

# RERA TIMES

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016



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# **RERA TIMES**

**REAL ESTATE**

**(REGULATION AND DEVELOPMENT) ACT, 2016**

**(A Journal on Real Estate Bye Laws)**

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## FROM THE EDITOR'S DESK...



Dear Readers,

Finance Minister Smt. Nirmala Sitharaman presented seventh consecutive Budget on July 23, 2024, for the financial year 2024-25, continuing her remarkable tenure of delivering the national budget year after year.

In the Union Budget 2024-25, the Finance Minister introduced modest income tax relief for the middle class. This includes an increase in the standard deduction and adjusted tax slabs for those opting for the new income tax regime. Prime Minister Narendra Modi also commented that this budget will be a catalyst for India's ascent to becoming the world's third-largest economy, rising from its current position as the fifth largest, and laying a solid foundation for a developed India.

This year, monsoon has significantly boosted agricultural production in India. Our country has also achieved a notable position, ranking 7th out of 63 countries in the Climate Change Performance Index (CCPI) 2024, an improvement from the previous year. In the Union Budget 2024, the Finance Minister announced plans to develop a "taxonomy for climate finance" to improve access to capital for climate adaptation and mitigation. This taxonomy will provide standardized regulations and guidelines to help companies and investors make impactful environmental investments. To support these efforts, 109 climate-resilient crop varieties will be introduced for farmers, and 10,000 need-based bio-resource centers will be established.

A significant change in the real estate sector was also introduced. The budget has reduced the Long-Term Capital Gains (LTCG) tax on real estate to 12.5 percent, down from the previous rate of 20 percent, although the benefit of indexation is still available for properties acquired before 23<sup>rd</sup> July'2024. These adjustments are expected to reshape the real estate market. Long-term investors might face reduced returns due to the loss of indexation benefits, while first-time homebuyers could benefit from more stable property prices. Developers, particularly in the affordable housing sector, may see growth despite higher project costs. Conversely, the luxury real estate market is expected to slow, potentially opening opportunities for value investors. Urban rental markets are likely to experience increased demand, and financial institutions may revise their lending strategies in response to these changes.

Despite these positive developments, a tragic incident last month has shaken our community. A 32-year-old trainee doctor in Kolkata was brutally raped and murdered, raising serious concerns about the Kolkata Police's handling of the case. The victim's family alleges that the police attempted to suppress the truth by hastily cremating the body and even tried to bribe them. The case has now been transferred to the CBI for an impartial investigation. However, a great failure on the part of the government has been evidenced in the case. The judiciary system in the case must act swiftly and decisively to ensure justice to the victim and her family without unnecessary delay.

Our country has performed well in the Olympics. Indian athletes have participated in every edition of the Summer Olympic Games since 1920, and the Paris Games marked India's 26th appearance. The Indian contingent consisted of 110 athletes competing in 16 sports. P.V. Sindhu and Sharath Kamal were the flag-bearers for the opening ceremony, while Manu Bhaker and P.R. Sreejesh carried the Indian flag during the closing ceremony. India won six medals, including a silver and five bronze, ranking 71st among the 206 NOCs that participated. This was India's third-best medal haul, after the 2020 and 2012 Games. My heartfelt congratulations to all the outstanding performers, and I wish the best for the upcoming Paralympics.

On the international front, the political and economic crisis in Bangladesh poses significant challenges for India. The resignation of Prime Minister Sheikh Hasina and the appointment of Nobel Laureate Professor Mohammad Yunus as Chief Advisor of the interim government have led to widespread unrest. This event has far-reaching implications for India's investments and economic ties with Bangladesh. As Bangladesh's second-largest export partner, India has considerable stakes in the country's stability. Particularly, Hindus residing there are either being targeted for conversion or sought refuge in India. The Hindu population in Bangladesh has drastically reduced from 27% during Partition to 9% today due to forced conversions and displacement. This shows operation of Hindus in Bangladesh.

Amidst these complex developments, India's financial markets have seen a surge in Initial Public Offerings (IPOs), with 215 IPOs hitting the market since the lockdown in 2020. This wave of new listings, driven by high liquidity and a booming economy, reflects investor confidence at an all-time high. However, as with any financial boom, there are inherent risks. The experience of the SME IPO market, in particular, highlights the importance of thorough due diligence and a balanced perspective. As the market continues to evolve, investors must remain vigilant, navigating potential pitfalls with caution.

As we reflect on these diverse yet interconnected developments, it is clear that India stands at a crucial crossroads. The Union Budget 2024-25 lays out a path toward economic growth, environmental sustainability, and social justice. However, the challenges we face are complex and multifaceted, requiring resilience, adaptability, and a united effort. From addressing climate change and economic reforms to ensuring justice and stability, the road ahead may be difficult, but with determination and collective action, India can continue to rise as an economic powerhouse and a beacon of hope and justice in the world.

**स्वस्तिप्रजाभ्यः परिपालयन्तां न्यायेन मार्गेण महीं महीशाः।  
गोब्राह्मणेभ्यः शुभमस्तु नित्यं लोकाः समस्ताः सुखिनो भवन्तु॥**

**(May the well-being of all people be protected by the  
powerful and mighty leaders be with law and justice.**

**May the success be with all divinity and scholars,  
May all the worlds become happy)**

**With Regards**

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**Date: 03/10/2024**



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#### **Disclaimer:**

While every effort has been taken to avoid errors or omissions in this publication. Any mistake or omission that may have crept is not intentional. It is suggested that to avoid any doubt the reader should cross check all the facts, law and contents of the publication with original Government publication or notification or any other concerned original document. It is notified that neither the publisher nor the author or seller will be responsible for any damage or action to anyone, of any kind in any manner, thereon.

**Part-I****HIGH COURT JUDGEMENT****IN THE HIGH COURT OF HIMACHAL PRADESH****Order dated: 20 August, 2024****Sumit Khanna****.....PETITIONER****VERSUS****Kanchan Sunil Adani****.....RESPONDENTS****CORAM: The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

For Petitioner(s): Adv Shivank Singh Panta

For Respondent(s): Adv Viren Sibal and Pawan Gautam

**Gist: The High Court of Himachal Pradesh upheld RERA's enforcement actions under the Real Estate (Regulation and Development) Act, 2016, confirming that RERA's procedures do not need to fully comply with the Code of Civil Procedure. The court rejected claims of procedural violations, emphasized the importance of timely compliance with regulatory orders, and imposed costs on the petitioners for abusing judicial processes, thereby affirming RERA's authority.**

In the case before the High Court of Himachal Pradesh, the central issue was the enforcement of decrees issued by the Real Estate Regulatory Authority (RERA) under the Real Estate (Regulation and Development) Act, 2016 (RERA Act). The court addressed whether RERA's execution procedures adhered to the Code of Civil Procedure (CPC) or if RERA's specific regulations sufficed. The disputes arose from two decrees issued on July 8, 2022, where RERA ordered substantial refunds to the complainants due to non-compliance by the developers.

The first decree directed the respondent promoter to refund Rs. 65 lakhs and Rs. 7.49 lakhs to Mrs. Kamal Arjan Mirchandani and another, totaling Rs. 72.49 lakhs, with interest at 9.7% per annum from June 29, 2018. The second decree required a refund of Rs. 65 lakhs and Rs. 6 lakhs to Mrs. Kanchan Sunil Idani, amounting to Rs. 71 lakhs, with similar interest terms. The refunds were mandated to be paid within 60 days of the order, with a penalty of Rs. 10 lakhs for contravention of the Act's provisions and an additional penalty of Rs. 5,000 per day for continued non-compliance.

Execution proceedings were initiated when the respondents failed to comply. The RERA issued notices on July 26, 2023, and continued with procedural steps despite various delays and challenges. The petitioners sought time extensions and filed appeals, which were dismissed due to procedural non-compliance. On December 2, 2023, RERA closed the

petitioners' right to file objections, leading to further legal maneuvers and appeals which were ultimately unsuccessful.

By May 9, 2024, the RERA Appellate Authority had dismissed the petitioners' appeals, prompting RERA to order the deposit of the decretal amounts with accrued interest and penalties by May 18, 2024. Failure to comply led to an arrest warrant being issued. The petitioners' continued non-payment and challenges were deemed attempts to delay the proceedings.

The High Court examined whether RERA's enforcement process adhered to CPC rules, specifically Orders 21 Rules 11A, 37, 39, and 40. The court found that RERA's procedures, governed by the Himachal Real Estate Regulatory Authority (Adjudication of Execution Petition) Regulations No.3 of 2020, were compliant with the RERA Act and did not need to fully follow CPC provisions. The court ruled that RERA had provided ample opportunities and time for compliance, and the petitioners had engaged in deliberate delays. The court dismissed the petitions, deeming them an abuse of the judicial process, and imposed costs of Rs. 25,000 each on the petitioners to be paid to the respondents. This case affirmed RERA's authority and procedures in enforcing decrees, emphasizing the importance of compliance with regulatory orders and the appropriate use of judicial processes.

## PART-II

## REPORTING OF CASE LAWS

**PUNJAB REAL ESTATE REGULATORY AUTHORITY****COMPLAINANT: Shonit Soni****RESPONDENT: M/S Altus Space Builders Pvt. Limited****CORAM: SHRI Malwinder Singh Jaggi, IAS****ORDER DATE: 02.07.2024**

Complainant Representative: Shri Rana Gurtej Singh, Advocate

Respondent Representative: Shri Amit Sharma, Advocate

**Gist – If the agreement does not specify a time or date for possession, the Honorable Supreme Court in case of "Fortune Infrastructure and Anr. vs. Trevor D'Lima and Ors." has established that a reasonable period for the developer is generally considered to be three years.**

This case involves two complaints under Section 31 of the Real Estate (Regulation and Development) Act, 2016, where the complainants seek possession of plots with basic amenities and delay interest, as the respondent has failed to deliver the plots despite receiving full payment.

**The complainant entered into an Agreement to Sell with the respondent for a plot at a basic sale price of ₹20,02,020/-. The entire amount was paid, and a receipt was issued, confirming no outstanding dues for the basic sale price. The complainant alleges that the respondent neither demanded further charges nor provided a specific possession date. The complainant references the Supreme Court ruling in "Fortune Infrastructure v. Trevor D'Lima," arguing that a reasonable time for delivery must be considered when no period is specified. The complaint was previously withdrawn and refiled with better particulars.**

The respondent claims that the complainant misrepresented facts and concealed material information. The respondent argues that ₹33,00,060/- was refunded to "Disha Agencies," a company of the complainant, on 29.12.2010. The respondent notes that the complainant and another individual, Rajiv Bansal, are associated with Disha Agencies, and Bansal also signed the Agreement to Sell.

The respondent, in their reply, contends that they received ₹43,00,000/- from the complainant, Shonit Soni, on 22.11.2010, without any signed agreement, and later refunded ₹33,00,060/- via RTGS on 29.12.2010. The respondent argues that the complainant remained silent for six years before returning to sign an Agreement to Sell on 11.07.2016, concealing the fact that he had already received a refund. The witnesses to the agreement were associated with the complainant, including Rajeev Bansal, the director of Disha Agencies, who was a witness to the agreement. The respondent claims that the complainant signed two agreements for plots at a price of ₹6,000 per square yard, totaling ₹40,00,000/-,



while withholding the fact that the government imposed restrictions on cash transactions over ₹20,000/- after 01.06.2015.

The complainant did not pay any government fees (₹5,750 per square yard), due from 07.12.2016 as per the agreement, and no details of payment were provided, making the contract void for lack of consideration. The respondent cites legal precedents, including the Supreme Court case *S.P. Changalvaraya Naidu vs. Jagannath* (1994), to argue that withholding vital documents constitutes fraud on the court. They also mention that a Civil Writ Petition No. 22109 of 2020 is pending before the Punjab and Haryana High Court, which prevents them from handing over the possession of the plot to the complainant.

