claim, whatsoever, monetary or otherwise shall lie against the Developer.

- On 27,12,2017 the Respondent No. 1 filed a consumer complaint before the National Consumer Disputes Redressal Commission ("National Commission") inter alia seeking refund of the money along with interest @20% p.a on account of inordinate delay and also submitted that the Developer misrepresented the allottees w.r.t the necessary approvals already been obtained. The Appellant Developer argued that there was no delay in offering the possession and the complaint filed is premature. Similar complaints were filed before the National Commission and batch matters related to the same Project were decided wherein the National Commission directed the Developer to refund the money of the allottees vide order dated 28.03.2019. Aggrieved by the Order of the National Commission, the Appellant/Developer filed the present appeal before the Hon'ble Supreme Court of India.

### **Court's Observations:**

- The Court took appropriate note and decided that the due date of possession shall be calculated from the date of issuance of Fire NOC. As per Clause 13.3 of the ABA, it provides that the possession shall be handed over within 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder. In accordance with Section 15 of Haryana Fire Service Act, 2009, it is mandatory for the Developer to obtain the Fire Approval before the start of construction activity. The Bench was of the opinion that obtaining the Fire NOC was a requisite which was categorically documented in the Building Plans as well in the Environment Clearance. The Hon'ble Court also submitted that there was delay of 7 months in obtaining the Fire NOC by the Appellant Developer.
- The Court on perusal of the ABA examined that the clauses set out in the agreement are wholly one-sided, and entirely

loaded in favour of the Developer and against the allottee at every step. The Court observed that the incorporation of such unreasonable and one sided clauses in the ABA constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act, 1986. The Court further observed that "unfair contract" has been defined under 2019 Act, and powers have been conferred on the State Consumer Fora and National Commission to declare contractual terms which are unfair, as null and void and such statutory recognition was implicit under the 1986 Act.

- Answering the third issue, the Court categorized the allottees under 2 categories. With regards to the Category A, the Court directed the allottees to take possession of the apartments and Developer shall be liable to pay the delay interest. Regarding the Category B, it was held that the allottees were entitled for refund along with compensation and interest. The Court held that Category B allottees were not bound to accept the Developer's alternate offer and in the interest of justice and fair play fixed the interest @9% simple interest p.a payable by the Appellant Developer.
- The Court concluded and relied on its own recent judgment Imperia Structures Ltd. Vs. Amit Patni and others where it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a Fora which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Additionally, Section 18 of the RERA Act, specifies that the remedies are "without prejudice to any other remedy available".

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