

MEHROTRA DEVELOPERS

Office:

Mehrotra House,

Opp. Circuit House, Naryat Nagar,

Delhi Road, Moradabad- 244001(INDIA)

Mobil No.: 9927070743

e-mail: skm@mehrotraimpexindia.com

Date: 06/02/2021

To,

The Technical Consultant

U.P. RERA

Lucknow

SUB: - Clarification on Ownership of Stock in Trade & Unlimited Liability of the Partners

Dear sir

In Respect To The Clarification About Some Points For Rera Registration Application:

1. In respect of the clarification regarding transfer of immovable property (owned by partner) into partnership firm, with due regard it is hereby submitted that partners had contributed their land as stock in trade as a part of their capital in partnership firm which has been duly mentioned in a separate clause of partnership deed on page no.1 of partnership deed. Further this partnership deed has been duly registered in the office of registrar of firms and upon such registration certificate of registration was duly allotted by the registrar bearing registration no **MOR/0005286** dated **11/12/2019**. (copy of registration certificate is attached along with partnership deed in the promoter tab and also in land details for your kind reference)

In view of the above facts, it can be concluded that land infused by the partners as a part of their capital contribution is the asset

of the firm even the provisions of section 14 of the **Indian Partnership Act 1932** is also important in this regard which states as follows:

SECTION – 14 (The Property Of The Firm)- Subject To Contract Between The Partners, ***The Property Of The Firm Includes All Property And Rights And Interests In Property Originally Brought Into The Stock Of The Firm, Or Acquired, By Purchase Or Otherwise,*** By Or For The Firm, Or For The Purposes And In The Course Of The Business Of The Firm; And Includes Also The Goodwill Of The Business. Unless The Contrary Intention Appears, Property And Rights And Interests In Property Acquired With Money Belonging To The Firm Are Deemed To Have Been Acquired For The Firm.

Thus, the fact that the assets invested by the partners as stock in trade of the firm shall be treated as the assets of the firm is also supported by the provisions of the section 14 of the Indian Partnership Act 1932.

Applicability of Transfer of Property Act

When a partner brings immovable property as his capital on formation of firm, there is no conveyance required because a partnership firm is not a distinct legal entity. Such a partnership deed mentioning the fact of the partner bringing in immovable property does not amount to conveyance, since it is governed by the partnership law and not by the transfer of property act, 1882 with the result that registration act, 1908 would have no application. A narration in the the partnership deed mentioning the pooling of the assets of the partners at the time of formation would be enough. Such a declaration in the deed to the effect that the immovable property of the partner/s will be assets of the firm will not amount to a conveyance requiring registration and no stamp duty is required to be paid in this case, as has been pointed out among other cases in chief controlling revenue authority v. Chidambaram air 1970 mad. 5 (fb).

2. In Respect Of The Clarification Regarding Liability Of Partners, Provisions Of Section 25 And Section 26 of the Indian Partnership Act 1932 are important which states as follows:

SECTION – 25 (Liability of a partner for acts of the firm) - Every partner is **liable, jointly** with all the other partners and also **severally**, for all acts of the firm done while he is a partner.

SECTION – 26 (Liability of the firm for wrongful acts of a partner) - Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority, of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

In view of the provisions of above mentioned section it can be concluded that all the partners of the firm shall be jointly and severally liable to the third parties for all the acts of the firm and other partners. Even it is a well settled rule that the liability of partners in a partnership firm is unlimited i.e. Even the Personal assets of the partners can be used to pay off the liability of the partnership firm in which a person is a partner. Thus it can be concluded that any loss occurred to any third party can be recovered from the assets of the partnership firm and even personal assets of the partner with or without their consent as the legal status of the partnership is that which says that partnership firm cannot be treated as a separate Legal Entity from its Partners. As per the above explanation given if anything wrong act will be done by any partner, other partners and partnership firm will be personally liable and the personal assets of the partners will be liquidated to honour any claim. Hence the interest of allottees in our project will be safeguarded in each and every respect. So it is requested to give us RERA registration and allow us for the development of the project.

THANKS AND REGARDS

FOR MEHROTRA DEVELOPERS

For Mehrotra Developers

Partner

SURENDRA KUMAR MEHROTRA
(PARTNER / AUTHORISED SIGNATORY)