

Understanding Dispute Resolution Related to Agreement for Sale as per the Real Estate (Regulation and Development) Act, 2016

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Abstract –The Real estate sector is important part of the country's economy though remains largely unregulated. To regulate the Real Estate sector, Government enacted The Real Estate (Regulation and Development) Act, 2016 (REA). The act secures the rights of the buyers and provides speedy dispute redressal by establishing two forums i.e., Real Estate Regulatory Authority and the Adjudicating Officer (AO). This paper focuses on decisions taken by Maharashtra Real Estate Regulatory Authority (MAHARERA). This study is focusses on the conditions for agreement for sale as per REA. For this, 24 complaints under MAHARERA related to agreement for sale are studied thoroughly. For better understanding, decision tree is drawn which will assist promoter as well as allottee to predict the decision of their deposit related complaint.

Key Words: MAHARERA, Dispute resolution, Decision support system, agreement for sale.

1. INTRODUCTION

The Real estate sector in India is the second largest contributor to the Nation's GDP and is a prominent job provider. Yet, it has been a victim of hefty frauds in the past few decades where the homebuyer had to encounter numerous issues, primarily with opaque practices, information asymmetry, delay in handing over the possession by the promoter, high-interest rates charged on late payments, multiple bookings for the same property, project failures, etc. On the other hand, promoters had to overcome the issues such as delays in building permits, late payments by homebuyers, and non-transparent operations. Despite of various laws present in India for consumer grievance redressal, there is lacuna present in their procedures hence end customers suffers a lot.

For safeguarding interest of homebuyers, Government of India enacted The Real Estate (Regulation and Development) Act, 2016 (REA) which ascertains the Duties and obligations to promoter, allottee and real estate agent too.

As per REA section no. 2, "agreement for sale" means an agreement entered into between the promoter and the allottee.

An agreement to sell is an instrument wherein the builder makes a promise to transfer the property to a homebuyer on fulfillment of certain conditions however it does not create ownership of the buyer over the property.

At the time of booking, builder/promoter takes advance more than limit without entering into agreement for sale and misuse the money by using it for another work. As no

written proof for terms and conditions is available, allottee has to agree to whatever builder is hindering.

To overcome this, REA gives proper guidelines for booking amount and agreement for sale. This research is focuses on the study of section no. 13 which deals with deposit for agreement for sale. For the research, complaints under MAHARERA related to section no. 13 are taken for studying different situations.

2. DISPUTE RESOLUTION IN REAL ESTATE SECTOR

Real estate can be defined generally as space described by man, relative to a fixed geography, intended to contain an activity for a specific period of time. Real estate developments range from a simple cave to the complex technology of the Park Avenue skyscraper (Graaskamp, 1981).

Construction/infrastructure is one of the fastest growing sectors of the world economy, and lots of money is spent in construction related disputes. In India also, rapid globalization and increase in industrial competition has led to growth in commercial disputes. At the same time however, the rate of industrial growth, modernization, and improvement of socio-economic circumstances has in many instances outpaced the rate of growth of dispute resolution mechanisms (Ghulghane and Khandve, 2015).

Khekle and Futane (2015) explained the types of claims related to construction industry. Procedure for claim management also described in their research. Mechanism for dispute resolution are simplified thoroughly by one by one i.e. Prevention, Negotiation, Standing neutral, Mediation, Conciliation, Arbitration and Litigation. Further they also clarified the advantages of Alternative Dispute Resolution (ADR).

Before the introduction of The Real Estate (Regulation and Development) Act, 2016, Indian real estate customers had little legal recourse and consumer protection was offered to them under various acts such as: The Indian Contract Act, 1872; The Consumer Protection Act, 1986; MOFA (Maharashtra Ownership Flats Act), 1963. Indian consumers had to approach various authorities such as, Consumer Courts and Civil courts, to get their grievances addressed. Before the passage of the act, no single regulatory authority existed for regulation of real estate sector and buyers were facing problems like timely delivery of projects, possession not being handed over by the developer, high rate of interest being charged on late payments, multiple bookings for the same property, misselling of projects etc. The developers were facing issues like delay in construction permits, late

payments by homeowners and operations in a non-transparent environment (Thakur, 2018).

