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# Courts and Contractors

Can contractors claim additional compensation owing to COVID? Can they claim relief on penalty charges because of delays in delivery? And how is RERA dealing with pandemic-related delays? SONAL VERMA and FAUZIA KHAN delve deeper.



Like most sectors across industries in India, the real-estate sector also experienced a major setback and was adversely hit by COVID-19. In May 2020, Prime Minister Narendra Modi announced special packages to fight the impact of the pandemic, the details of which were announced by Finance Minister Nirmala Sitharaman.

A major relief for contractors under the Atmanirbhar Bharat initiative was the directive to all central agencies, such as the Railways, Ministry of Road Transport and Highways (MoRTH) and Central Public Works Department (CPWD) to provide an extension of up to six months for completion of contractual obligations, including EPC and concession agreements. Accordingly, the Department of Expenditure issued instructions to grant such extension/ relief without imposing any additional cost or penalty on the contractor.

In June 2020, MoRTH approved

relief on retention money, which is a part of the performance security till completion of the construction period, and waiver of penalty for delay. The finance minister also declared that the pandemic be treated as a 'force majeure' event under the Real Estate Regulatory Act (RERA) 2016. Accordingly, an advisory was issued to all the states and union territories to treat the pandemic as an 'act of God' and *suo motu* extend the completion dates of projects. Additionally, owing to the prolonged nature of the pandemic, the finance minister extended a six-month relaxation and a further three-month extension for all real-estate projects registered under RERA.

## Major court rulings

In the case of *MEP Infrastructure Developers Ltd v South Delhi Municipal Corporation & Ors. W.P. (C) 2241/ 2020*, the Delhi High Court held that a force majeure clause instantly comes into effect upon being acknowledged by the

other party and, therefore, the need to explicitly invoke such a clause need not arise. The matter pertained to a contractor of a highway development project, who was liable to pay revenue to the respondent for being permitted to collect toll at a certain stretch of road under the terms of a toll collection contract. However, the contractor defaulted in making the weekly payment under the terms of the contract and had further sought consideration of extension of time period while giving effect to the termination notice and also an extension for payment of instalments of arrears. The court observed that the pandemic was an explicitly classified force majeure event and, therefore, the need for a separate notice postulating the occurrence of the force majeure event did not arise.

In the case of *Halliburton Offshore Services v Vedanta Ltd (O.M.P. (I) (COMM) & I.A. 3697/2020*, Halliburton, the drilling

contractor for Vedanta, was due to complete drilling of wells by certain fixed dates in 2019. The contractor sought an extension until March 30, 2020, which was disputed by Vedanta. Subsequently, Halliburton gave a notice of force majeure to Vedanta on the basis of the COVID-19 lockdown. However, the court observed that non-performance of a contract could not be condoned on grounds of the pandemic outbreak. Moreover, courts are not obliged to safeguard non-performance/default; hence, there must exist a substantial reason or justification for the court to consider invoking a force majeure clause.

#### **Latest RERA notifications**

On August 6, 2021, the Maharashtra RERA allowed a six-month relief by accepting applications seeking invocation of the force majeure clause on account of the disastrous second wave from the promoters of registered projects under RERA. The relief is available on projects for which the date of completion expired on or after April 15, 2021. Accordingly, in compliance with directions by the Government of India, the extension period has been granted from April 15, 2021, to October 14, 2021.

In July 2021, the Kerala RERA issued a notification invoking provisions of Section 6 of the RERA Act, read with Rule 8 of the Kerala Real Estate (Regulation and Development) Rule, 2018 (Rules 2018), whereby it decided to grant a further extension for all real-estate projects registered under RERA. The relief is applicable to projects with the date on the registration certificate expiring on or after April 1, 2021. Developers seeking such extension are required to apply via Form E annexed to the Rules 2018.

#### **Reliefs from government**

In July 2021, via the Delhi Building and Other Construction Workers Welfare Board, the Delhi government granted pandemic relief of ₹5,000 each to over 47,000 construction workers. The disbursement is applicable to workers whose applications were approved between May 28 to July 18, 2021.

In July 2020, Prime Minister Narendra Modi granted approval to affordable rental housing complexes (AHRCs) for urban migrants/the poor as a sub-scheme under the Pradhan Mantri Awas Yojana - Urban (PMAY-U). The project aims to provide dignified standard of living to urban migrants/the poor close to their workplaces. The initiative is expected to enhance investment opportunities and encourage entrepreneurship in the rental housing sector<sup>3</sup>. The development of AHRCs has also been approved by the Delhi Development Authority (DDA) under its Master Plan of Delhi 2021.

#### **State-specific RERA circulars (March 2020 till August 2021)**

##### **MAHARASHTRA**

**April 2, 2020:** Owing to the unforeseen circumstances around the pandemic situation and lockdown restrictions, all Maharashtra RERA-registered real-estate projects were granted a relief of three months and all statutory compliances due in March/April/May were also extended to June 30, 2020.

