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ADVICE NOTE

On

APPLICABILITY OF RERA ON INDUSTRIAL & COMMERCIAL PROJECTS IN PUNJAB

The querist/promoter intended to set up an Industrial Township in the State of Punjab and got the project registered under the **Punjab RERA (Real Estate Regulation and Development Act)**. The project was intended for the purpose of construction and sale of industrial plots and developing Industrial Township for intending buyers.

Querist is faced with the issue of applicability of the RERA act on Industrial Township Project and if so, then whether such applicability will be *de facto* or *de novo*. Although the provisions of the RERA Act do not include the terms such as 'industrial or 'manufacturing unit', yet it is applicable where the land is developed into plots for the purpose of selling, irrespective of its usage. Since the definition of '*building*' under the Act includes the phrase '*structure intended for residential, commercial or any other usage*', it is implied that the registration of an industrial project under RERA is required to be done. Further, the issue arises that whether the effect and operation of the RERA Act will be applicable 'de facto' or 'de novo'. The position regarding this was settled in the landmark case of *Ms. Simmi Sikka Vs. M/s Emaar MGF Land Limited*, wherein it was held that RERA Act will be applicable for registered as well as unregistered projects, so the applicability of the act would not be affected by the date of registration of the project or the commencement of the Act. Hence, it is a de facto law applicable for commercial project under RERA.

Further, the querist raised the question whether the draft 'agreement to sale' provided in the Punjab RERA Rules have to be strictly adopted or can be modified as per the requirement of the parties. Alteration in the Agreement for Sale (ATS) is permissible depending on the flexibility of the parties. The RERA rules also outlines that that ATS needs to be suitably modified as per the requirement of the industrial plot buyers. The Act as well as the Rules does not limit or restrict the parties to make suitable changes in the ATS in order to suit the requirement but on the other hand such ATS must be in compliance with the existing laws, and must not defeat the provision and purpose of the Act.

Moreover, the querist also raised the query asking, whether the definition of 'Common Area' in the Act is could be adopted in the ATS with the mutual understanding of the parties. The legal position regarding the same provides that 'Common Area' under sections- 4(f) and 17(1) of RERA Act, instructs that a promoter would include 'Common Area' in the ATS to be executed in favour of the allottees or association of the allottees, only when the buyer/allotees have paid additional consideration amount in order to avail such services. But when the promoter has invested from its own funds and the cost of which has not been loaded on the buyer, it would not be legally tenable either for the buyer to demand the transfer of such services to the association of the allottees or to include the same in the definition of 'Common Area' under the Act.