The case continues with both parties reiterating their earlier arguments. The complainant's counsel emphasized that ₹20,02,020/- was paid as per the agreement and that the delay in possession caused financial loss, arguing that the respondent must pay interest under Rule 16 of the 2017 Rules if unable to deliver possession. The respondent's vague claims of refunding ₹33,00,000 to a separate entity, Disha Agencies, were challenged, asserting that the Agreement to Sell, dated 11.07.2016, remains legally binding.

Upon reviewing the arguments and records, it is noted that the respondent never legally challenged the Agreement to Sell. According to the Supreme Court's ruling in *Fortune Infrastructure vs. Trevor D'Lima* (2017), when no specific possession date is mentioned, a reasonable time, typically around three years, is allowed for delivery. The judgment suggests that possession should have been delivered by the last quarter of 2014. Since this was not done, the respondent is potentially liable for the delay.

The court ruled that the Agreement to Sell dated 11.07.2016 should have been implemented within three years, setting the possession delivery date as 10.07.2019. Since the respondent failed to deliver possession by that date, the complaint is accepted. The respondent is ordered to immediately deliver the plot to the complainant and pay interest on the ₹20,02,020/- deposited by the complainant. The interest, calculated at 10.95% per annum (8.95% MCLR rate plus 2%), is to be paid for the delay period from 10.07.2019 until the actual delivery of possession. Both complaints are resolved on these terms, and the case files will be archived after compliance.

#### **MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: ASSOCIATION OF FLAT UNITS PURCHASER**

**RESPONDENT: M/S COMMERCIAL DEVELOPERS**

**CORAM: Hon'ble Shri. Ajoy Mehta, Chairperson, MahaRERA**

**ORDER DATE: 2.07.2024**

**Complainant Representative: Adv Nikita Jacob**

**Respondent Representative: Adv. Avinash Pawar**

**Gist – Flat purchasers filed a complaint under RERA against the promoter for not executing the conveyance deed and making amendments in plan without consent. The authority directed the promoter to form a cooperative society and execute the**

**conveyance deed within specified timelines but found no basis to halt construction or revoke amended plans.**

The Complainants, who are flat purchasers and allottees under the Real Estate (Regulation and Development) Act, 2016 (RERA), have filed a complaint against the Respondent, the Promoter of the project "CHANDRA DARSHAN HEIGHTS". The project, initially set for completion by 31.12.2019, now has a revised completion date of 30.12.2023, and has received a Part Occupation Certificate (OC) as of 30.07.2020.

**The Complainants are seeking the following reliefs: An order to stop further construction on Wing 'C', revoke the 2020 amended plan, and halt any additional work on this wing. An order to prevent the creation of third-party rights in Wing 'C', and require disclosure of any allotments made. An order to form and register a cooperative society of allottees, including the Complainants, as required by RERA. An order to execute the Deed of Conveyance for the property in favor of the forthcoming society or association of allottees.**

The Respondent stated that the Part Occupation Certificate (OC) for the disputed building was obtained in 2020 and that a Completion Certificate (CC) was also secured for the new building. The complaint, filed in July 2023, came when 70% of Wing 'C' was nearly complete. The Respondent claimed that the Complainants had consented to changes and amendments in the plans as per agreements signed in 2013/2014. They also mentioned that forms for forming a cooperative society had been provided to residents, who had not yet completed the necessary formalities. The Respondent indicated that conveyance would occur once all three buildings are completed.

The Complainants argued that general consent did not forfeit their legal remedies and that any amendments to the plans required individual consent under Section 14 of the Act. They asserted that the Respondent's actions were in violation of this requirement. They also cited a Supreme Court ruling that extends limitations due to COVID-19. The Complainants highlighted discrepancies, such as reduced RG and parking areas, and claimed that the conveyance should occur as specified once two buildings were constructed. They also noted that society formation forms were provided only 10 days before the hearing.

The Respondent noted that parking areas are already being used and that society formation could only be finalized once residents complied with requirements. They reported that 5 to 6 third-party rights had been created in the new building.

To determine if the complaint is entitled to reliefs under the Real Estate (Regulation and Development) Act, 2016, the following points are crucial:

**1. Project Registration and Compliance:**

- o The Respondent holds a single project registration certificate.
- o The project has received a Part Occupation Certificate (OC), and possession has been granted to the allottees.

**2. Promoter's Duties (Section 11):**

- o The promoter must create a web page with project details and updates.
- o At booking, the promoter must provide sanctioned plans, specifications, and a project completion schedule.

- o The promoter is responsible for all obligations until the conveyance of the property to the allottees or their association.
  - o Responsibilities include obtaining and providing completion and occupancy certificates, enabling the formation of a society, and executing the conveyance deed.
- 3. Reliefs Sought:**
- o The Complainants seek to halt construction of Wing C, revoke amended plans, and direct the formation of a society and execution of the conveyance deed.
- 4. Legal Framework (Section 17):**
- o The promoter must execute a registered conveyance deed and hand over possession and documents within specified periods, typically three months from the date of the occupancy certificate.

**The Authority found that under Sections 11 and 17 of the Real Estate (Regulation and Development) Act, 2016, the Respondent is required to form a cooperative society and execute the conveyance deed for Wing A of the project. The Respondent was directed to comply with these requirements.**

**The Authority did not find sufficient basis for the additional reliefs sought by the Complainants, such as restraining construction of Wing C or revoking amended plans, as the Complainants did not specify which provisions of the Act supported these claims. The Respondent was ordered to form the cooperative society within 3 months and execute the conveyance deed for Wing A within 3 months after the society's registration. Both parties were directed to cooperate in forming the cooperative society and transferring the title via the conveyance deed.**

**COMPLAINANT: Atul Avinash Dixit**

**RESPONDENT: Gaurang Associates**

**CORAM: Shri. Mahesh Pathak, Hon'ble Member**

**ORDER DATE: 10.07.2024**

Appellant Representative: complainant appeared in person

Respondent Representative: NA

**Gist- A complaint was filed for delayed possession of flats, seeking interest and compensation, After due consideration of facts the honorable authority awarded interest for the delay but denied rental compensation.**

The complainant initiated a case against the respondent before the Maharashtra Real Estate Regulatory Authority (MahaRERA), seeking legal redress for the delayed possession of two flats, B-503 and B-504, which were booked from the respondent, who is a promoter, for a total consideration of Rs. 58,72,000. The complainant had already paid Rs. 28,10,000 towards the purchase of these flats, with an agreement that the respondent would hand over possession by December 31, 2022. However, the respondent failed to meet this deadline, leading the complainant to file a complaint under the Real Estate (Regulation and Development) Act, 2016 (RERA), claiming interest on the amount paid due to the delay in possession, compensation for the financial distress caused by the delay, and reimbursement

for rental expenses incurred as the complainant had to arrange for alternative accommodation.

The complainant argued that the respondent's failure to deliver the flats on the agreed date constituted a breach of contract, resulting in significant financial loss and inconvenience. The complainant sought the execution of the sale agreement, the handover of possession, and interest on the paid amount from the promised date of possession until the actual possession is given. Additionally, the complainant requested compensation for the rental expenses incurred during the delay, as they had to continue renting another property due to the unavailability of the flats.

The respondent, in their defense, acknowledged the delay but argued that it was minimal and occurred due to unavoidable circumstances, including health issues faced by the promoter, which impacted the progress of the construction work. The respondent contended that the construction of the flats was nearly complete and that the delay was only a few days beyond the agreed timeline. They further argued that the complainant was not entitled to any compensation, as the delay was caused by circumstances beyond their control and was not significant enough to warrant financial penalties.

The respondent emphasized that they had been transparent about the delays and had communicated with the complainant throughout the process. MahaRERA, after considering the submissions from both parties, ruled in favor of the complainant, finding that the delay was indeed significant and that the reasons provided by the respondent were not sufficient to justify the extended timeline.

The Authority noted that the Real Estate (Regulation and Development) Act, 2016, was enacted to protect the interests of homebuyers and to ensure that promoters adhere to the timelines and commitments made in sale agreements. MahaRERA ordered the respondent to pay interest to the complainant on the amount paid towards the flats, at the rate prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Regulation and Development) Rules, 2017. This rate is the State Bank of India's highest marginal cost of lending rate plus 2%, which is the standard interest rate applicable for such delays under the RERA framework. The interest was to be calculated from January 1, 2023, which was the day after the promised date of possession, until January 8, 2024, which was determined as the actual date of possession by the respondent. This ruling was intended to compensate the complainant for the financial loss suffered due to the delay, by ensuring that they receive a return on the funds that were tied up in the project during the period of delay.

However, MahaRERA dismissed the complainant's demand for rental compensation, stating that while the Act provides for interest on delays, it does not explicitly cover compensation for rental expenses. The Authority clarified that the RERA Act allows homebuyers to claim interest for delays in possession, but it does not extend to compensating for ancillary expenses such as rental payments, particularly when the buyer has chosen to proceed with the purchase and seek possession rather than opting for a refund.



MahaRERA highlighted that if the complainant had chosen to withdraw from the project and sought a refund, they might have had a stronger case for claiming additional compensation, but since they opted to continue with the purchase, the compensation was limited to the interest for the delay.

### **HARYANA REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: Gowrishankar S/o Sadasivam Kothadaraman**

**RESPONDENT: M/s Raheja Developers Limited**

**CORAM: Ashok Sangwan, Member**

**ORDER DATE: 03.07.2024**

Complainant Representative: Ms. Madhuri Negi, Advocate

Respondent Representative: Mr. Garvit Gupta, Advocate

**Gist– An NRI investor seeks a refund with interest after a property developer in Gurugram failed to honor a buy-back agreement, leading to a dispute over unfulfilled obligations. Authority directed to refund the amount paid along with interest.**

The complainant, represented by Mrs. Gowrimanohari Venkataraman under a power of attorney dated August 20, 2009, has brought forward a complaint against the respondent in connection with an investment made in a property located in Gurugram. The background of the case traces back to 2014 when the complainant, an NRI residing in Chennai, was introduced to the respondent by ICICI Securities Ltd., a subsidiary of ICICI Bank Ltd. ICICI Securities presented the respondent as a credible investment opportunity, persuading the complainant to invest in a property buy-back scheme in Raheja's Revanta, a project located at Gurugram. The property in question is situated on the 4th Floor, with a super area of approximately 2,225.90 square feet in Tower C of the said project. The scheme, as outlined by ICICI Securities, required the complainant to contribute 25% of the total investment amount, with the remaining 75% being financed by ICICI Bank. The investment scheme offered two options at the end of three years, either the complainant could leave the investment, and the developer would assume the loan, providing a guaranteed return, or the complainant could take over the loan, thereby acquiring the property. The complainant, interested solely in the investment and not in owning property in Delhi, chose to invest based on ICICI Securities' assurances of a guaranteed return upon exercising the buy-back option.

In furtherance of this scheme, a Memorandum of Understanding (MoU) was executed between the complainant, the respondent, ICICI Securities, and ICICI Bank, setting forth the structure of the investment and financing arrangements. Various agreements, including a tripartite agreement, were subsequently executed to facilitate the transaction. According to the transaction documents, the complainant was entitled to opt for the buy-back of the flat by the respondent after a period of 36 months, with the expectation that the respondent would repay the loan to ICICI Bank. However, when the complainant attempted to exercise this option within the stipulated timeframe by email, the respondent began evading its obligations, eventually informing the complainant via email, that it could not honor the buy-

back proposal due to unfavorable market conditions. As a result, the respondent defaulted on the repayment of the loan, forcing the complainant to make payments on behalf of the respondent under duress from ICICI Bank, which had started harassing the complainant for the loan installments. Despite several communications and assurances from the respondent that the amount would be repaid, only one installment was reimbursed to the complainant. Furthermore, ICICI Home Finance Company Limited also urged the respondent to address the issue of reimbursement, but to no avail. It became evident from various communications that ICICI Bank, ICICI Securities, ICICI HFC, and the respondent were fully aware of the complainant's investment and the exercise of the buy-back option. Nonetheless, the respondent expressed its inability to fulfill the buy-back arrangement, citing adverse market conditions, and additionally, the construction of the flat in question did not progress as agreed upon in the transaction documents.

