

Where there is no law there is no freedom

~John Locke



AN APPROACH TOWARDS NEW TENANCY LAW

by Arul Prakash
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(An Article on the recently enacted Model Tenancy Act)

The MTA is aiming to provide a revolutionary change in the Rental Sector with an approach to cover for all the disputes that can possibly occur during a tenancy and effective measures thereto for the redressal of the said disputes. Following are some provisions produced herein, which are of acute importance:

BRIEF BOX

Articles

- An Approach Towards New Tenancy Law.
- Amended Rules of HRERA For Reckoning Area of the Unit.
- Wilful Disobedience As a Sufficient Ground For Contempt Of Court

Recent Updates

IBC Notifications

- The writ petition to be not maintainable in compliance to the IBC proceedings [Link](#)

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- Institutional framework – regulatory and judicial bodies-
- Rent Authority-Section 29 of MTA provides for the appointment of Rent Authority to be an officer who is not below the rank of Deputy Collector.

Rent Authority exercises same power as vested in Rent Court in matters related to uploading details of tenancy agreement on a digital platform, fix or revise the rent on an application, investigate the case and pass an order in case of deposit of rent by the tenant with the rent authority, allow the tenant, to vacate the premises if it becomes uninhabitable in absence of repairs by the landlord, and conduct an inquiry and allow compensation or levy penalty in case of an application made to it by the landlord or tenant if any person cuts-offs or withholds any essential supply or services.

Rent Court and Rent Tribunal-

Section 32 and 33 of the Act provides for the constitution and Section 34 provides for the jurisdiction of Rent Court and Rent Tribunal respectively.

For speedy disposal of cases, Rent Court or Rent Tribunal has to dispose the case within 60 days from the date of receipt of the application or appeal and shall record the reasons in writing in case of disposal of case exceeds 60 days period.

Appeal from the orders of the Rent Court lies to the Rent Tribunal. In addition, order of Rent Court or Rent Tribunal shall be executable by as a decree of a civil court.

Scope of coverage-

Section 2 & 3 MTA applies to any premises, which is, left separately for residence or commercial or educational use except industrial use

- The lok sabha passes the IBC amendment bill for pre-packaged insolvency process for MSMEs [Link](#)
- Lender who advanced interest free loans to corporate body is also a financial creditor, says Supreme Court [Link](#)
- The Insolvency and Bankruptcy (prepackaged insolvency resolution process) Rules, 2021 [Link](#)
- Govt. specifies Rs 10 Lakh minimum amount for pre-package of Insolvency Resolution Process of Corporate Debtor. [Link](#)
- Monetary Penalties to be imposed by an insolvency professional agency [Link](#)
- Filing of form in CIRP 8 under IBBI regulations, 2016 [Link](#)
- Moratorium Ordered U/Sec.14 IBC Does Not Apply To Proceedings In Respect Of Management Of Corporate Debtor: Supreme Court [Link](#)

Continue.....

However, MTA does not provide what constitutes residence/commercial/educational/industrial use.

Protection of landlord-

As stated above the prime object of the MTA is to eliminate the fear among landlords regarding repossession of their premises and increase the growth of investment in rental sector of the market. Keeping this view, MTA proposes to give protection to landlord in following manner-

- Subletting of rented premises cannot be affected without prior consent of landlord in writing [Section 7].
- Landlord is allowed to make deduction from security deposit amount for any liability of the tenant [Section 11].
- Landlord can file an application to the Rent Authority against the tenant in case of cut-off or withhold of any essential supply or service in the premises by the tenant [Section 20].
- Landlord can make any construction or improvement to the rented premises after permission of the Rent Court obtained in this behalf [Section 25].
- Landlord is allowed to fix or revise the rent payable by the tenant, provided the same should be agreed by the tenant in the tenancy agreement [Section 8 & 9].

Significant safeguard of tenant-

MTA proposes to give protection to landlord in the following manner-

- Successors will have same rights and obligations in the tenancy agreement as that of tenant if he/she passes away within the period of tenancy [Section 6].