**May 18, 2020:** In accordance with the advisory of the Government of India and in exercise of its power, the Maharashtra RERA invoked force majeure from March 15 to September 14, 2020, thereby granting a six-month relief on an immediate basis.

**May 18, 2021:** The Maharashtra RERA notified guidelines pertaining to the conduct of its Conciliation & Disputes Resolution Forum in referred conciliation matters (online complaints).

**August 6, 2021:** On August 6, 2021, the Maharashtra RERA allowed a six-month relief by accepting applications seeking invocation of the force majeure clause on account of the disastrous second wave from the promoters of registered projects under RERA. The relief is available on projects for which the date of completion expired on or after April 15, 2021. Accordingly, in compliance with directions by the Government of India, the extension period has been granted from April 15, 2021, to October 14, 2021.

##### **DELHI/HARYANA (GURUGRAM & PANCHKULA)**

**May 26, 2020:** This circular provided information about the advisory on extension of registration for real-estate projects owing to the force majeure. The extension permitted developers to avoid paying additional fees to HEREA on account of delay in filing application for registration/ submission of the required information. An extension/relaxation on six months for registration, compliance and extension for provisions under the RERA Act was given from March 25, 2020, to September 24, 2020.

**July 7, 2020:** This circular provided information on the online registration of real-estate agents and observed that the online receipt of applications for their registration had begun. Those who wanted to register themselves as real-estate agents could do so as per Section 9 of the Real Estate (Regulation & Development) Act,

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2016, which is now available in online mode, keeping in mind COVID-19 protocols.

**August 27, 2020 (Panchkula):** The authority decided to start its court proceedings through video conferencing in view of the prevailing COVID situation in the country.

**April 19, 2021:** The circular provided information about the guidelines issued by the RERA chairman of Haryana, which focused on measures to prevent and control the spread of COVID-19. The circular specified that there would be no physical meetings held on hearing of complaints owing to the increasing number of cases and that meetings would be held in a virtual mode. Further, restrictions on entering the HRERA building were also imposed.

**April 30, 2021 (Panchkula):** The authority published several health measures to be taken for the welfare of employees in view of the surge in COVID cases. These preventive measures included work from home for all officials, cleaning and sanitising of the office, going on home quarantine if feeling unwell, etc.

### UTTAR PRADESH

**June 6, 2020:** In view of the COVID-19 pandemic, the authority granted relief to registered projects under the UP RERA jurisdiction, for which the completion/extended/ revised date of registration expired on March 25, 2020. The additional timeframe for these projects was a six-month extension. Further, the time limit for adhering to compliances such as submission of quarterly progress reports and annual audit reports of projects was also extended up to June 30, 2020, on grounds of force majeure.

**April 2, 2021:** Owing to the catastrophic second wave of the COVID pandemic, the scheduled hearing of the National Lok Adalat was revised from April 10 to May 8, 2021.

**April 16, 2021:** Amid the rise of COVID cases in the state, the Uttar Pradesh RERA deferred the option of physical hearing of complaints from May 1, 2021. With the state being among the highest affected in terms of the pandemic, the authority decided that hearings would be conducted through virtual mode to maintain the COVID protocol of social distancing.

**August 2, 2021:** To help developers cope with the pandemic crisis in the real-estate sector, the authority extended the deadline for around 100 projects in Noida, Greater Noida and Yamuna Expressway by two years.

**August 3, 2021:** The UP RERA granted a nine-month additional extension to registered projects whose extended registration is ending on or before December 31, 2021, in the NCR region and six months in the non-NCR region. Such extension will be granted only upon an application by the promoter along with an affidavit stating completion of the project within the extended period and also a financial plan for the same.

### KARNATAKA

**May 19, 2020:** This circular superseded the K-RERA Circular of April 4, 2020. The authority decided to extend the period of validity of registered projects whose completion date and revised date expired on or after March 15, 2020. The extension was given for a six-month period by invoking the force majeure clause.

**December 18, 2020:** The authority decided to extend the completion date of all registered real-estate projects by another three months in view of the prevailing COVID-19 situation. This extension was applicable for projects that had their extended dates of completion expiring on or after March 15, 2020.

### TELANGANA

**September 29, 2020:** With increased difficulties in procuring material and other restrictions on the real-estate sector owing to the pandemic, the authority, in addition to the previous extension from March 15 to September 14, 2020, notified another six-month extension from September 15, 2020, to March 15, 2021. Additionally, it also notified that promoters/ developers falling under the abovementioned ambit would not be liable to pay additional fee for extension owing to COVID-19.

**June 1, 2021:** As a measure to facilitate promoters to cope in trying times, the authority further provided relief by extending the validity of registered projects for which the completion date expired on or after March 15, 2021, by another six months, i.e. March 15 to September 14, 2021. Additionally, the real-estate authority also notified that promoters/developers falling under the abovementioned ambit would not be liable to pay additional fee for extension owing to COVID-19.

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