One of the key objectives of enacting the act was to create a specific forum to provide for prompt dispute redressal. This is because consumer forums, though sensitive to the rights of the allottees, still suffered from the delays of litigation in India. The promoters misused this to their benefit and adopted a policy of tiring out the allottee in the hope of paying inadequate settlement, or frustrating the allottee to a point where the allottee withdraws the legal claim. The buyers would have to initially approach the district forum, then the state forum, and finally the national forum, which not only caused delay, but also made the process lengthy, bulky and economically burdensome for the buyers. To enlarge the problem, most builders, especially those considered to be big firms, hired specialized legal counsels to draft lop-sided contracts and as a matter of practice, included arbitration clauses to deter buyers from litigation.

3. DECISION TREE DIAGRAM as DSS

A **decision support system (DSS)** is an information system that supports business or organizational decision-making activities. DSSs include knowledge-based systems. A properly designed DSS is an interactive software-based system intended to help decision makers compile useful information from a combination of raw data, documents, and personal knowledge, or business models to identify and solve problems and make decisions.

Three fundamental components of DSS:

1. The Database
2. The model
3. The user interface.

According to Bastias and Molenaar (2005) Decision support systems are basic tools for today's construction managers. These tools can improve decisions, with more useful information, strong arguments, and very acceptable accuracy. The choice to apply a DSS is easy because of the advantages that it offers, however, the choice of the right model with the right tool, and the right technique must first be addressed.

A DSS provides information enabling users to analyze situations and make decisions (Coe et. al. 1998). In order to provide information for predicting patterns and trends more convincingly and for analyzing a problem or situation more efficiently, an integrated decision support system (DSS) designed.

Chaphalkar and Patil (2012) highlights the need of scientific framework for understanding and administratively resolving disputes over contract clauses. Decision Support System is one such tool. An attempt has been made to develop one such system for disputes arising out of variation and deviations clause in Indian construction contracts.

Iyer et.al. (2001) explains the use of DSS as, in practice, almost all decision support systems are viewed as expediting some part of the problem solving process by improving consistency, accuracy and providing better ways of viewing and solving problems. Also one of the main purposes of

decision support systems is to provide a common conceptual basis for decision making that is to combine separate potential decisions of various people by filtering these decisions through a single model that would estimate the total results.

As per Maharashtra Real Estate Regulatory Authority's official webpage, total complaints received are in thousands. But any type of decision support system is not formed on that complaints which can be used as a ready reference to both promoters as well as allottees and any non-legal professional. So the purpose of this paper is to formulation of DSS for MAHARERA complaints

4. METHODOLOGY

The formulation involves the development of a research framework, data collection and, ultimately, data analysis.

- For the proposed work, past complaints related to MAHARERA are required to identify most dispute prone sections. This complaints are taken from the MAHARERA's official webpage.
- Complaints are analyzed by converting them into tabular format. Complaints filed under same section are grouped.
- The sections which commonly seen are tagged as dispute prone section, grouped section are compared so as to find out the pattern in claims and their order. There is a regularity in the complaints and their judgement which is then used to frame the yes no type questions.
- By using this questions, decision trees are formed in GitMind software for each dispute prone sections by supplementing each question using relevant complaint.
- Decision tree technique is used to develop DSS. One common decision tree is formed as a DSS by assembling decision tree for identified dispute prone sections. Work is concluded by explaining uses of this DSS for both parties i.e. for promoter and for allottee.

5. DEVELOPMENT OF DECISION TREE

Development of decision trees is carried out in three step-

1. Data collection
2. Data analysis
3. Formulation of decision tree

5.1 Data collection

For development of decision trees, orders are taken from MAHARERA's official website. Near about 75 complaints are taken for study from which 24 orders related to agreement for sale are used for analysis.