**The complainant also contends that ICICI Bank, which was supposed to oversee the progress of the construction and disburse funds in accordance with the agreed payment schedule, failed to do so. The bank was required to obtain prior written approval from the complainant before releasing any funds to the respondent, particularly since the payment schedule was explicitly mentioned in both the agreement to sell and the tri-partite agreement. The agreement to sell, a key document in this case, clearly stipulated that no further payments were to be made to the respondent until construction had reached the 15th floor. Despite this, ICICI Bank disbursed funds indiscriminately without consulting the complainant and without ensuring the progress of construction. Consequently, the complainant is now seeking a refund of the entire amount paid to the respondent, with interest calculated at the rate of 18% per annum, as agreed upon in the MoU and reconfirmed by the respondent in an email.**

In the relief sought, the complainant has requested the authority to direct the respondent to refund the amount paid, along with 18% interest. The respondent/promoter, represented by its authorized representative and advocate, marked its appearance in the proceedings but failed to comply with the orders of the authority despite specific directions. After repeated failures to file a written reply, the authority, in its proceedings, noted that despite ample opportunities, the respondent had not complied with the directives and had not provided any justification for the delay. Consequently, the defense of the respondent was struck off. All relevant documents, which have been filed and placed on record, were undisputed in their authenticity, allowing the complaint to be decided based on these documents and the submissions made by the complainant.

In considering the relief sought by the complainant, the authority evaluated the complainant's request to withdraw from the project and to receive a refund of the amount paid with interest at 18%, as per the terms of the MOU. The MOU, specifically Clause 8, outlined that the purchaser/investor could opt to cancel the booking within a timeframe of 33 to 36 months from the date of booking, with the developer being obligated to refund the amount paid by the purchaser along with a guaranteed premium compensation of Rs. 1,000

per square foot. The complainant was allotted Unit on the 4th Floor, Tower C in Raheja's Revanta, and made an investment based on the assurances provided by ICICI Securities regarding the credibility of the respondent and the structure of the buy-back scheme.

The authority's findings revealed that while the complainant had expressed a desire to withdraw from the project, this was before the applicable period stipulated in the MOU. Despite this, the authority noted that the promoter is obligated to refund the amount on demand with interest as prescribed by the State Government, even if the complainant's withdrawal was requested earlier than the agreed-upon period. Moreover, the agreement to sell, stipulated that possession of the unit was to be given within 36 months, with a grace period of 6 months, subject to the completion of necessary infrastructure by the government and other force majeure conditions. However, the construction had not progressed as expected, and the respondent had not obtained the requisite occupation certificate by September 2018.

**In evaluating the complainant's entitlement to a refund with interest, the authority referenced Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2019, which determines that the prescribed rate of interest shall be the State Bank of India's highest marginal cost of lending rate plus 2%. The authority concluded that while the complainant had not exercised the buy-back option within the prescribed period as per Clause 8 of the MOU, the amount paid by the complainant should still be refunded along with interest at the rate prescribed under Rule 15. Therefore, the complainant's claim for an 18% interest rate was denied, and the refund was to be calculated according to the prescribed rate.**

In light of these findings, the authority determined that the complainant is entitled to a refund of the amount paid, along with interest at the rate prescribed under Rule 15, as the respondent failed to fulfill its obligations under the MOU and the agreement to sell. The authority's decision underscores the importance of ensuring that promoters adhere to their commitments and that allottees are protected under the provisions of the Real Estate (Regulation and Development) Act, 2016, and the associated rules.

**COMPLAINANT: 1) Satakshi Gupta**

**2) Jyoti Gupta**

**RESPONDENT: M/S Chirag Buildtec Pvt. Ltd.**

**CORAM: Shri Sanjeev Kumar Arora, Member**

**ORDER DATE: 12.07.2024**

Complainant Representative: Ms. Ankur Berry

Respondent Representative: Shri Garvit Gupta

**Gist:- Satakshi and Jyoti Gupta filed a complaint against M/S Chirag Buildtec Pvt. Ltd. for delays and additional charges in a real estate project, seeking possession and refunds. The company attributed the delays to COVID-19 and force majeure.**

The case in Complaint No. 2521 of 2023, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 and Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017, involves a dispute between the complainants (allottees) and the respondent (promoter) regarding the project "ROF Ananda" in Sector-95, Gurgaon. The complainants booked a unit (No. C-205, Tower-C, 2nd Floor) on June 2, 2019, and paid an initial amount of Rs. 1,12,334. The total sale consideration for the unit was Rs. 24,96,264.

According to the Agreement to Sell executed on July 18, 2019, and in line with the Affordable Housing Policy, 2013, the promoter was obligated to offer possession within four years from the date of environmental clearance, which was issued on October 9, 2017. This set the due date for possession at April 9, 2022. However, possession was delayed with the Occupancy Certificate being issued only on February 22, 2022, and the offer of possession made on February 23, 2022. Additionally, the complainants entered into a tripartite agreement with HDFC for a loan of Rs. 20,22,000 on July 26, 2021, but faced delays in loan disbursement due to a hold placed on the respondent company by HDFC. A significant issue raised was the improper charging of GST: although the Government reduced the GST rate for Affordable Housing to 1% effective March 29, 2019, the respondent continued to charge 8% GST on the total sale consideration, resulting in excess charges. The complainants, despite raising this issue with the respondent, did not receive any resolution or adjustment. The complaint highlights these discrepancies, including the delayed possession and incorrect GST charges, seeking redress under the provisions of the Act and associated rules.

The complainants allege that the respondent company did not issue an offer of possession for their unit despite multiple follow-ups and site visits, where they faced dismissive responses and inaccurate information. They also claim that the company failed to deliver crucial documents due to an incomplete address and imposed unauthorized charges, including holding charges from May 2022 and increased carpet area fees. They seek relief for delayed possession, removal of illegal charges, a refund of GST, and other claims. The respondent counters that delays were due to force majeure conditions, including the COVID-19 pandemic, and asserts that the complainants have consistently defaulted on payments, with an outstanding balance of Rs. 3,22,763. The respondent insists that they have adhered to the agreement terms and that the complainants' allegations are baseless.

Section 11(4)(a) of the Act mandates that promoters are responsible for meeting obligations to allottees and associations until the conveyance of properties. Section 34(f) grants the Authority the jurisdiction to enforce compliance but not to award compensation, which is for adjudicating officers. The complainants' unit, located in ROF Ananda, was subject to delays due to force majeure conditions, particularly the Covid-19 pandemic. The possession date was extended from 09.10.2021 to 09.04.2022, as per HARERA notification no. 9/3-2020 allowing a six-month extension due to the pandemic.



As per the judgment, the offer of possession was invalid and the promoter was found non-compliant with obligations. The complainants are entitled to interest for the delay from the extended due date of 09.04.2022 at a rate of 10.95% per annum. This interest rate applies both to the delayed possession charges and to amounts the promoter might charge the complainants in case of default. The judgment also mandated that the promoter waive illegal interest charges and any additional fees not included in the buyer's agreement. Furthermore, the GST amount charged should be refunded as per anti-profiteering provisions, and the holding charges, RWA fees, and BOCW cess not stipulated in the agreement should be refunded. The promoter is directed to execute the conveyance deed within 90 days and to reflect any increase in carpet area and corresponding sale consideration accurately. Additionally, the authority is to ensure the benefit of the six-month grace period is applied equally to both parties, and no interest should be charged for the period between 01.03.2020 and 01.09.2020.

### **KARNATAKA REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: 1. DhimoshMangadan**

**2. Jipsy Simon**

**RESPONDENT: GVG Infrastructure Pvt. Ltd**

**CORAM: SHRI G.R. REDDY**

**ORDER DATE: 10.07.2024**

**Gist- The complainants sought a refund and interest for a delayed flat possession in the "Malberry Mist" project, and K-RERA ordered the respondent to refund Rs. 34,77,086 with interest due to project non-completion. The respondent failed to appear, and the case proceeded ex-parte.**

In Complaint No. CMP/001093/2023 before the Karnataka Real Estate Regulatory Authority (K-RERA), DhimoshMangadan and Jipsy Simon, represented by Assured Justice LLP, filed a case against GVG Infrastructure Pvt. Ltd. concerning their investment in the "Malberry Mist" project. The complainants booked a flat, C-001, on the ground floor of the project, with two car parking spaces. They entered into a construction agreement and agreement of sale on August 25, 2018, and paid Rs. 23,21,526 towards the total sale price of Rs. 84,39,760. The respondent was required to hand over possession within 12 months from the agreement date, but failed to do so, and the project showed no significant progress. Consequently, the complainants sought a refund of the amount paid along with interest. The case was registered under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA), and the project was found to be registered under RERA with Registration No. PRM/KA/RERA/1251/446/PR/171125/000597, valid until September 30, 2021.

Despite notice from K-RERA, the respondent failed to appear or present any objections, and the case proceeded ex-parte. The complainants provided documentary evidence, including payment receipts, the bank loan statement, agreements, email correspondence, and a memo of calculation dated April 18, 2024. The matter was heard on November 29, 2023, and

February 27, 2024. Based on the evidence, K-RERA considered two key points: whether the complainants were entitled to the claimed refund and interest, and what orders should be issued. The authority answered both points affirmatively.

In their complaint, the complainants sought a full refund of Rs. 23,21,526, interest, and the closure of their home loan. They also referenced Supreme Court judgments in the Newtech Promoters and Imperia Structures cases, which affirmed that homebuyers have the right to seek a refund with interest if a promoter fails to deliver possession on time. The RERA Act, under Section 18(1), supports the right of an allottee to claim a refund with interest if the promoter does not complete the project or hand over possession within the stipulated time. The respondent's failure to appear before K-RERA meant that the claims went unchallenged, leading the authority to accept the complainants' claims as corroborated by evidence.

The complainants filed a memo of calculation on April 18, 2024, claiming a total refund of Rs. 34,77,086, including interest. K-RERA verified the memo and found the claim genuine. As per the final order, K-RERA directed the respondent to refund Rs. 34,77,086, which includes the principal amount and interest calculated at MCLR + 2% from August 10, 2018, until April 18, 2024. Additionally, interest from April 19, 2024, until the final payment date will be calculated at the same rate (MCLR + 2%) and paid to the complainants. The respondent was given 60 days from the date of the order to comply with the payment. Furthermore, the complainants were directed to cooperate with the cancellation of the construction and sale agreements upon receipt of the entire refund amount. The authority also clarified that if the respondent failed to comply with the order, the complainants were at liberty to initiate further legal action. No order was made regarding costs.

## **HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: Shivam Yadav**

**RESPONDENT: 1. UMA'S EUPHORIA, Sandwood Infratech Projects Pvt. Ltd .,**  
**2. Smt. Uma Bagolia, daguther of Mr. Joban Bagolia**  
**3. Sh. D Konda**

**CORAM: Chairperson**

**ORDER DATE: 07.08.2024**

Complainant Representative: Mr. Shivam Yadav

Respondent Representative: None for respondent no. 1

Sh. Shiv Kumar Bagolia for respondent no. 2

**Gist: The complainant sought a refund for a canceled flat booking with Sandwood Infratech, but the refund was not processed due to IBC proceedings, which extinguished his claim. The case involves disputes over the refund and responsibilities between the complainant, the developer, and the landowner, compounded by insolvency issues.**

In this case, the complainant booked a flat (No. 26) in the Uma's Euphoria project by Sandwood Infratech Project Pvt Ltd, registering under RERAHPSOP08170002, on June 24, 2019, and paid a booking amount of Rs. 3,80,000. The complainant obtained a loan sanction from HDFC Bank, but the bank's site inspection revealed no construction progress. Conse-

quently, the complainant requested cancellation of the allotment and a refund via email on October 16, 2021. The company acknowledged the cancellation request and confirmed the refund process on October 19, 2021. However, no refund was issued.

