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Is the Coronavirus outbreak a 'force majeure' as defined under RERA, for Indian real estate?

While the apprehensions of economic losses, construction halt and slow sales are causing a negative mood in the real estate sector, the question arises as to whether business has been affected to the extent that legally, it could qualify for the force majeure clause under RERA. Experts share their take on the matter

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Businesses world over are as much sentiment-driven as the economic fundamentals. In India, real estate is arguably the second-most sentiment sensitive business after the stock market. It is hence no surprise that the Coronavirus pandemic (<https://housing.com/news/10-things-housing-societies-must-know-to-fight-coronavirus/>) is hurting the sentiments of the business.



Ground reality for Indian real estate in times of Coronavirus pandemic

- New project launches that had been announced are being postponed.
- Sanitisation drive is visible across project sites.
- Sales pavilion on the weekends are not being organised.

In short, the outbreak has only added to the already bearish sentiments in the sector. Some industry reactions seem to suggest that the better-safe-than-sorry sentiment is all pervasive.

“Earlier, we had decided to do a physical launch with channel partners and brokers. However, now, due to the COVID-19 situation (<https://housing.com/news/coronavirus-precautions-how-to-protect-your-home/>) and as a responsible company, we will be conducting a digital launch where we will accept requests and enquiries from customers online. We will then be providing time slots to the customers for site visit, where there will be no crowd gathering but every customer will be attended one-on-one as per their respective allotted time,” shares **Anuj Khetan, director, Vijay Khetan Group**.

In fact, real estate industry body CREDAI has asked the government to declare COVID-19 as ‘Force Majeure’ under Section 6 of the RERA (<https://housing.com/news/rera-will-impact-real-estate-industry/>). The question is whether the outbreak, even if it is affecting the construction pace and the sales velocity could be termed as force majeure?

What is force majeure?

Force majeure is a French term that literally means greater force. It is related to the concept of an act of God – an event for which no party can be held accountable, such as an earthquake or a tsunami. Force majeure also encompasses human actions such as war, armed conflict, terrorist attack, labour strike, lockouts, etc.



Does the Coronavirus pandemic make a case for force majeure?

For Coronavirus to be termed as force majeure, the government must declare it an 'emergency shutdown', which is not a case so far. More importantly, the economic impact of an emergency shutdown would wreak havoc on the Indian economy.


The opinion on the issue is divided, but JLJ Law Offices believe that it is legally tenable to contest it as force majeure.

An authored article by the law firm's **advocates Vivek Jain and Manish Sharma**, states: "For events to constitute force majeure and for parties to seek relief for non-performance of a contract, due to force majeure event, under the law, the event must be: beyond reasonable control; shall affect the ability to perform of the party; and reasonable steps taken by the parties to the contract to mitigate the loss." However, beyond the CREDAI seeking demands in the wake of the outbreak, the fact of the matter is that construction work has not completely stalled in most states.

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Sales velocity has been impacted by Coronavirus

Developers believe that the sales velocity has definitely been slow and the real  impact on the buying behaviour would be visible only during the upcoming festive spell of Akshay Tritiya and Navratri.

“I don’t see why one should postpone the new launches at this point of time due to Coronavirus. Yes, our sales are slow for many reasons and the corona fear is only leading to more bearish sentiments,” admits **Amit Modi, Director, ABA Corp.**

Kaushal Agarwal, chairman, The Guardians Real Estate Advisory, believes the fear of contagion has dampened business activities across the globe. The impact on real estate will be significant, especially in the immediate short-term. “Affordable and mid-income housing that has been a silver lining for the sector, over the past several years, will also come under pressure primarily because its success depends on maximum distribution and volume sales. However, we see this impact to be a temporary one, keeping in mind the measures being taken by governments across the world. The situation is bound to recover sooner or later, once the impact is absorbed”, says Agarwal.

Only the apprehensions of economic losses, construction halt and slow sales are driving the sector with negative sentiments. None of these apprehensions have affected the business to the extent that legally it could be termed as force majeure. New launches are delayed and the sales initiatives are curtailed. It is to be seen as to what extent it has dented the home buyers’ sentiments and their purchasing power. That eventually might lead to the logical conclusion of whether Coronavirus outbreak would be termed as force majeure.

(The writer is CEO, Track2Realty)

FAQs

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Will force majeure apply on housing projects in the aftermath of coronavirus spread?



As of now, the business has not been impacted to the extent that legally the outbreak could result in builders citing the force majeure clause over project delays.

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