5.2 Data analysis

Complaints have been tabulated in Microsoft Excel which under different heads like

- Name of Petitioner
- Respondent
- Details of project which includes MAHARERA registration no, Project name, Type of ownership of the promoter, different dates related to project like date of Agreement

for Sale, booking date, allotment letter date, Agreed date of possession etc. if any.

- Relief sought explains reason of complainant to file the complaint
- Amount claimed by the complainant
- Amount Refunded by the respondent
- Reason due to which authority allows the claim or disallows the claim
- Claim allowed/Partly allowed/Not allowed
- Reference section used by petitioner to claim or by authority to refund
- Location of the project
- Defense statement which explains reasons given by the respondent.

By studying this database, some consistency is observed in the orders. From this, decision tree is formulated.

5.3 Formulation of DSS

For the formulation, section no. 13 of REA is studied which is related to deposit for agreement for sale.

Section no. 13 of REA is as follows:

“(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

After reviewing this, questions are formed by using relevant complaint as a case study.

First question arises from above is,

- **Whether the promoter accept a sum more than 10% of the cost of apartment, plot or building without entering into a written AFS?**

In case of Eshaan Desai and Others Vs. Shree Sukhakarta Developers Pvt. Ltd and Another(2019, CC006000000055883) , the promoter demanded money which is more than 10% of the cost of the apartments without entering into registered agreement for sale. As allottee denied for substantial paying further payments, the promoter cancelled the termination. In this case, authority held that the promoter violated the provisions of sections but went on demanding more money without registering the agreement and finally issued letter terminating the

allotment. Both the parties are directed to register the agreement for sale within period of 30days. A penalty of Rs.2 Lakh as per section no.63 is imposed on the respondents for violating the provisions of the Act.

Next questions are formulated after studying some complaints related to evidence of Agreement for sale. It is observed that, most of the time promoters accepts payments more than the ten percent of the cost of the apartment from the allottees without entering into registered agreement for sale. Further promoter delays the possession by quoting various reasons. As there is no written and authorized proof which shows promised date of possession by the promoter, allottee cannot asked for the interest on payment. If there is any booking form or allotment letter which contains all the terms and conditions having sufficient clarity disclosing the fact that the parties agreed to sale and purchase of the property, it is treated as agreement for sale by the authority. From this discussion, the question forms

- **Whether the promoter demanding amount more than % without entering into AFS?**
- **Whether there is any authorized proof in form of booking form or allotment letter which contains all the terms and conditions?**

In case of Kapil Dharmakumar Kapadia Vs. Ashwin Kumar Jain (2020, AT006000000010544), Letter of allotment was given by the promoter at the time of booking. That allotment letter is taken as an evidence by the authority. As there was a delay in possession, promoter is directed to refund the amount paid by allottee with interest from the date of the payment.

In case of Promila Bansal Vs. Nakta Investment Pvt. Ltd (2018, CC006000000022980), in spite of having paid substantive amounts on basis of allotment letters, the promoter was failed to execute registered agreement for sale. There was a delay in possession, therefore Allottee prayed that the promoter be directed to refund the amount with interest as per provision of act. As there was no registered AFS, relief under the act was not granted by the authority.

5.4 Decision tree diagram used as DSS

The main objective of this research work is to produce a simple Decision support system for promoters as well as for allottees. After studying complaints related to agreement for sale, it is observed that there is a consistency of the pattern in which the decisions of the complaints.

This decision tree diagram gives idea about the outcome of dispute. Questions are simple for understanding. Only yes no type questions are formulated. From the DSS developed, certain guidelines can be formed; those can significantly help in drafting a better agreement and thus minimize the possible disputes addressed in this study.

