

## No escape from RERA by structuring sale through lease

### Agreement to lease Promoter includes Lessor Bombay High Court Order

Real Estate developers have been trying to avoid the applicability of Real Estate Regulatory Act (RERA) on their projects and transaction. One of the more common practice followed by real estate developers is to structure the agreement of sale transaction in the form of agreement of lease with perpetual right to the Lessee and his/her successors, right to transfer the lease etc.

The Developers have loudly contended that the term Promoter and allottee as defined under RERA do not include a Lessor and a Lessee and therefore the lease transactions are outside the purview of jurisdiction of Real Estate Regulatory Authority.

The aforesaid preposition has been challenged before the Maharashtra Real Estate Regulatory Appellate Authority and Bombay High Court. The Bombay high court has confirmed applicability of RERA on sale via agreement to lease.

Below are the prominent takeaways from the Bombay High Court Order:

- (i) The nomenclature of the document cannot be true test of the real intent and document has to be read as a whole to ascertain the intention of the parties;
- (ii) the definition of 'Allottee' also includes the 'Lease Agreement', though it may not include such Agreement, when the apartment is in its real sense given purely on rent and it is, in reality, an 'Agreement of Rent and Lease' and not, in effect, a transaction of sale;
- (iii) The object of the RERA, is to regulate the real estate industry, to ensure greater accountability towards consumers and significantly to reduce frauds and delays, to bring into it the standardization, professionalism and the transparency, so that interests of the consumers are protected;
- (iv) If the allotment of a plot, apartment or building, as the case may be, can be whether as a freehold or as leasehold, then the



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word 'selling' used in the definitions of 'Promoter' and 'Real Estate Project' also includes the allotment of a plot by lease. Merely because the Legislature has excluded the allotment, when it is given on rent, it does not exclude the long term lease.