Sandwood Infratech admitted receipt of Rs. 3,80,000 but argued that as per the agreement, the booking amount was non-refundable upon cancellation by the complainant. They also highlighted that Corporate Insolvency Resolution Process (CIRP) had begun against them on October 25, 2021, with Sh. Ravinder Kumar Goel appointed as Interim Resolution Professional (IRP).

Subsequently, the National Company Law Tribunal (NCLT) approved Sh. D Konda as the successful resolution applicant on August 10, 2023, to complete the project. Smt. Uma Bagolia, the landowner and respondent no. 2, stated she was not privy to the sale agreement and had no involvement in the transactions post-IBC proceedings. She contended that all dealings were with Sandwood Infratech, which was responsible for the refund and cancellation.

The complainant's rejoinder indicated that loans were sanctioned twice but could not be disbursed due to no construction progress. The complainant argued that despite initiating the cancellation and refund request, no action was taken, and the refund request was never fulfilled. Respondent no. 1, Sandwood Infratech, argued that the cancellation and refund were subject to forfeiture according to the agreement. Smt. Uma Bagolia argued that she was not liable as the transactions were with Sandwood Infratech.

The case was further complicated by the IBC proceedings, where the successful resolution applicant Sh. D Konda asserted that the resolution plan, approved by the NCLT, provided a clean slate, absolving him of pre-CIRP liabilities. The complainant's claim was not included in the resolution plan, and under Section 31 of the IBC, such claims stand extinguished once the resolution plan is approved. Therefore, the proceedings before the Real Estate (Regulation and Development) Act, 2016 authority were deemed not maintainable.

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: Kanchan Sharma**

**RESPONDENT: Dhanuka Realty Ltd.**

**CORAM: Smt. Veenu Gupta, Hon'ble Chairperson**

**ORDER DATE: 07.08.2024**

Appellant Representative: Adv Aviral Goyal

Respondent Representative: Adv Samkit Jain and Adv. Kripa Kumari Gurjar

**Gist- The complainant's new case was dismissed because it was precluded by a prior complaint dismissed for default. The Authority noted that the complainant should have sought restoration of the earlier case rather than filing a new one. The decision was based on procedural grounds and the principle of res judicata.**

On 07.08.2024, a complaint was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, concerning the 'Sunshine Aditya' project (registration No. RAJ/P/2017/331), where the complainant had been allotted flat No. 502 for Rs. 28,23,279

but paid Rs. 30,08,350. The Agreement for Sale, dated 20.11.2017, assured possession by 31.03.2021.

A loan agreement for Rs. 25,00,000 was executed on 18.12.2017. Upon visiting the site, the complainant discovered the flat and amenities were incomplete. Despite requests for a completion certificate to secure final loan disbursement, the respondent terminated the Agreement for Sale on 08.11.2022, canceling the allotment.

The complainant sought physical possession of the flat, interest for delays, and compensation for pre-EMI payments. The respondent argued that the complaint was not maintainable due to a prior complaint (No. RAJ-RERA-C-N-2021-4153) dismissed on 27.04.2022 for non-appearance, asserting that res judicata barred the new complaint.

The complainant countered that the previous dismissal was procedural, not on merits, thus not precluding the current complaint. The respondent also referenced a Supreme Court judgment (Ganesh Prasad vs. Rajeshwar Prasad & Ors., 14.03.2023) to argue against filing a new suit on the same cause of action post-dismissal for default.

**The Authority, after examining the case, observed that the earlier complaint was dismissed in default and the complainant should have sought restoration of that complaint rather than filing anew. Consequently, the Authority dismissed the current complaint, citing that procedural issues related to the previous case could have been addressed through restoration, not by filing a new complaint.**

**COMPLAINANT: Ummed Singh**

**RESPONDENT: 1) Berry Developers and Infrastructure Pvt. Ltd.**

**2) Bhiwadi Integrated Development Authority**

**CORAM: Smt. Veenu Gupta, Hon'ble Chairperson**

**ORDER DATE: 14.08.2024**

Complainant Representative: Adv Aviral Goyal

Respondent Representative: Adv Rubal Tholia on behalf of the respondent no. 1

Adv Pallav Choudhary, on behalf of the respondent no. 2

**Gist – Promoters are not allowed to accept more than 10% of the property's cost as an advance payment without first entering into a written Agreement to Sell with the buyer. This agreement must also be registered under relevant laws. If a promoter fails to execute this agreement but still accepts payments, they may be liable to refund the deposited amount with interest, as prescribed by the applicable real estate regulations, such as the Rajasthan Real Estate (Regulation & Development) Rules, 2017**

The complaint was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, concerning the 'BDI Ambbaram' project (Registration No. RAJ/P/2018/839). The complainant was allotted Unit E/GF/110 on May 4, 2016, with a total sale consideration of ₹4,03,750. By 2017, the complainant had paid ₹3,13,814, but no Agreement to Sell was executed. The respondent failed to deliver possession of the flat within the stipulated time, leading the complainant to request a refund with interest.



Respondent No. 1 argued that since no Agreement to Sell was executed, the complaint should be dismissed. Respondent No. 2 stated they were only a facilitator under the Rajasthan Affordable Housing Policy, 2009, and that the complainant dealt directly with Respondent No. 1. The complainant's counsel maintained that despite payment, Respondent No. 1 failed to hand over the unit within the agreed time.

In this case, Respondent No. 1 argued that since no Agreement to Sell was executed between the parties for the allotted unit, there was no agreed date for handing over the unit. Therefore, the complainant should only be refunded the principal amount without any interest on the deposited amount.

**Upon reviewing the arguments and the records, it was noted that although the complainant received an allotment letter in 2016, an Agreement to Sell was never signed. According to Section 13(1) of the Real Estate (Regulation and Development) Act, 2016, a promoter is not permitted to accept more than 10% of the cost of the apartment as an advance payment without first entering into a written agreement for sale. There was no evidence presented showing that the developer attempted to get the Agreement to Sell signed, which means the fault does not lie with the allottee. The complainant had already paid over 75% of the total sale consideration, and the respondent benefited from this amount for seven years. Thus, the respondent cannot avoid the liability of paying interest merely because the Agreement to Sell was not executed.**

The judgment referenced from the Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai, further supports the view that allottees can invoke Section 18 of the RERA Act, 2016, even without a formal Agreement to Sell. The Tribunal emphasized that the provisions of Section 18 can be applied based on other forms of agreements or documents like booking applications or allotment letters. As per Section 18, if a developer fails to complete the project or hand over possession by the agreed date, the allottee has the right to seek a refund with interest.

In light of these observations, the respondent is ordered to refund the deposited amount along with interest at the rate prescribed in the Rajasthan Real Estate (Regulation & Development) Rules, 2017, which is SBI's highest MCLR + 2% (9.00% + 2% = 11.00%) from the date of deposit until the date of refund.

**COMPLAINANT: Bajrang Lal Bajaj**

**RESPONDENT: Felicity Projects Pvt. Ltd.**

**CORAM: Smt. Veenu Gupta, Hon'ble Chairperson**

**ORDER DATE: 21.08.2024**

Complainant Representative: Adv Samkit Jain

Respondent Representative: Adv Rishi Raj Maheshwari

**Gist:- The complainant's attempt to enforce possession and address compensation for unit D-1210 was limited by the original order, which did not include adjustments or**

**the addition of the welfare society. Execution could not extend beyond the order's explicit terms.**

In the matter concerning the execution of an Authority order dated 31.07.2023, the case revolves around the complainant's request for enforcing the order that directed the promoter to hand over possession of unit No. D-1210 after settling outstanding dues as per the demand notice dated 25.06.2022. The order set aside previous directions regarding the unit's cancellation and stipulated that the promoter must deliver possession only after the complainant pays the specified dues. The complainant, seeking enforcement of this order, filed an execution application demanding that the respondent not only hand over physical possession but also execute the sale deed, pay interest from the escrow account, and initiate further proceedings under relevant sections of the Rajasthan Real Estate (Regulation and Development) Act, 2016.

The complainant additionally requested that Felicity Roongtas Aventure Welfare Society be added as a respondent due to its issuance of maintenance charges invoices despite the complainant not having possession of the flat, asserting that these demands were unlawful.

The respondent countered that the execution application was not maintainable, arguing that the order dated 31.07.2023 did not address compensation or interest adjustments and that the complainant had not paid the required amount.

**The Authority reviewed the arguments and determined that the execution application could not extend beyond the original order and that the addition of the Felicity Roongtas Aventure Welfare Society was unwarranted at the execution stage, as no prior directions had been issued concerning the society. Furthermore, the request for compensation or interest adjustment was not supported by the order dated 31.07.2023 and was thus beyond the execution scope, although the complainant was advised to pursue the matter through appropriate adjudication. The application was disposed of accordingly, emphasizing that the execution could not modify or go beyond the Authority's original order.**

## **BIHAR REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: Mr. Anil Singh**

**RESPONDENT: M/s Jaidev Green Homoes Pvt. Ltd.**

**CORAM: Hon'ble Member Mr. S.D. Jha, RERA, Bihar**

**ORDER DATE: 22.08.2024**

Complainant Representative: Mr. Ujjwal, Advocate

Respondent Representative: Mr. Jai Ram Singh, Advocate

**Gist: The case involves a dispute where the complainant, a landowner, alleges the respondent failed to deliver the full agreed-upon share of built-up area and rectify structural defects, while the respondent contends the project was completed before RERA's enforcement. The Authority directed the respondent to complete the project as per the agreement, deliver the remaining area, and obtain a completion certificate.**

The complainant, a landowner, had entered into a Development Agreement on March 15, 2011, with the respondent to develop a multistoried building on his land. The Agreement stipulated that the complainant would receive 45% of the total built-up area of approximately 150,52 square feet, translating to 6,762 square feet. However, the complainant only received 6,514.95 square feet, resulting in a shortfall of 248 square feet. Additionally, the building has not been completed as per the Agreement, and there are reported structural defects that have not been rectified despite complaints to the respondent. The complainant seeks a directive for the respondent to complete the building according to the Agreement, hand over the remaining 248 square feet, and rectify the structural defects.

In response, the respondent's counsel argued that the complainant had received possession of his share in 2015 and claimed that structural defects pointed out after eight years did not fall under Section 14(3) of the RERA Act, 2016. The respondent contended that the Development Agreement was executed before the enactment of the RERA Act and the project was completed before RERA's enforcement. They also claimed that the complainant had sold two flats and should be considered a promoter under Regulation 6 – Explanation 1(c) of Bihar RERA (General) Regulation, 2021. The respondent argued that the case was not maintainable under RERA provisions.

The complainant countered, asserting that despite the Development Agreement entitling him to 45% of the total built-up area including car parking, the building was not completed as agreed, and possession was never fully transferred. The complainant had repeatedly sought resolution from 2016, including sending legal notices and filing a criminal case for breach of trust. They also claimed that the respondent did not rectify the defects or obtain the necessary completion certificate from the Patna Municipal Corporation.

Upon reviewing the case, the Authority found no dispute regarding the complainant's entitlement to 45% of the built-up area as stipulated in Clause 2 of the Development Agreement. However, the respondent failed to produce a completion certificate from the competent authority, thus invalidating their claim that the project was completed per the sanctioned plan in 2015. The absence of the completion certificate meant that the respondent's plea that the case was not maintainable under Section 14(3) of the RERA Act was rejected. The Authority determined that the core issues were the completion of the building as per the Agreement, the handover of the remaining 248 square feet, and rectification of the structural defects.

The Authority directed the respondent and its Directors—Kumar Sourabh, Mukesh Kumar Singh, Rajeev Kumar Singh, and Kumar Nikhliesh—to complete the project as per the Agreement and obtain a completion certificate from the Patna Municipal Corporation within two months from the order date. They were also instructed to deliver the remaining 248 square feet of the complainant's share within this timeframe. Furthermore, the case was to be referred to the RERA Registration Wing for initiating a suo motu proceeding under Section 59 of the RERA Act for non-compliance with Section 3 of the Act, considering that the project was completed before RERA's enforcement but lacked the required registration and completion certification. The case was thus disposed of with these directives.