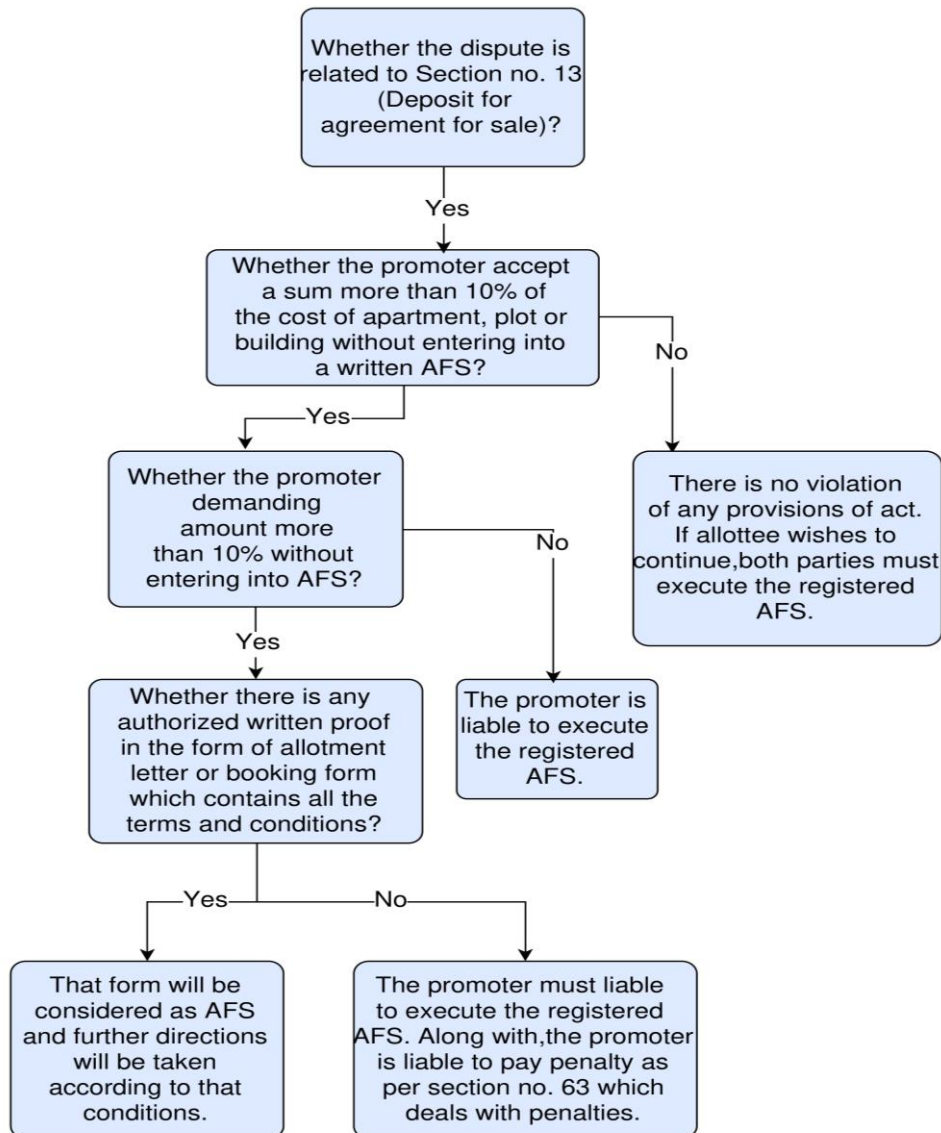


Fig no. 5.1 Decision Tree Diagram for section no.13

6. CONCLUSION

Agreement for sale is important in the process of purchasing flat. Section no. 13 of REA establishes that promoter can demand only 10% amount before entering into registered agreement for sale. It was observed that there is a consistency of the pattern in the decisions of the complaints filed in MAHARERA for agreement related disputes. This consistency has been tried to use to make questions. The questions in the decision trees are directly generated from complaints.

The purpose of designing this decision tree as DSS is to assist the dispute resolution process within the framework of the law i.e. REA. It will also give rough idea about the outcome of

the dispute to both parties. This DSS is simple and easy to understand. By considering the facts of complaints, the outcome of complaint can be found out easily.

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