

Investors Tweak Realty Deals to Avoid Litigation Under RERA

PEs, strategic investors fear getting labelled as developers & facing penalties for violations by projects

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Mumbai: Many private equity as well as strategic investors, who have invested in real estate, mainly at the project level, are renegotiating their contracts, with the developers fearing litigation and fines once the new real estate regulations come in to force.

The fear is that under the Real Estate (Regulation and Development) Act (RERA), they can be labelled as a developer and may have to face strict penalties for any violation of rules by the projects they fund. The responsibility of compliance under the RERA is on the promoter. And the term has a wide definition to cover, not only the developer, but also a landlord and private equity or strategic investor, if they actively participate in the project.

“There is a concern on the part of many investors — strategic as well as private equity — that they could be defined as a promoter and have to share obligation under RERA if things don’t go well. Many investors are exploring to dilute their roles or tweaking some of the past contracts under which, if there is a litigation or a penalty, the developer will have to take care of that or at least contractually the obligation can be transferred to the developer,” said

Renegotiating Contracts

Why the concern

In last few years, many investors, including PE firms, were actively involved in the design, development and marketing strategies for projects

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The next step

Renegotiations between the developers and investors have already begun

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Hemal Mehta, partner at Deloitte Haskins & Sells.

Industry trackers said the renegotiations between the developers and investors have already begun. Investors are either looking at diluting their stake or inserting clauses in contracts whereby their liability would reduce.

These commercial contracts between an investor and the developer may not have legal protection from RERA, said industry experts. The clauses that investors want to insert include, shifting the monetary obligation to pay fines from investor to the developer. So in case of a fine, the developer would be requi-

red to pay the fine directly, without involving the investor.

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In many cases, especially where a foreign PE fund has invested in a project, diluting stake is also being considered. Some investors are looking to entirely exit such projects or reduce their stake and thereby lessen the control. However, this may not be that easy.

“Some investors are also looking at diluting their stake in the real estate SPVs but that may not be an option for all as they may not get a profitable exit. RERA will also impact those PE firms that have taken control of some of the real estate project because the developer was unable to complete it,” said Mehta.

The regulation is aimed at keeping irregularities in the sector under control said experts. RERA is set to provide a fillip to the overall real estate funding environment, they said. The developer would be required to take a disciplined approach for project execution.

“RERA implementation is likely to impact business plan projections and hence the security structure and investment terms need to align with the changing realities of project timelines and economics,” Milestone Capital Advisors’ executive vice chairman, Rubi Arya, said.

It stipulates stringent compliances, which in the interest of a successful project execution would necessitate deeper engagement of the investor with the developer for project monitoring. Further, our investment agreements are designed to ensure protection of money at all times, and the RERA norms can be a step forward,” Milestone Capital Advisors’ executive vice chairman, Rubi Arya, said.