### **RAJASTHAN REAL ESTATE APPELLANT TRIBUNAL**

**APPELLANT: Felicity Projects Pvt. Ltd.**

**RESPONDENT: RERA through Registrar & Anr.**

**CORAM: Mr. Justice Veerendr Singh Siradhana (Retd.), Hon'ble Chairperson**  
**Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)**

**ORDER DATE: 05.07.2024**

Appellant Representative: Mr. Rishi Raj Maheshwari, Advocate

Respondent Representative: Mr. Prateek Kedawat, Advocate

**Gist – The appeal challenging the involvement of the RWA as complainants in suo moto proceedings was rejected, with the court finding no illegality in the process.**

In this case, the appellant challenged an order issued on April 15, 2024, by the Authority below, arguing that the procedure followed in adding the Residents Welfare Association (RWA) as complainants was improper. The Authority had initiated suo moto proceedings and determined that the issues raised by the RWA were identical to those being considered in the suo moto proceedings. Consequently, the Authority decided that the RWA should be added as complainants, considering them necessary parties to the case.

The appellant's counsel did not dispute that the RWA was a necessary party to the proceedings but contended that the correct procedure, as prescribed under Rule 35 of the Real Estate (Regulation and Development) Rules, 2017 (referred to as the "Rules of 2017"), should have been followed when adding the RWA as complainants.

**Upon reviewing the order issued by the Authority below, it was found that the Authority had, in accordance with its powers under Section 35 of the Rules of 2017 and Section 38, sought certain information from both parties involved in the case. After considering the provisions of the Rules and the Real Estate (Regulation and Development) Act, 2016 (RERA), the reviewing body found no illegality in the proceedings conducted by the Authority. The process of adding the RWA as complainants was found to be in compliance with the legal provisions.**

The appellant had also responded by providing a timeline for rectifying certain defects as part of the ongoing proceedings. However, the appellant's counsel argued that the order dated April 15, 2024, was legally flawed and challenged its validity, legality, and correctness.

**After considering the arguments and the facts presented, the reviewing body concluded that the appeal was without merit. The arguments raised by the appellant's counsel were deemed baseless and lacked any factual foundation. Consequently, the appeal was rejected.**

**In addition to rejecting the appeal, the appellant was ordered to pay a cost of Rs. 10,000. The appellant was directed to deposit this amount with the Authority within two weeks of the order. Finally, the case file was ordered to be consigned to the record, effectively closing the matter.**



**APPELLANT: M/s Ruheen Developers and Properties LLP**

**RESPONDENT: Ruheen Regal Residents Welfare Society**

**CORAM: Mr. Justice Veerendr Singh Siradhana (Retd.), Hon'ble Chairperson  
**Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)****

**ORDER DATE: 19.07.2024**

Appellant Representative: Mr. Pranjul Chopra, Advocate

Respondent Representative: Mr. Aviral Goyal & Mr. Yashwant Suwalka, Advocates

**Gist – The case centers on a developer's unsuccessful appeal against a RERA order requiring the removal of unauthorized terrace structures, transfer of common areas, and acquisition of occupancy certificates. Tribunal ordered that terrace should be treated as common area.**

The case revolves around an appeal filed by the appellant, a real estate developer, challenging the order issued by the Rajasthan Real Estate Regulatory Authority (RERA), Jaipur, on April 15, 2024. The order was in response to a complaint lodged by the respondent, a registered Resident Welfare Association (RWA) representing the unit holders of "Ruheen Regal," a residential project in Jagatpura, Jaipur, developed by the appellant.

The respondent's primary grievances included the appellant's improper use and transfer of common areas, particularly the terrace, failure to provide necessary completion and occupancy certificates, and non-compliance with the handover of common areas as required by law.

Specifically, the RWA alleged that the appellant encroached upon the common terrace area by selling portions of it to individual unit holders, contrary to the approved maps submitted to the Jaipur Development Authority (JDA) and RERA. The appellant was accused of misrepresenting the terrace as a "Terrace Garden" during the sale process, subsequently selling approximately 5,624 sq. ft. of the common terrace to certain individuals, who then erected temporary structures, segregating their areas from the common terrace.

The respondent made several attempts to rectify these irregularities by approaching the appellant with several letters, but after non-response, the RWA filed a complaint with RERA. The RWA sought various remedies, including the fulfillment of promises made during the sale regarding the construction of a terrace garden and library, the handover of common areas and amenities as per Section 17 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act), details of parking allotment, provision of necessary certificates, and removal of the illegal structures on the terrace. Additionally, they sought a refund of amounts collected for parking space and Rs. 60,000 in legal expenses.

**RERA examined the approved maps and found that the terrace was intended to be a common area, with no provisions for "Private Terrace" areas, establishing that the appellant's actions violated Section 14(1) of the RERA Act. Regarding parking, RERA found that the allocation was consistent with the approved Equivalent Car Unit (ECU) system, and there were no discrepancies. Furthermore, RERA discovered that the appellant had failed to properly hand over the common areas to the RWA as mandated by Section 17 of the RERA Act, noting that the appellant's claim of a verbal handover in September 2022 was unsupported by any documentation, and that the RWA was not registered until November 2022.**

Consequently, RERA ordered the terrace to be treated as a common area, with the removal of any unauthorized structures, and directed the appellant to hand over the common areas to the RWA, obtain an occupancy certificate from the competent authority, and pay a penalty of Rs. 5 lakh under Section 61 of the RERA Act.

The appellant, in their appeal, argued that RERA's order was based on a misapplication of law and facts, citing the existence of a completion certificate dated November 5, 2022, which they claimed was not visible due to a technical glitch on RERA's website, and an occupancy certificate obtained on March 30, 2024. The appellant also contended that under Clause 10.2.1(3)(ii) of the Rajasthan Building Bye-Laws, 2020, the transfer of terrace areas to top-floor unit owners for independent use was permissible, arguing that the approved maps depicted these terrace areas as private. Additionally, the appellant claimed that Section 17 of the RERA Act does not require a written handover of common areas and that the RWA had taken over management of these areas from its inception, charging maintenance fees, which indicated the handover had occurred.

The respondent countered by emphasizing that the approved layout plans marked the terrace as a common area, with no mention of "Private Terrace," and that the completion certificate appeared to be backdated, with the occupancy certificate's validity also in question. The respondent also maintained that the RWA had been charging maintenance fees since its registration, and the appellant's claims of verbal handover were unsubstantiated.

**The tribunal, upon reviewing the case, upheld the RERA order, affirming that the terrace should be treated as a common area, that unauthorized structures should be removed, and that the common areas must be handed over to the RWA with the necessary occupancy certificate obtained by the appellant. The tribunal also upheld the Rs. 5 lakh penalty under Section 61 of the RERA Act, dismissing the appeal as devoid of merit.**

**The tribunal emphasized the developer's obligations under the RERA Act to fulfill promises made to allottees and adhere to legal requirements, highlighting the importance of protecting homebuyers' rights and interests as mandated by the Supreme Court in its interpretation of related laws.**

#### **MAHARASHTRA REAL ESTATE APPELLANT TRIBUNAL**

**APPELLANT: Irene Edwyn D'Mello**

**RESPONDENT: 1. Hirji Kaniibhai Barwadia**  
**2. Badhi Hirji Barwadia**

**CORAM: 1. Shriram R. Jagtap, Member (Judicial)**  
**2. Dr. K. Shivaji, Member (Administrative)**

**ORDER DATE: 01.08.2023**

Appellant Representative: Mr. Shrey Shah

Respondent Representative: Ms. Namrata Bobade

**Gist – When applicant itself disclosed that there's deliberate default & in action on the part of applicant in filling the appeals within the prescribed time the delay cannot be condoned as this not being a sufficient cause.**

In the matter before the Maharashtra Real Estate Appellate Tribunal, Mumbai, the applicant, Irene Edwyn D'Mello, filed Miscellaneous Applications, seeking condonation of a 206-day delay in filing appeals against an order issued by the MahaRERA. These applications were accompanied by requests for a stay of the order under Miscellaneous Applications. The respondents in these cases were Ramesh Gangabhai Devda, Ganga Ramesh Devda, Hirji Kanjibhai Barwadia, and Badhi Hirji Barwadia. Given that the issues in both applications were identical, the Tribunal decided to address them through a common order.

The applicant sought the Tribunal's indulgence to condone the delay in filing the appeals, attributing it to reasons beyond her control. She contended that the impugned order from MahaRERA was perverse, illegal, and contrary to the provisions of the Real Estate (Regulation and Development) Act (RERA). According to the applicant, the delay in the project's completion, which led to the impugned order, was not due to her negligence but was caused by the lackadaisical approach of the concerned officials in granting necessary approvals and issuing the commencement certificate. She claimed that despite several follow-ups, the SRA Authority failed to issue the commencement certificate, which resulted in her inability to commence and complete the construction of the project on time.

**The applicant further argued that the MahaRERA's order, which directed her to pay interest to the allottees for delayed possession, imposed an undue financial burden on her. She maintained that she did not initially file the appeals because she was confident that she would complete the project once the commencement certificate was granted. Filing appeals at that stage, she argued, would have unnecessarily burdened the Tribunal, as she was operating under the assumption that the commencement certificate would be issued promptly, allowing her to complete the construction on time.**

**However, the non-applicants strongly opposed the applicant's plea for condonation of delay, arguing that the applicant had not provided a satisfactory explanation for the delay. They pointed out that the applicant had failed to offer any sufficient cause that prevented her from filing the appeals within the prescribed limitation period. The non-applicants emphasized that the applicant was already in possession of a commencement certificate up to the 9th floor but had not completed the construction up to that level. They argued that the applicant's justification for the delay was vague and irrelevant, and that the applicant had failed to demonstrate due diligence in pursuing the completion of the project over the past nine years.**

The non-applicants also contended that the applicant, being a builder, was well aware of the limitation period for filing appeals and had not made a case for condoning the significant delay of 206 days. They asserted that the applicant's inaction and negligence should not be condoned, especially in light of the established legal principles regarding condonation of delay. They urged the Tribunal to reject the applications, arguing that the applicant's conduct was not in line with the diligence and promptness expected of a party seeking condonation of delay.

Upon hearing the arguments presented by both parties, the Tribunal considered whether the applicant had established sufficient cause for the delay in filing the appeals. The Tribunal noted that the applicant's primary justification for the delay was the alleged inaction of the SRA Authority in issuing the commencement certificate. However, the Tribunal found that the applicant had not provided any evidence of the earlier commencement certificates or explained why construction was not completed up to the 9th floor, despite having the neces-

sary approvals.

The Tribunal also observed that the applicant's submissions indicated that she had initially chosen not to file the appeals, suggesting that the delay was deliberate. The Tribunal emphasized that condonation of delay is only warranted in cases where an aggrieved party intended to file an appeal but was prevented from doing so due to compelling reasons. In this case, the Tribunal found that the applicant had not demonstrated any such compelling reasons.

Citing the Hon'ble Supreme Court's decision in *Esha Bhattacharjee vs Managing Committee of Raghunathpur Academy & Ors*, the Tribunal underscored that a lack of bona fide action on the part of the applicant seeking condonation of delay is a significant factor that cannot be overlooked. The Supreme Court's judgment also highlighted the importance of diligence and prompt action, cautioning against a lax attitude towards delay.