- Guidelines for technical standards for the performance of core services and other services (Amendment), 2021 [Link](#)

SEBI Updates

- SEBI had came up with SEBI (LODR) Second Amendment Regulations 2021 effective from May 5 2021. [Link](#)
- The SEBI has extended the timing of Regulatory Filings by one month for the quarter ending 31-03-2021. [Link](#)
- Amendment in Securities Contract (Regulation) Act, 1956 - Circular dated April 01, 2021 The Finance Act 2021 [Link](#)

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- Rent cannot be increased during the tenancy period, unless the amount of increase is expressly set out in the Tenancy Agreement. [Section 9]
- Tenant is entitled to get refund of the security deposit amount at the time of vacating the premises after deduction of amount of liability, if any. [Section 11]
- Tenant is entitled to get a written acknowledgment rent receipt by the landlord. [Section 13]

Lastly, It is not a point of dispute that MTA is a measure in the best interests of the Rental Sector. The Act will weed out many infirmities infecting the Rental Sector and curbing its growth for many Years now. That the Rental Sector is an important aspect of the Indian Economy, accountability and transparency in the same will have a lasting impact. But is it adequate? Why tenancies which have existed since many years and the same being unjust and arbitrary, or detrimental to the interests of Landlords, should not be within the purview of MTA.

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Amended Rules Of HRERA For Reckoning Area Of The Unit

by Tithi Aggarwal

(An Article on HRERA Rules for reckoning Area of Unit)

On 18th May 2021, the Haryana Real Estate Regulatory Authority (HRERA), Gurugram having considered it necessary to provide for a mechanism to ensure compliance of the obligation cast upon the promoters and real estate agents to sell/facilitate sale of Apartments/Floors in a real estate project on the basis of carpet area notified the Haryana Real Estate Regulatory Authority, Gurugram, (Sale of Apartments/Floors in a Real Estate Project on the Basis of Carpet Area) Regulations, 2021.

- System Driven Disclosures has been implemented for member of Promoter Group and inclusion of listed debt securities. [Link](#)
- Settlement of Running Account of Client's Funds lying with Trading Member. [Link](#)
- Relaxation from the requirement of minimum vesting period in case of death of employee(s) under SEBI (Share Based Employee Benefit) Regulations, 2014. [Link](#)

RBI Updates

- The RBI has directed Banks and Non-Bank on Prepaid Payment Instrument. [Link](#)

The rationale behind the notification is a series of Supreme Court and High Court decisions saying that the practice of sale of real estate on Super Area basis is illegal, misleading, ambiguous, opaque, and gives rise to confusion and complexities.

Since, there is no universal definition of Super Area, the developers as per their convenience, define Super Area in the builder-buyer agreements in a vague manner. The properties are not accurately described giving details and breakup of the components that are included in the Super Area.

New Rule: As per the notified rules, that apartments and flats within the jurisdiction of HRERA, Gurugram would be sold only on the basis of Carpet Area, and not Super Area, which had been the practice followed by most of the developers so far.

A promoter is obligated to provide complete information under clause (h) of section 4(2) of the Real Estate (Regulation and Development) Act 2016 about the number, type and carpet area of the real estate unit for sale in the project along with the area of exclusive balcony or verandah and open terrace area.

Applicability: These regulations shall be applicable: (i) for sale of flats in new projects, ongoing projects (i.e projects without completion certificate), and exempted from registration;

(ii) to resale of a real estate unit i.e apartment/floor in the favor of subsequent allottee, as the Real Estate (Regulation and Development) Act, 2016 does not distinguish between an allottee and a subsequent allottee.

- Master Direction-RBI (Certificate of Deposit) Direction 2021 dated 4th June 2021. [Link](#)
- Customer Due-Diligence for transactions in Virtual Currencies (VC). [Link](#)
- Reporting on transactions in Govt. Securities by Foreign Portfolio Investors. [Link](#)
- Amalgamation of District Central Co-operative Banks (DCCBs) with the State Co-operative Bank (StCB) – Guidelines. [Link](#)
- Sponsor Contribution to an AIF set up in Overseas Jurisdiction, including IFSCs. [Link](#)
- Priority Sector Lending (PSL) - On-lending by Small Finance Banks (SFBs) to NBFC-MFIs. [Link](#)

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This shall bring more transparency into the real estate sale. For on-going projects: In case of ongoing projects where the promoter has allotted real estate units on super area basis prior to the Real Estate (Regulation and Development) Act, 2016, the developer will now have to define all the components of the super area, and mention it in the builder-buyer agreement. The inclusion of common area, club facilities, health centre, veranda, and other such areas will not be allowed to be clubbed in saleable areas, as had been done in the past. Further, that the conveyance deed shall still be registered only on carpet area basis, according to the HRERA rules. This is to prevent any fraud with the allottee when the unit is sold on super area basis.

