

ELECTIVE PAPER 6D – ECONOMIC LAWS

SUGGESTED SOLUTION – CASE STUDY 1

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (a) [Hints: Refer Section 3 of the Real Estate (Regulation and Development) Act, 2016]
2. (b) [Hint: Refer Section 4 (2) (c) of the Real Estate (Regulation and Development) Act, 2016]
3. (d) [Hint: Refer Section 10 of the Real Estate (Regulation and Development) Act, 2016]
4. (d) [Hint: Section 14 (3) of the Real Estate (Regulation and Development) Act, 2016]
5. (a); [Hint: Refer Section 3 of the Real Estate (Regulation and Development) Act, 2016. It may not be mandatory in a particular State if the State has granted exemption to such on-going project]
6. (a); [Hint: Section 15 of the Real Estate (Regulation and Development) Act, 2016. It is to be noted that if a consumer or his family holds more than one unit in the project then he will be considered as one consumer only]
7. (b); [Hint: Refer Section 19 (10) of the Real Estate (Regulation and Development) Act, 2016]
8. (b); [Hint: Refer Section 2 (q) of the Real Estate (Regulation and Development) Act, 2016]
9. (b); [Hint: Refer Section 2 (9) (iii) of the Prohibition of Benami Property Transactions Act, 1988]
10. (c). [Hint: According to Section 2 (b) of the Competition Act, 2002, 'Agreement' includes any arrangement or understanding or action in concert:
 - (i) Whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. (i) (a) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, exercised the following rights:
- (I) Obtained the information relating to sanctioned plans, layout plans along with the specifications as approved by the competent authority.
 - (II) Demanded to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities.
 - (III) Claimed physical possession of the said apartment.
 - (IV) Obtained the necessary documents and plans, including that of common areas, after getting the physical possession of the apartment from the promoter.
- (b) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, fulfilled the following duties:
- (i) Made necessary payments within the time as specified in the agreement for sale.
 - (ii) Became a member of the RWA formed by the allottees.
 - (iii) Took physical possession of the apartment within a period of two months from the issue of Occupancy Certificate.
 - (iv) Participated towards registration of the conveyance deed of the apartment.
- (c) (i) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, did not exercise the following right:
- The right to claim the refund of amount paid along with prescribed rate of interest. It was so because the promoter was able to give

possession of the apartment in accordance with the terms of agreement for sale.

- (ii) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, was not required to fulfill the following duty:

The duty to pay interest at prescribed rate for delay in making any payment. It was so because he had made the payments in accordance with the terms of agreement for sale.

- (ii) As per section 15 of the Real Estate (Regulation and Development) Act, 2016, a promoter is permitted to transfer his majority rights and liabilities in respect of a real estate project to a third party.

The provisions given below are to be adhered to by the promoter for transfer:

- (a) Obtain prior written consent from two-third of allottees. Such consent will not include the consent given by the promoter.
- (b) Also obtain prior written approval of the Authority.

Note: It is to be ensured that such transfer shall not affect the allotment or sale of the apartments, plots or buildings, as the case may be, in the real estate project developed by the promoter.

- (i) After obtaining the required consent of both allottees and the Authority, the new promoter shall be required to independently comply with all the pending obligations under the provisions of the Act or the rules and regulations made thereunder.
- (ii) The new promoter is also required to comply with the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.
- (iii) Further, the new promoter must note that any transfer so permitted shall not result in extension of time to him to complete the real estate project.

Note: In case of default, he shall be liable to the consequences for delay, as per the provisions of the Act or the rules and regulations made thereunder.

Since in the given case study , 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 in compliance with the requirements given in the said provisions. Such transfer of a real estate project to a Sai Developer's Pvt Ltd. is valid.

2. According to proviso to section 3 of the Real Estate (Regulation and Development) Act, 2016, projects that are on going on the date of commencement of the Act, and for which the completion certificate has not been issued, the promoter of the project are required to make and application to the concerned Authority for the registration of the said project within a period of 3 months from the date of commencement of the Act.

Further, the section provides that no registration of real estate project shall be required where the area of land proposed to be developed does not exceed 500 square meters or the number of the apartments proposed to be developed does not exceed 8 inclusive of all phases.

Hence, the Act requires registration of on-going projects where completion certificate was yet to be obtained as well as new projects, if the area to be developed exceeded 500 sq. mtrs. or apartments to be built under the project exceeded eight. Thus, registration of Omega Capetown Residency was must with the Real Estate Regulatory Authority of UP (RERA, UP), as consisted of 1,000 residential units.

Further, even if Omega Capetown Residency consisted of only 250 residential units (i.e. more than 8 units), it will be compulsory to get itself registered under the Act. The process of registering a project with the Real Estate Regulatory Authority (RERA) which consists of 1,000 units or 250 units is same which is given under section 4 of the Act.

With reference to Section 4, various important documents and declaration required to be submitted while registering a project with RERA are as under:

- Details of the project such as name, address, type, names and photographs of the promoters, etc.
- Details of the project which were already launched by the real estate developer in the preceding 5 years and their present status.
- Approvals and commencement certificates obtained from the competent authority for each phase of the project separately.

- Sanctioned layout plan, the development plan for the project and details of basic facilities being made available like drinking water, electricity etc.
- Proforma of allotment letter, agreement for sale and conveyance deed to be signed with the consumers.
- Location of the project with clear demarcation of the land for the project.
- Number, type and carpet areas of units to be sold.
- The details of open areas if any like terraces, balconies etc.
- Details of associated engineers, contractors, architects and intermediaries in the project.
- a declaration, duly supported by an affidavit, stating the following important matters:
 - that the promoter has a legal title to the land and it is free from all encumbrances along with legally valid documents;
 - the time period required for completion of the project;
 - that seventy per cent. of the amount realised from the allottees, from time to time, shall be deposited in a separate escrow account and shall be used only for the purpose of completion of project;
 - that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice; and shall take all the pending approvals on time from the competent authorities; etc.

3. According to section 2(b) of the Competition Act, 2002, 'Agreement' includes any arrangement or understanding or action in concert:

- (i) Whether or not, such arrangement, understanding or action is formal or in writing, or
- (ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Further, section 2(c) of the Competition Act, 2002, "Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

An association for the welfare of the trade or formed for any other purpose not mentioned in the aforesaid definition will not be a cartel. Thus, it is only when an association, by agreement amongst themselves, limits control or attempts to control the production, distribution, sale or price of, or, trade in goods or provision of services, that it will be a cartel.

Hence, an agreement which prohibits an enterprise or person or their association for entering into an agreement in respect of production, supply, distribution, storage, acquisition or control of goods or services, which causes or is likely to cause an appreciable adverse effect on competition. Such agreements entered in contravention of the above are void. These agreements are presumed to have an appreciable adverse effect on competition.

Here, in the given situation, the agreement between Mr. Bhanu Pratap Taneja and other builders would have fallen into the ambit of section 2(b) and 2(c) of the Competition Act, 2002 as the aim of the association was to increase the price of the apartments. Thus, such an association would be void.