**In light of these considerations, the Tribunal concluded that the applicant had not established sufficient cause for the delay. The Tribunal found that the applicant's conduct, behavior, and attitude demonstrated a lack of diligence and seriousness in pursuing the appeals. The Tribunal also noted that the applicant, being a promoter with considerable resources, should have been more vigilant in protecting her interests.**

**Based on these findings, the Tribunal dismissed the Miscellaneous Applications, along with the associated appeals and all pending Miscellaneous Applications. The Tribunal also ordered the applicant to pay costs of Rs. 10,000 to each of the non-applicants. The Tribunal's order underscored the importance of adhering to statutory timelines and the need for parties to act promptly and diligently in pursuing legal remedies.**

**PART-III****NOTIFICATION & CIRCULARS****ODISHA REAL ESTATE REGULATORY AUTHORITY****Order No. 4591/ORERA****Dated: 03.07.2024****NOTIFICATION****Subject- Project Closure Policy.**

The Authority in its 21st meeting held on 07.06.2024 has approved certain guidelines with respect to closure of real estate projects registered with the Authority.

On completion of the project, the promoter is required to produce the following documents before the RERA Authority-

1. Completion certificate for Plotted Development projects as per Sec- 2(q) of the RE (R&D) Act, 2016.
2. Occupancy certificate for Apartment/Housing projects as per Sec-2 (zf) of the Act.
3. Formation of Association of Allottees.
4. Undertaking that all the sanctioned/layout plans & common areas of the project have been handed over to the Association of Allottees.
5. A copy of deed of transfer of common areas and facilities of the project.
6. Transfer of corpus fund if any, to the Association of Allottees for maintenance purpose only.

Once the project is complete in all respects, the money lying in the 70% RERA designated account will be kept as security money for the next five years to meet the expenses for rectification of structural defects within five years of handing over possession of the property in accordance with Section-14 (3) of the Act.

The project will be declared as closed thereafter.

**Order No. 5062/ORERA****Dated: 23.07.2024****NOTIFICATION**

Odisha Real Estate Regulatory Authority (ORERA) notified Odisha Real Estate Regulatory Authority (Amendment) Regulations, 2021 vide Notification No.2653/RERA, dated 26.8.2021 and published in the Odisha Gazette No.351 dated 2.3.2022. These Regulations, 2021 introduced Regulation 13 that provides for payment of late fee by the promoters in case of delayed application for registration of real estate projects.



Meanwhile, there have been representations received from Builder Associations with a request to reconsider the decision for levy of late fee for project registration.

The matter was discussed at length in the 22<sup>nd</sup> Authority Meeting held on 22.7.2024 wherein it has been decided that Regulation 13 providing for payment of late fee shall be kept in abeyance.

Now, pursuant to the above decision of the Authority, the Regulation 13 is hereby kept in abeyance with immediate effect until further orders.

## **KERALA REAL ESTATE REGULATORY AUTHORITY**

**Order No. K-RERA/T1/102/2024**

**Dated 10.07.2024**

### **ORDER**

**Sub: Post Registration Compliance for K-RERA Registered Projects under Real Estate (Regulation and Development Act, 2016, Kerala Real Estate Regulation and Development) Rules, 2018 and Kerala Real Estate Regulatory Authority (General) Regulations, 2020 - revised orders issued.**

1. The responsibilities of the Kerala Real Estate Regulatory Authority (K-RERA) include monitoring real estate projects and ensuring that registered projects adhere to legal and regulatory requirements. After a project is registered, promoters must follow several post-registration requirements to ensure the project progresses as promised and to protect buyers' interests.
2. With four years of experience in monitoring registered projects and adjudicating complaint cases filed under Section 31 of the Act 2016, the Authority observes that many promoters are not fully complying with post-registration requirements. Based on these observations, the Authority has concluded that a comprehensive set of directions are required to ensure compliance. Therefore, in exercise of powers conferred upon the Authority under Section 37 of the Act read with Section 3, the Authority hereby issue the following set of directions for post-registration compliance. These directives will serve as a comprehensive guideline for promoters and aims to minimize disputes between promoters and allottees. The overall goal is to enhance transparency, accountability, and trust within the real estate sector of the state of Kerala. The order dated 5<sup>th</sup> June 2024 on this same matter is hereby cancelled.

#### **1) Allotment Letter**

As required under Section I 1(3) of the Act, 2016 the promoter shall issue an allotment letter, clearly indicating the booking amount, at the time of booking. A model allotment letter shall be issued shortly by the Authority.

#### **2) Quarterly Progress Reporting (QPR)**

- a) As per Section 11(1) of the Act, 2016, promoters must upload the quarterly progress of registered projects on the K-RERA web portal within seven days of the end of each

quarter. The Authority has observed that some promoters are not timely uploading the Quarterly Progress

Reports (QPR) on the web portal, which has resulted in the imposition of penalties. The Authority takes this non-compliance seriously and will impose strict penalties for any failure to comply.

b) Stage wise photographs, indicating the stage of the completion shall be uploaded as part of QPR in space provided for it.

c) Promoters are not required to upload the QPR once the Form No. 6 is uploaded on the K-RERA web Portal.

d) Even if there is no progress during the quarter, the same figures of the previous quarter shall be filled for that quarter.

e) As per Rule 17(4), the promoter is solely responsible for the authenticity and accuracy of the details and documents submitted and uploaded to the website. The promoter must ensure these details are correct at all times.

### **3) Advertisement**

a) According to Section 11(2) of the 2016 Act, all advertisements materials in print and electronic and social media shall contain the RERA registration number of the project and K-RERA web address ([rera.kerala.gov.in](http://rera.kerala.gov.in)). A QR code of the registered projects shall appear in

such advertisements. Any information disseminated through advertisements must be consistent with the details provided in the K-RERA website and agreement for sale.

b) The promoter shall upload any advertisements materials including brochures and prospectus (including those on social media) to the project's webpage on the web portal of K-RERA as soon as the advertisement is released (Rule 17(1)(b)(i)).

c) It is observed that some promoters incorrectly advertise projects as 'K-RERA approved' instead of 'K-RERA registered,' a misrepresentation that the Authority will further consider as serious violation of the Act.

### **4) Financial Compliance**

a) The Promoter is required to open two accounts in a Scheduled Bank for each project, one account as a collection account to deposit all the amount collected from the allottee for the project and another account as a designated account to transfer the seventy percent of the amount collected. These funds can only be used for construction and land-related costs, ensuring that the money is used for its intended purpose.

b) Withdrawals from the designated account must be based on the certification issued by the Architect, Engineer, and Chartered Accountant using Form No.2, Form No.3, and Form No.4, respectively, so as to ensure that the withdrawal is proportional to the percentage of completion

of the project. These forms must be uploaded to the project's webpage immediately after the withdrawal, as required by Section 4(2)(i)(D) and Regulation 5(3), and the promoter shall not wait for the end of the quarter.

c) The Authority has been receiving request to change their designated bank account after the project registration. Such requests will be considered after verifying the bank statement

of the old designated account and evaluating the reasons provided by the promoter for the change.

#### **5) Adherence to Sanctioned Plans:**

Promoters shall ensure that the project is completed according to the sanctioned plans. Any alterations or additions in the sanctioned plans/layout plans/ specifications of the building or the common areas shall be made only with the prior written consent of at least two-thirds of the allottee and approval of K-RERA (Section 14 (2) (ii) of the Act).

#### **6) Annual Report on Statement of Accounts (Form 5)**

As per Section 4(2)(1)(D) of the Act, 2016, an annual report on statement of accounts of the project in Form No. 5, from a Chartered Accountant, must be uploaded on the web portal by 31 October of each year until the project is completed and Form No. 6 is uploaded. This statement must confirm that the funds collected for the project have been used solely for that project and that withdrawals have been made in proportion to the percentage of project completion. This form has been made available for public view in the website and is an important element of transparency and trust. Promoters shall adhere strictly to this mandate.

#### **7) Agreement for Sale (section 13 Read with Rule 10-Annexure A)**

- a) The promoter shall not receive more than 10% of the total value of the unit without entering into an agreement for sale in Annexure A, Rule 10 of the Rules, and registering the same. In some cases, the Authority has noted that these requirements have not been complied fully. viz: not registering the agreement, not following the prescribed format, changing the terms of the agreement, adding clauses contravening the provisions of the Act.
- b) The total price of the apartment/villa/plot based on the carpet area, along with a detailed breakup, shall be mentioned in the clause 1.2 of the agreement for sale. This price includes cost of the apartment, cost of other amenities, cost of common area, maintenance cost till handing over to the association of allottees, and including the taxes to be paid by the promoter. However, in case of any additional changes in tax rate shall be governed by (ii) of the explanation in clause 7.2 of the AOS. Charges for electrification, parking, water distribution, solid waste collection, any other common amenities are all included in the total price of the unit. Any fees to be paid by the allottee like electricity connection fee, water connection charges, stamp duty etc. to the government shall be borne by the allottee.
- c) Any additional terms and conditions mutually agreed upon, which are not consistent with the Act, rules or regulation, shall be clearly stated after Clause 33 of the agreement for sale as 34 onwards.
- d) The Authority notes that there exists a practice of collecting "Corpus fund" from the allottees in advance and to be handed over to the Association of Allottees once the project is complete. In case such a collection is made from the allottee, it shall be clearly mentioned after clause 33 of the prescribed agreement for sale. Such corpus fund shall be collected only just before the execution of sale deed of the unit and the amount so collected

shall be handed over to the registered Association of Allottees at the time of handing over of the completed project to them.

### **8) Formation of Association of Allottees**

a) As per Section 11(4)(e) of the Act, 2016, promoters shall facilitate the formation of an Association of Allottees within three months of the majority of apartments or units having booked. Allottees are legally obliged to participate towards the formation of the Association of

Allottees (Section 19(9)). The Authority observes that in some projects, allottees are hesitant to form the Allottee association, instead they want to form owners' association or residents' association after the unit is handed over to them. This argument is not legally tenable.

b) The Authority hereby direct the promoters to issue a legally drafted letter to allottees after majority of the allottees having booked their units, citing Section 11(4)(e). The letter shall be in the form of invitation letter for meeting of the allottees for the formation of Association of Allottees. In order to facilitate the formation of the association, the promoter shall enclose model bylaws for the association. Promoter himself or a senior representative shall attend the meeting and explain the need and modality of formation of the association.

### **9) Project Completion and Handing over**

a) On receipt of occupancy certificate, after completion of the project in all respects as promised to the allottees and as per the agreement for sale, the promoter shall upload a declaration in Form 6 on the web page of the project. Once these documents are uploaded, the project is considered complete.

b) The promoter shall ensure that receipts are provided upon handing over the individual units to allottees.

c) Within 3 months of receipt of occupancy certificate, the promoter shall hand over the common amenities to the registered Association of Allottees and shall obtain a receipt for the same. They shall handover the originals of all documents relating to the project including deed of the project land, sanctioned plans, occupancy certificate, NOC's, licenses, annual maintenance contract documents, electrification plans, firefighting plan, plumbing plans, consent to operate etc. The original deed of the project land may be retained by the promoter if any units remain unsold at the time of handing over to the association. The original deed shall be handed over to the association once all the units are sold.

### **10) Project Transfer to a Third Party**

a) As per Section 15 of the Act, 2016, If the promoter wants to transfer the project to a third party, he shall obtain prior written consent from the two-third of allottees. A joint application shall be filed before the Authority by both promoter and intending promoter along with written consent from the two-thirds of allottees and a draft transfer agreement between the parties (There is no prescribed format for the joint application). If land owner is different from the promoter, the draft agreement shall be tripartite. The Authority upon

consideration of the application, if necessary, after a hearing will issue a written prior approval for the transfer. Thereupon the agreement shall be registered and a copy of the registered agreement along with proof of physical transfer of the project shall be submitted to the Authority. The Authority will record the name of the new promoter in its record and issue a revised registration certificate. The designated account shall be changed to the name of new promoter. Such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings made by the erstwhile promoter.

b) Such transfer shall not result in extension of time to the intending promoter to complete the project. However, after the project transfer, if further extension of time is required to complete the project, the intending promoter should apply online before the Authority under Section 8 of the rules, with the prescribed fees and written consent of the majority of allottees.

