

ELECTIVE PAPER 6D: ECONOMIC LAWS

CASE STUDY 1

Mr. Bhanu Pratap Taneja is a leading real estate developer based in Delhi. In the last decade, his company Garvit Bhoomi Developers Pvt. Limited having registered office in Bhikaji Cama Place, New Delhi, had successfully developed four housing projects – two in Gurgaon and one each in Jaipur and Lucknow. They had a robust management team. Having been the name behind developing more than five thousand luxurious apartments with modern amenities, they had the reputation of delivering the projects well within the promised time.

In the beginning of the year 2015, they launched another project in Indirapuram, UP by the name Omega Capetown Residency in which 1000 residential units consisting of 2BHK and 3BHK apartments were to be developed. They were to be completed in all respects by January 2018 and delivered to the consumers by that date. This project was being carried on smoothly when the Real Estate (Regulation and Development) Act, 2016 came to be enacted w.e.f. 1st May, 2016. Section 3, which was enacted later w.e.f. 1st May 2017. Since Omega Capetown Residency consisted of 1,000 residential units, it was required to be registered and so the company submitted the requisite documents with concerned authorities.

As the application for registration was found to be complete in all respects, the Omega Capetown Residency Project was granted registration by RERA (UP) within the statutory period and was provided with a registration number including a log-in ID for assessing the website of the Authority and to create webpage.

In the meantime, Mr. Taneja was approached by some of the influential developers that an understanding had been reached among them to control the price of apartments to be built by them. However, because of legal tangles such understanding could not be brought into writing and it was also not intended to be enforced by legal proceedings. Mr. Taneja did not agree to the proposal because even though the understanding was not in writing and it was not intended to be enforceable by legal proceedings, it was still illegal as per the Competition Act, 2002. This revelation made by Mr. Taneja discouraged the intending developers and they desisted from being a party to this proposal.

Mr. Taneja's son Garvit, who was a commerce graduate and holder of law degree, had a college friend Rohit whose father Mr. Dev Kumar dealt in sale, purchase and renting of properties under the title 'Dev Property Dealers' from the Yusuf Sarai market. Since Rohit had joined his father's business, it was thought prudent to convert the existing proprietary business into a registered partnership firm titled as 'Dev & Sons Property Dealers'. Because of the enactment of Real Estate Act, Rohit consulted his friend Garvit regarding its implications in case of real estate agents. Accordingly, the firm was got registered as real estate agent with the help of Garvit's legal advisor.

Further, Garvit made a proposal to Rohit and his father that they could associate themselves with his Omega Capetown Residency, a registered RERA project in Indirapuram for facilitating sale of apartments which they readily accepted. Garvit also cautioned them that as per the Act, since their firm was now a registered real estate agent they were not supposed to facilitate sale/purchase of any plot,

apartment or building in a real estate project being sold by the promoter in any planning area, if such project was not registered with RERA of the concerned State.

In addition, Garvit's legal advisor told them that as required by Section 10, a registered real estate agent would maintain and preserve proper books of accounts and other necessary documents. Further, such agent would not involve himself in any unfair trade practice like making a false statement regarding services to be provided by him. He would also not permit the publication of any advertisement whether in any newspaper or otherwise of services that were not intended to be offered. Besides, the agent would also have to help the intending buyers in getting the required information and documents to which they were entitled, at the time of booking of any property.

Rohit had a friend Tarun whose father Dr. Sreenivas Sharma was a surgeon in a government hospital and was residing in a rented government flat in the hospital campus itself. He had an intense desire to have a luxurious flat of his own. Tarun had joined IBM after doing MBA from IIFT, New Delhi. So, with the combined salary of both, they decided to buy a flat. Tarun contacted Rohit to help him in searching a suitable apartment for his family. In turn, Rohit informed him that one particular 3BHK flat at an ideal location was available in Omega Capetown Residency in Indirapuram as the original allottee had withdrawn from the scheme; otherwise the booking under this project was already full. Dr. Sharma got interested in the information and went to the Omega Capetown Residency along with his family to see the concerned apartment. He liked its strategic location and gathered more information regarding sanctioned plan, layout plan along with the other specifications, etc. He then asked for stage-wise time schedule of completion of the project and also enquired regarding provision of water, sanitation and other amenities. Since, Rohit personally knew Garvit and his father Mr. Taneja - the promoters of the project - Dr. Sharma and his family had a lively and fruitful meeting with them. Subsequently, he and his son jointly entered into an agreement for sale with the promoters of the project and made payment of 75% of the cost of the apartment, while remaining 25% of the cost was to be paid at the time when the apartments were ready for occupation.

A few months after booking the apartment, Dr. Sharma got a notice from the promoters of Omega Capetown Residency that due to unforeseen circumstances they were not in a position to complete the project and needed the allottees' consent for transferring of their majority rights and liabilities to another reputed developer M/s. Sai Developers Pvt. Limited of New Delhi. In case any of the allottees was not agreeable to this proposal he could get his money refunded. Since Dr. Sharma was very much attached to the location of the flat, he accepted the proposal after enquiring with Rohit and his father. He also learnt that 95% of the allottees had already given their written permission. Further, the Authority had given its written approval to the proposal for transfer and completion of Project by M/s. Sai Developers Pvt. Limited. Dr. Sharma was also assured by Mr. Bhanu Pratap Taneja, the erstwhile promoter with whom he had earlier interacted satisfactorily, that all the pending obligations would be fulfilled by the new developer and in no case the date of completion of the project would be extended; otherwise it would attract penalty. It was also disclosed by Mr. Taneja that the new promoter would rectify any structural defect if it occurred within a period of five years from the date of handing over the possession of the apartments. Dr. Sharma, thus felt relieved.