Penalty: a) For Developers: Any violation of these provisions, the developer will be liable for revocation of registration of real estate project under section 7(1) (c). Whereever the developer is found indulging in unfair trade practice/fraudulent practice of selling the Apartment/Floor in a real estate project on the basis of super area/covered area/ sale area or an/by other nomenclature except on carpet area, the Authority may revoke the registration granted under section 5 to the promoter or section 9 to the real estate agent of the Real Estate (Regulation and Development) Act, 2016 as the case may be.

b) For Real Estate Agents:

If any promoter is found indulging in facilitating sale of a real estate unit on any other basis except on carpet area basis it shall be treated as involvement in unfair trade practice under section 10 of the Real Estate (Regulation and Development) Act, 2016 and proceedings for revocation of registration of such errant real estate agent may be initiated as per provisions of section 9(7) of the Act *ibid*.

- Amendment in RBI (Gold Monetization Scheme) GMS 2015. [Link](#)
- Deendayal Antyodaya Yojana – National Urban Livelihoods Mission (DAY-NULM). [Link](#)
- Investment in Entities from FATF Non-compliant Jurisdictions. [Link](#)

RERA Updates

- Haryana Real Estate Regulatory Authority Notification of sale on carpet area [Link](#)
- Promoter information to be filed by the Reply [Link](#)
- The Supreme Court Observed that there is no per se bar to grant relief of interest on refund to a subsequent purchaser of flat [Link](#)

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WILFUL DISOBEDIENCE AS A SUFFICIENT GROUND FOR CONTEMPT OF COURT

by Srivarshini
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(An Article elucidating the contempt law in India)



Contempt in law means being disobedient to a court of law or towards its ruling. The recognition of contempt of court and to punish for contempt is essential for a nation such as India which is based on the concept of rule of law, which requires supremacy of law, since the judiciary is considered as the place of hope and justice for the citizens.

According to the Supreme court bar association v. Union of India (1995), the object of punishment is both curative and corrective and these are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity.

Every citizen of our country is bound by the orders of the Hon'ble courts and no one, however powerful dare to disobey the binding and final orders of the court, otherwise he has to face the ire of the court. No authority can afford to wilfully disobey the orders of the court for the fear of being prosecuted under the Contempt of Courts Act, 1971.

It is relevant that Article 129 and 215 of the Constitution of India provides that the Supreme Court of India and High Courts respectively shall be treated as a Court of Record and shall have all the powers of such a court including the power to punish for contempt itself.

According to section 2(b), civil contempt means wilful disobedience of any judgement or a decree of a court or a wilful breach of any undertaking given to a court. Determination of civil contempt is objective and is not based on the subjective understanding of anyone.

If there is a judicial order and if such an order has been wilfully disobeyed, then that fact of disobedience will constitute civil contempt. The Supreme Court in Contempt Petition (Civil) Nos. 625-626 of 2019 in Civil Appeal Nos. 11017-11018 of 2018 reiterated that contempt action can be taken only in respect of established wilful disobedience of the Court order. In the aforementioned contempt cases, the bench comprising Justices A M Khanwilkar and B R Gavai observed that the primary concern must be whether the acts of commission or omission can

be said to be contumacious conduct of the party who is alleged to have committed default in complying with the directions given in the judgment and order of the court. In these cases, the Uttar Pradesh Jal Nigam annulled the recruitment process pursuant to which the petitioners were employed, thereby terminating services of the petitioners. The said order was set aside by the Allahabad High Court which directed that the petitioners be permitted to work and be paid regular monthly salary. This was later upheld by the Supreme Court. Contempt petitions were filed alleging violation of directions issued by the Court.

But the orders passed by the High Court and the Supreme Court do not contain explicit direction to reinstate the petitioners with continuity of service and back wages as such. Instead, the expression used was only "to permit the petitioners to work on the posts" which were held by them at the time of their termination and "to pay them regular salary month by month" and "as and when the same accrues to them". Thus, it was understood that it is not a case of wilful disobedience of the orders of the court.

The bench further observed what amounts to wilful disobedience and stated; Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom.

Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.

Therefore, on the basis of above observations, the respondent's action of passing a subject termination order without affording prior opportunity to the Petitioners was justified as it was not possible for the respondents to segregate tainted from the untainted candidates and hence the Contempt Petitions were disposed of stating that such termination is not wilful disobedience.



"You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free."

~Clarence Darrow



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