### **GUJARAT REAL ESTATE REGULATORY AUTHORITY**

**Dated: 11.07.2024**

**Subject: Additional indicative guidelines for amicable settlement of Complaints by internal mechanism.**

**Reference: Order No. 89, dated: 23/02/2024**

The Authority had issued Order No. 89, providing, certain guidelines for amicable settlements of the complaints by internal mechanism established by this Authority.

The results are found encouraging and in some cases, Complainants and Respondents, even at the time of hearing, prefer to choose the said mechanism.

Therefore, after due consideration, the Authority has decided as follows:

1. To allow the parties to opt for amicable settlement, even if the complaint is pending for hearing before the concerned Bench of the Authority.
2. During the course of hearing also, the parties will be allowed to request for placing their pending complaint before the Bench concerned.
3. In appropriate cases, case may also be referred by the Bench suo moto for amicable settlement.
4. If the parties are able to reach an amicable settlement, the matter shall be placed before the concerned bench of the Authority for appropriate order. However, in case of failure to achieve amicable settlement, the matter will be put up before the Bench again for regular further hearing.



**WEST BENGAL REAL ESTATE REGULATORY AUTHORITY****Order No. 1519 -RERA/L-01/2023****Date: 25.07.2024****ORDER**

**Sub: Directions with regard to displaying of West Bengal Real Estate Regulatory Authority (WBREERA) Registration Number and WBREERA Website address in Advertisements & other Publicities of Registered Projects by the Promoters.**

Whereas Section 11(2) of Real Estate (Regulation and Development) Act, 2016 (here in after referred to as the said Act), provides that, - "The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto";

Whereas it has come to the notice of the Authority that some promoters are violating the above mentioned provision of the said Act by not displaying the WBREERA Registration Number of the project and website address of this Authority in the advertisements and other publicities of the said project;

Whereas this Authority also noted that some promoters while displaying the WBREERA registration details in their advertisement / publicities of the registered projects, do not follow the specific instruction in this regard provided in section 11(2) of the said Act and they are displaying the details in very small font-size which is not legible and some are displaying the details vertically, which is again non-readable;

Whereas under Section 37 of the said Act, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, this Authority is vested with the power to issue directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it considers necessary and such directions shall be binding on all concerned;

Whereas in exercise of the powers granted to this Authority under the aforesaid provisions of the said Act, this Authority considers it necessary in the interest of the allottees, promoters including landowners and real estate agents, the present Order is issued;

Now therefore, In consideration of the circumstances mentioned above, in exercise of powers conferred under Section 37 of the said Act and in accordance with Section 11(2) of the said Act, in partial modification of the earlier Order in this regard vide No. 492-RERA/L-

01/2023 dated 07.03.2024, this Authority do hereby issues following directions to the promoters of the registered Real Estate Projects:-

1. All Advertisements and Publicities through electronic media, including Facebook, Whatsapp, Instagram, X-Handle etc. related to the WBREERA registered project(s), in any media and not limited to print, electronic or social media (including press, outdoor hoardings, electronic media, SMS, pamphlets, banners, posters, through FM Radio or publicity in any form) shall bear the RERA Registration Number and the Website Address of the WBREERA, (hereinafter referred to as "RERA Registered Information") in accordance with the specifications as directed below :-

2. (a) Every promoter of a WBRERA registered project shall display the Project Registration Number issued by this Authority and the Website Address of WBRERA ([www.rera.wb.gov.in](http://www.rera.wb.gov.in)), in bottom portion of the Advertisement or Prospectus or other Publicities in a separate strip style format. The area of the bottom strip portion containing the "RERA Registered Information" shall not be less than 8% (eight percent) of the total area of the Advertisement issued in the print media

(b) The Promoter shall take every endeavor to ensure that the bottom strip portion is free from any type of obstruction and clearly visible to the public at large.

(c) The size of lettering and numbering, used in the bottom strip portion for the purpose of "RERA Registered Information" shall not be less than one-third ( $\frac{1}{3}$ "d) of the font-size used for the name of the project in the said Advertisements or other Publicities.

(d) The font and size of letters used for mentioning the "RERA Registered Information" shall be made in Bold lettering with the use of contrast background colours, so that the viewer can easily identify the "RERA Registered Information".

3. (a) For Advertisements on FM radio or for other Audio Formats, the Registration Number of Project and Website address of WBRERA shall required to be mandatorily mentioned in the closing slide / segment giving a reasonable timeframe, so that the information can be heard and understood by the listener.

(b) For Advertisements on Television or for Video Formats, the Registration number of the Project and Website address of WBRERA shall require to be mandatorily mentioned in the closing slide/segment giving a reasonable timeframe so that the information can be seen and understood by the viewer.

(c) For Advertisements through different social media, electronic media etc. and through SMS, Whatsapp etc., the Registration Number of the project and Website Address of the WBRERA shall be prominently mentioned.

4. WBRERA Registration Number of the project and Website Address of this WBRERA Authority shall be prominently mentioned in the Display Board installed at the Project

5. All advertisements and publicity related to the WBRERA registered project shall be Site uploaded in the quarterly uploading section of the said project in the WBRERA Web-portal.

6. If it is noticed that the above directions are not strictly complied with by any promoter, this Authority shall be constrained to initiate penal actions as provided under section 61 and 63 of the said Act, against the Defaulter Promoter without further notice, as per which the penalty shall be a maximum of 5% of the estimated cost of the project concerned.

7. The copies of this order shall be transmitted to all the promoters of registered projects via email for strict compliance.

This order is hereby issued with the approval of Hon'ble WBRERA Authority.

This order shall come into effect immediately.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY****Order No. 57/2024****Date: 30.07.2024****Subject: In the matter of facilities/ amenities to be provided by promoters for real estate projects.**

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra, vide Notification No. 23, dated 08.03.2017, has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as "the Authority".

And whereas, the Government of Maharashtra has notified the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures of Website) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, under Section 34 of the Act, some of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act as well as to ensure compliance of the obligations cast upon the promoters, the allottees and real estate agents under the Act, the Rules and Regulations made thereunder.

And whereas, the Authority under Section 37 of the Act and Regulations 38 of the Regulations is vested with the powers to issue directions to promoters, real estate agents and allottees from time to time as it may consider necessary.

And whereas, Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act

And whereas, Section 4 (2) of the Act, mandates promoters to enclose along with the application made for registration of real estate projects, the documents as enumerated in the above-referred section.

And whereas, Section 4 (2) (g) of the Act, mandates promoters to submit the proforma of the allotment letter and the agreement for sale proposed to be signed with the allottees along with the application made for registration of real estate projects.

And whereas, Section 13 (2) of the Act, mandates that the agreement for sale referred to in Section 13 (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.

And whereas, it is noticed by MahaRERA, that promoters in the proforma of the agreement for sale as uploaded in compliance of Section 4 (2) (g) of the Act, as well as in the agreement for sale to be executed with the allottees do not mention the facilities and amenities provided either in the building and/or in the common areas and / or in the layout as the case may be, and if mentioned the dates when the same would be made available for the use of the allottees, their family members and residents are not disclosed.

In view of the above the following directions are issued:

In the proforma of the agreement for sale uploaded by promoters in compliance of Section 4 (2) (g) of the Act as well as in the agreement for sale to be executed between the promoter and the allottees the following aspects shall be detailed / mentioned and the approved plan in respect thereof shall be annexed to the agreement for sale:

A.) The facilities / amenities provided/to be provided either in the building and/or provided in the common areas and / or in the layout as the case may be, such as (list not exhaustive) swimming pool, badminton court, tennis court, theatre, gymnasium, table tennis court, squash court, etc;

I) For the facilities / amenities which are provided/to be provided by utilizing "free of FSI" area under Local planning Rules and Regulations shall be provided

II) For the facilities / amenities which are provided/to be provided by utilizing FSI of the project available under Local planning Rules and Regulations shall be provided

B.) The size and the location of the facilities / amenities in form of open spaces (RG/ PG etc.) to be provided within the plot and / or in the layout, and proposed date on which such open spaces etc shall be handed over to the common organization of Allottee(s) or Federation of common organizations as the case may be.

C.) Number of lifts to be provided with details as to

I) Type of Lift: passenger/Stretcher/service/Fire Evacuation/goods etc

II) Capacity in form of number of passengers.

III) The speed of lift specified as Meter per second

D.) The facilities / amenities shall be detailed / mentioned in this Annexure 'I' shall be same as the list mentioned in the registration Form-A under "Common Areas, Facilities, and Amenities," and in Table B of Form 1 Architect Certificate. For any major revisions, changes, shifting or corrections in the amenities, facilities, or common areas, a correction application should be submitted as per the provisions of Section 14(2) of the Act.

E.) The clause to be incorporated in the manner as stated in Annexure 'I' annexed hereto, shall be considered as non-negotiable clause and the Authority shall take such action as enumerated in MahaRERA Order No. 38/2022, dated 13.12.2022, if the same are not provided in the proforma of the agreement of sale and in the agreement of sale to be executed between the promoter and the allottees or if the same is / are modified.

This order shall come into force with immediate effect. (As approved by the Authority)

**Order No. 58/2024****Date: 07.08.2024****Subject: Guidelines for Go-Live of MahaRERA CRITI (Complaint and Regulatory Integrated Technology Implementation)**

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017

And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as "the Authority".

And whereas, the Government of Maharashtra has notified the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, the Authority under Section 37 of the Act and Regulation 38 of the Regulations is vested with the powers to issue directions to the promoters, real estate agents and allottees from time to time as it may consider necessary.

And whereas, Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

And whereas, Section 4(3) of the Act mandates the Authority, to operationalize a web based online system for submitting application for registration of real estate projects.

And whereas some of the functions of the Authority under Section 34 of the Act is to publish and maintain a website of records as well as to maintain a database, on the website of the Authority.

And whereas, Regulation 48 of the Regulations empowers the Authority by an Order to fix standard fees, annual fees, to be levied on promoters or real estate agents or allottees for inspection of documents, certified copies of documents, updating of website, database management and maintenance of website.

WHEREAS, the extant IT system is more than seven years old, necessitating a comprehensive overhaul to enhance user-friendliness for all stakeholders, improve functionalities for all users, introduce Data Analytics and Dashboards, and ensure speed, efficiency and convenience.

WHEREAS, MahaRERA has developed Next Generation integrated Enterprise-wide Comprehensive IT Solution, incorporating Business Intelligence and Data Analytics for all its regulatory and complaint management functions, to be denominated as MahaCRITI (MahaRERA Complaint and Regulatory Integrated Technology Implementation).

WHEREAS, in the course of transitioning from the old system to the new MahaCRITI system, it is imperative to clearly define the processes and schedule to be adhered to by



MahaRERA for the implementation of the new system and the migration of data from the old system to the new system.

In light of the foregoing, the following advisories and procedures are hereby issued for all users of the system:

- Go-Live Schedule of MahaCRITI:

- i. Track 1: Project Lifecycle & Agent Lifecycle Modules

- ii. Track 2: Complaint Management & Conciliation Management Module

- Track 1: Go-Live of Project Lifecycle and Agent Lifecycle Modules

- a. The Project Lifecycle module encompass all applications related to projects including Project Registration, Project Correction, Project Extension, Project Quarterly Updates and so on. Similarly, the Agent Lifecycle Module includes applications related to agents, including Agent Registration, Agent Correction, Agent Renewal, Agent Half Yearly Updates and so on.

- b. These modules shall go live on MahaCRITI on 11:59 PM, 31st August 2024.

- c. Consequently, Promoters and Real Estate Agents will be unable to submit any applications from 11:59 PM, 13th August 2024 in the old system. Between 14th and 20th August, MahaRERA officers will process all pending applications.

- d. In the event of incomplete applications, they shall be returned to the Promoters/Agents. Subsequently, the Promoters/Agents must resubmit their applications using the new system, MahaCRITI. In such instances, the MahaRERA application fees will be adjusted accordingly, and Promoters/Agents will not be required to pay any additional fees, to the extent of fees already paid. However, Promoters/Real Estate Agents shall be liable to pay the convenience fees associated with the new system, MahaCRITI. Therefore, all Promoters/Real Estate Agents are strongly urged to ensure the completeness and accuracy of their applications to expedite processing.