M/s. Sai Developers completed the project on time and received Completion Certificate from the Competent Authority. As per the agreement for sale, Dr. Sharma made payment of the remaining 25% of the cost. Thereafter, he received Occupancy Certificate and took physical possession of the apartment well before two months since the allottees were supposed to take physical possession within statutory period of two months from the issue of Occupancy Certificate. He was also given other necessary documents and plans, including that of common areas. He also became a member of the RWA formed by the allottees. In the meantime, the promoter executed a registered conveyance deed in favour of each of the allottees along with the undivided proportionate title in the common areas to the RWA.

I. Multiple Choice Questions

1. Registration of a real estate project shall not be required –
 - (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight.
 - (b) where the area of land proposed to be developed does not exceed five thousand square meters or the number of apartments proposed to be developed does not exceed eighty.
 - (c) where the area of land proposed to be developed does not exceed two hundred fifty square meters or the number of apartments proposed to be developed does not exceed four.
 - (d) where the area of land proposed to be developed does not exceed three hundred square meters or the number of apartments proposed to be developed does not exceed three.
2. Who is required to submit a copy of duly obtained approvals and commencement certificate for getting the project registered with RERA:
 - (a) Allottee
 - (b) Promoter
 - (c) Real Estate Agent
 - (d) None of the above
3. A registered real estate agent shall -
 - (a) Facilitate the sale/purchase of any plot, apartment or building, being sold by the promoter in any planning area, which is registered with the Authority;
 - (b) maintain and preserve prescribed books of account, records and documents;
 - (c) not involve himself in any unfair trade practices
 - (d) All of the above.

4. The promoter is required to rectify any structural defect if it occurs within a period of ---- years from the date of handing over the possession of the apartments to allottees –
- (a) Two years
 - (b) Three years
 - (c) Four years
 - (d) Five years
5. Registration of on-going project for which completion certificate is yet to be received is mandatory -
- (a) Yes, if the area of land (developed or to be developed) exceeds five hundred square meters or the number of apartments (developed or to be developed) exceeds eight.
 - (b) No, irrespective of the area of land or the number of apartments
 - (c) Can't say
 - (d) None of the above
6. A real estate developer can leave the project mid-way by selling that project to another developer if he has taken a written approval of ----- of allottees along with approval of the Authority.
- (a) 2/3rd
 - (b) 1/3rd
 - (c) 3/4th
 - (d) 1/4th
7. The time limit within which an allottee is required to take physical possession of the apartment after issue of occupancy certificate is -
- (a) one month
 - (b) two months
 - (c) three months
 - (d) four months
8. A certificate certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications as approved by the competent authority under the local laws is called -
- (a) Commencement Certificate
 - (b) Completion Certificate
 - (c) Occupancy Certificate
 - (d) None of the above

9. The flat purchased by Dr. Sharma jointly with his wife Mrs. Neelima Sharma though funded by him would be held as 'benami transaction' under the Prohibition of Benami Property Transactions Act, 1988 -
- (a) Yes
 - (b) No
 - (c) Can't say
 - (d) None of the above
10. As per the Competition Act, 2002 'Agreement' includes any arrangement or understanding or action in concert:
- (a) Whether or not, such arrangement, understanding or action is formal or in writing; or
 - (b) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.
 - (c) Whether or not, such arrangement, understanding or action is formal or in writing; or whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.
 - (d) None of the above.

II. Descriptive Questions

1. (i) Examine the following given aspects with reference to the allottee in the situation given in the case study :
- (a) Rights exercised by Dr. Sharma as an allottee.
 - (b) Duties fulfilled by Dr. Sharma as an allottee.
 - (c) Right which was not exercised by him and duty which was not required to be fulfilled by Dr. Sharma.
- (ii) The promoters of Omega Capetown Residency transferred majority of rights and liabilities to Sai Developers Pvt Ltd. for the completion of the project. Advise as to the validity of such transfer of a real estate project to a Sai Developer's Pvt Ltd in the case study?
2. In the given case study Omega Capetown Residency has got itself registered under the Real Estate Regulatory Authority, as it consisted of 1,000 residential units. However, if Omega Capetown Residency consisted of only 250 residential units, then was it necessary to get itself registered under the Real Estate (Regulation and Development) Act, 2016: if yes, name the various important documents and declarations which are required to be submitted by a 'real estate developer' while registering a project with the Real Estate Regulatory Authority (RERA) having only 250 residential units and not 1,000 residential units.
3. Mr. Bhanu Pratap Taneja was approached by some of the influential developers to join their association so as to reach an understanding whereby they could inflate the price of the apartments built by them. Even though the deal was in favour of Mr. Bhanu Pratap Taneja, he rejected the proposal from other developers. In the light of the provisions of the Competition Act, 2002, discuss whether the decision of Mr. Bhanu Pratap Taneja is lawful?