- e. From 11:59 PM, 20th August 2024 onwards, the process of data migration from the old system to the new system shall be initiated, and the new system shall be prepared for Go-Live. Post Go-Live on 11:59 PM, 31st August 2024, all Promoters/Real Estate Agents shall be able to submit applications for both old and new projects in MahaCRITI.

- Track 2: Go-Live of Complaints and Conciliation Modules

- a. Complaint Module consists of all applications from Complaint Filing, Online Hearings, Online Orders, Miscellaneous applications etc. Conciliation Module consists of all applications including conciliation hearings, orders etc.

- b. These modules shall go live on MahaCRITI on 11:59 PM, 31st August 2024.

- c. Accordingly, Complainants and Respondents will not be able to submit any applications from 11:59 PM, 20th August 2024 in the old system. Between 21st August to 31st August, all data of complaints and conciliation shall be migrated from old system to the new MahaCRITI application. During this period, while new complaints / applications cannot be filed, however online hearings shall continue.

d. From 11:59 PM, 31st August 2024, Complainants and Respondents shall be able to access complaints and conciliation module in new system – MahaCRITI.

- The proposed MahaCRITI solution aims to significantly enhance the user experience for stakeholders, including allottees, agents, and promoters, by offering a truly integrated system with a single source of truth, ensuring that data captured at one point is consistently used across the platform. This solution provides personalized dashboards for stakeholders, system-driven reminders, and notifications, transforming processes like Quarterly Progress Reports (QPR), compliance, and complaint management. Additionally, it introduces new features such as a mobile application and AI chatbots for real-time assistance, making the MahaCRITI solution a comprehensive and efficient platform for all users.

- Further, due to introduction of next generation MahaCRITI system, the following convenience fees shall be levied in the new system - MahaCRITI. The convenience fees payable by users as more specifically listed in Column III of the Table hereunder drawn for the services as listed in Column II shall be as per the charges listed in Column V in place of the charges listed in Column IV at the milestone as listed in Column VI of the said Table.

S.No	Service	Applicable Users	Existing Service Charges (exclusive of taxes and Bank Charges)	Revised Service Charges (exclusive of Bank Charges)	Payment Milestone
(I)	(II)	(III)	(IV)	(V)	(VI)
1	New Project Application Form per Project	Real Estate Promoter	1050	4425	Per Transaction
2	Project Extension Request Form	Real Estate Promoter	700	2065	Per Transaction
3	Project Status update fees per project	Real Estate Promoter	700	4425	
4	Project Transfer Request	Real Estate Promoter	Manual	118	Per Transaction

	Form				
5	Project Correctio n Request Form	Real Estate Promoter	Manual	1062	Per Transacti on
6	New Agent registratio n Form	Real Estate Agent	700	1121	Per Transacti on
7	Agent renewal request Form per request	Real Estate Agent	700	1121	Per Transacti on
8	Agent Correctio n Request Form	Real Estate Agent	Manual	118	Per Transacti on
9	Complain t registratio n Form per complaint	Real Estate Promoter / Real Estate Agent / Citizen	70	118	Per Transacti on
10	Online request for certified copies	Real Estate Promoter / Real Estate Agent / Citizen	Manual	59	Per Transacti on

This directive is intended to provide comprehensive guidance to all stakeholders involved in the transition process. As approved by Authority.

## PART-IV

### RERA NEWS

#### **BUSINESS STANDARD**

**Date: 08.07.2024**

##### **National-level builder-buyer agreements for realty to be a reality soon**

India is set to introduce national-level standardized builder-buyer agreements. The Centre has submitted a model agreement to the Supreme Court, developed with Credai and state governments. Chief Justice DY Chandrachud highlighted the need for uniformity to prevent buyer fraud. The initiative aims to address issues like delayed or incomplete delivery of promised amenities. This follows a 2020 PIL by advocate Ashwini Upadhyay and aligns with the Real Estate (Regulation and Development) Act 2016. The Supreme Court has directed states, union territories, and the Law Commission to collaborate on this effort.

#### **BUSINESS TODAY**

**Date:23/07/2024**

##### **Budget 2024: Govt's Rs 2.2 lakh crore boost for the affordable housing**

In the 2024-25 budget, Finance Minister Nirmala Sitharaman announced a significant boost for affordable housing, allocating ₹2.2 lakh crore in central assistance to support the development of 1 crore new homes under the Pradhan Mantri Awas Yojana-Urban (PMAY-U). This initiative is part of the government's broader plan to build 3 crore affordable homes in urban and rural areas over the next five years. The investment of ₹10 lakh crore, including the central assistance, aims to address the housing needs of poor and middle-class families.

The scheme also includes provisions for interest subsidies to make home loans more affordable. Industry stakeholders have widely praised this move, recognizing it as a robust step toward achieving the government's "housing for all" goal. Key figures in the real estate sector, such as Prashant Sharma of NAREDCO Maharashtra and Boman Irani of CREDAI, have lauded the initiative for enhancing living standards and supporting the affordable housing segment.

#### **FINANCIAL EXPRESS**

**Date:25/07/2024**

##### **Realty players grapple with indexation move**

The real estate sector is grappling with the recent Union Budget decision to remove the indexation benefit for property sales, replacing it with a reduced long-term capital gains (LTCG) tax rate of 12.5% from the previous 20%. The indexation benefit, which adjusted the purchase price of a property for inflation, had previously helped reduce taxable gains. The Income Tax department argues that the change will benefit most taxpayers, as nominal real estate returns generally exceed inflation.

However, industry players are divided. Some, like Sanjay Dutt of Tata Realty, criticize the removal of indexation, arguing that it fails to account for inflation and could lead to higher taxes for sellers. Others, like Ritesh Mehta of JLL, believe it may deter sellers in the secondary market, although first-time buyers remain unaffected.

Gulam Zia of Knight Frank points out that the real estate market is cyclical, and the removal of indexation could disproportionately affect those selling in a downcycle. Meanwhile, Prashant Thakur of Anarock Property Consultants and others agree with the tax department, noting that the reduced LTCG tax rate may benefit sellers with higher returns. The overall impact of this change varies depending on the seller's situation, with investors and those with lower returns potentially facing increased tax liabilities.

## **BUSINESS TODAY**

**Date: 7.08.2024**

### **Realtors cheer govt's LTCG tax amendment; to lift homebuyers confidence**

The government has reinstated the option for property holders to choose indexation benefits on long-term capital gains (LTCG) from real estate transactions, allowing them to pay either 12.5% tax without indexation or 20% with indexation. This amendment, applicable to properties acquired before July 23, 2024, has been well-received by the real estate industry, as it provides flexibility and potential tax relief.

Industry leaders like Niranjan Hiranandani and Dhruv Agarwala have praised the move for its potential to boost investment and market confidence. It clears up previous confusion, prevents negative market impacts, and gives taxpayers time to optimize their benefits.

According to Dharmendra Raichura, the reinstatement could lead to a 20-25% increase in real estate investment and a 0.5-1% boost in GDP growth. Manju Yagnik of Nahar Group highlighted that the policy change will reduce sellers' tax burdens, encouraging more market activity and enhancing the overall real estate sector's growth.

## **ET REALTY**

**Date: 9.08.2024**

### **Rainwater harvesting made mandatory for all new buildings in Rajasthan**

The Water Resources Department (WRD) of Jaipur has made rainwater harvesting systems mandatory for all new residential and commercial buildings in the state. This requirement, effective immediately, mandates that the Public Health Engineering Department (PHED) will not approve drinking water connections for properties that do not comply.

The initiative aims to boost groundwater levels in the arid region. According to an August 5 notification, residential buildings of 225 square meters or more and commercial buildings of 500 square meters or more must install rainwater harvesting facilities. Owners must construct these structures, and without them, municipal authorities will not issue No Objection Certificates (NOCs) for water connections. Non-compliance could lead to legal action, including fines or imprisonment.



The regulations are part of the Environmental Protection Building Regulations 2020 and RIICO Building Regulation 2021, which stipulate that rainwater harvesting units must be built in setback areas of qualifying plots. The state government is now empowered to enforce these measures to ensure widespread adoption of rainwater harvesting infrastructure.

## **TIMES OF INDIA**

**Date: 19.08.2024**

### **Is Gurgaon about to unseat Mumbai in price of luxury condos ?**

The Indian real estate market, particularly in the luxury segment, is experiencing a significant post-COVID boom. DLF is set to launch Camellias-II in Gurgaon, which may become India's most expensive highrise condominium in terms of carpet area, with prices starting at Rs 60 crore for 10,000 square feet. The carpet area pricing could surpass the current Rs 1.7 lakh per square foot seen in the existing Camellias. Historically, only Mumbai, Delhi, and parts of Gurgaon have commanded over Rs 1 lakh per square foot.

The existing Camellias, home to top CEOs and high net worth individuals, was launched a decade ago at Rs 22,500 per square foot and remains one of the priciest properties in the country. Gurgaon's rapid growth in luxury real estate is evident, with the Camellias breaking into the elite club of properties with high pricing.

Demand for larger and better homes has surged post-COVID, with DLF selling 2,500 units across three projects in Gurgaon, worth Rs 22,000 crore, within 15 months. India's luxury real estate market has grown by 250% from 2018 to 2023, with luxury and super luxury properties becoming a significant but small part of the overall market. The trend of buying aspirational homes is strong, especially among younger buyers and NRIs. DLF is also launching luxury villas in Goa, starting at Rs 60 crore.

## **BUSINESS LINE**

**Date: 20.08.2024**

### **GoM to review GST on JDA in real estate sector, Council to meet on September 9**

The GST Council is expected to review the application of GST on Joint Development Agreements (JDA) in the real estate sector on September 9. This review follows recommendations from a Group of Ministers (GoM), which will meet beforehand to discuss various aspects of GST on the transfer of development rights under JDA. The GoM, led by Goa Chief Minister Pramod Sawant, includes members from several states and will also examine schemes to boost the real estate sector.

JDAs allow landowners and developers to collaborate on real estate projects, with different GST implications depending on when the agreement was signed. The Telangana High Court recently upheld GST applicability on the transfer of development rights in JDAs, a ruling that has been challenged in the Supreme Court, with a hearing scheduled for September 9.

**BUSINESS WORLD****Date:19/08/2024****Despite Budget Provisions, Residential Housing Market Will See Sales Growth: Knight Frank**

The Knight Frank report highlights a cautiously optimistic outlook for India's residential housing market. Despite potential budget impacts and uncertainties, 51% of stakeholders expect higher sales in the next six months, while 61% foresee an increase in residential launches. Pricing is also expected to rise, with 63% predicting price hikes.

In the office leasing market, 63% of respondents anticipate increased activity, reflecting positive business sentiments and economic revival. However, both residential and office markets show a cautious sentiment, with some stakeholders expecting stability or decline.

The future sentiment score for different regions and stakeholders has moderated, indicating a more conservative outlook. Nevertheless, optimism remains strong, with India's broader economic scenario expected to improve. Knight Frank's Chairman, Shishir Baijal, emphasizes India's resilience and strong growth prospects, supported by effective monetary policy and stable conditions.

**ET REALTY****Date: 20.08.2024****MahaRERA makes submission of quality assurance by project developers mandatory**

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has introduced new regulations requiring real estate developers in Maharashtra to present a quality assurance certificate to the regulator at the end of each financial year. This certificate must be based on various factors, including the project's structural design, stability, material quality, workforce skill level, and fire safety measures. Developers must publish this certificate on their websites.

The regulations were introduced through the MahaRERA General (Amendment) Regulations, 2024, which amend the existing 2017 regulations. The aim is to improve construction quality, making the defect liability period less relevant. Developers are now required to ensure quality control at each stage of construction, with increased accountability to homebuyers. The defect liability period, where developers must address deficiencies in residences within five years of possession, remains in effect, with complaints to be resolved within 30 days at no cost to the homebuyer.



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