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# RERA TIMES

## REAL ESTATE

(Regulation and Development) Act, 2016

*(A Journal on Real Estate Bye Laws)*

Volume-I

Part-II

Sept. 2017

**CA. Sanjay Ghiya**  
FCA, DISA, CCCA

**Tejram Meena**  
I.R.S. (Retd. Member ITAT)





# RERA TIMES

**REAL ESTATE  
(REGULATION AND DEVELOPMENT) ACT, 2016  
(A Journal on Real Estate Bye Laws)**



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## **TABLE OF CONTENTS**

### **PART – I**

<b>ARTICLE .....</b>	<b>1</b>
----------------------	----------

### **PART – II**

<b>REPORTING OF CASE LAWS.....</b>	<b>5</b>
------------------------------------	----------

### **PART – III**

<b>NOTIFICATION &amp; CIRCULARS.....</b>	<b>17</b>
--	-----------

### **PART – IV**

<b>RERA NEWS .....</b>	<b>28</b>
------------------------	-----------

### **PART – V**

<b>MISCELLANEOUS .....</b>	<b>33</b>
----------------------------	-----------

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## PART-I: Article

### DUTIES AND OBLIGATIONS OF PROMOTERS UNDER REAL ESTATE (Regulation and Development) Act, 2016

The peculiar feature of this Act is that unlike the other Acts in force, it focuses on the principles of transparency and self-discipline rather than just meeting out with a bunch of compliances. It has taken a leap away from unethical practices to ethical practices.

RERA Act provides a legal framework that seeks to:

Engulf the shattered provisions of the previous real estate laws



Blend it with the new regulations



And build a new and improved standardized structure that would act as a confined mould for the real estate sector to fit into without looking for escape routes.

**RERA Act, 2016 will ensure greater accountability towards consumer and attempts to balance the interest of consumers and promoters by imposing certain responsibilities on both. Here in this article, the major duties and responsibilities of the promoter/developer under the Act have been explained.**

*The Act through its provisions has imposed certain mandatory obligations over promoters to make them answerable and accountable towards consumers/allottees.*

- **Mandatory Registration:**

Prior registration of real estate project with RERA in cases where the area of proposed land to be developed exceeds 500 sq. mtrs. or where the number of apartments proposed to be developed exceeds 8, is now mandatory; failing

which the promoter would not have the autonomy to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building.

- **Obligation to attach Documents:**

In the interests of transparency and symmetry of information between builder and allottee, it is the obligation of the promoter to enclose various documents along with application for registration.

- **Availability of Documents:**

Promoter is responsible to make available to the allottees sanctioned plans, layout plans, the stage-wise time schedule of completion of the project including the provisions for civic infrastructure like: water, sanitation, electricity, etc.

- **Advance or Deposit:**

In order to safeguard the misapplication of client's fund, the promoters are now not allowed to accept as advance or deposit or application fee more than 10% of cost of apartment, plot or building without first entering into agreement for sale followed by its registration.

- **Certificate from engineer, an architect and CA in practice to withdraw fund:**

Also, the promoters are bound to keep 70% of the amounts realized from real estate project from allottees, from time to time, deposited in a separate account in a schedule bank and to use the same only for meeting the cost of construction and land cost. Withdrawal for the purpose of usage is safeguarded by certification from an engineer, an architect and CA in practice.

- **Revocation of Registration**

Non-compliance of Rules and Regulations, violation of term and conditions of approval and actions related to unfair trade practices can now result in revocation of registration.

- **To transform the promoter's "liberty" into their "liability", obligatory provisions have been enacted.**

- For instance, adherence to sanctioned plans and project specifications, not to make any major alterations or additions to sanctioned plans,

layout plans and specifications without the previous written consent of at least 2/3<sup>rd</sup> of allottees;

- Liability to rectify structural defect or defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development within 30 days if brought to the notice of promoter by allottee within 5 years from the date of handing over possession;
- Liability to compensate allottees for loss caused by defective title and there is no time limit for filing the claim for compensation.
- In order to attain transparency and public visibility the promoters are required to create webpage on website of RERA and share details of proposed project including quarterly updates of list of bookings, no. of garages booked, up-to-date status of the project as well as the status of approvals and such other information, documents as may be specified by the regulations made by the authority.
- Promoter is responsible to obtain the completion certificate or the occupancy certificate or both as applicable from the relevant competent authority as per the local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees.

❖ *The Act has made clear distinction between the terms “**completion certificate**” and “**occupancy certificate**”. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. **Completion certificate** relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority. The two definitions are very broad and in cases where the municipal authority issues only certificate which covers both the requirements, the same would be sufficient.*

- To execute a registered conveyance deed in favor of the allottee within specified period as per sanctioned plans as provided under the local laws and in absence of any local law, the conveyance deed shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate.
- Promoters have been assigned the responsibility of formation of association or society of allottees within the time limit as prescribed under local laws or in absence of that, within 3 months of majority of allottees having booked their plots or apartments;

### **Rights of Buyer**

- There are always two sides to a coin; the same ideology goes with the RERA as well.
- Duties of the promoters vis-a-vis rights of buyers are provided under the Act.
  - Total price payable by buyer to be clearly mentioned in Agreement For Sale and shall be escalation-free except for increase in statutory development charges;
  - The allottee shall have the exclusive ownership over the apartment/plot clubbed with the proportionate share in common areas;
  - Right to remedy of approaching RERA against wrongful cancellation of allotment by the promoter;
  - Right to claim compensation from promoter for breach of agreement or loss caused by defective title without any time period limitation;
  - Right to take possession within 2 months of issue of occupancy certificate;

## **PART-II:**

### **Reporting of Case Laws**

#### **MAHARASHTRA RERA AUTHORITY V/S SAI ESTATE CONSULTANT CHEMBUR PVT. LTD.**

ORDER DATE: 05.06.2017

(ORDER OF SUO-MOTO COMPLAINT)

A registered real estate agent having published advertisement of unregistered real estate projects in various newspapers and also displayed their billboards, hoardings all over the city; not acceptable.

Authority gave direction to withhold the advertisement with immediate effect and rectify all the advertisement/hoardings by putting **Maharashtra RERA** registration no. The agent was restrained from advertising any project for marketing, booking and selling or offers for sale or inviting persons for purchase of any building/apartments not registered with Maha RERA, put stickers on the future advertisements indicating that as per the directions of Maha RERA: the advertisement of the project which has not been registered has been withdrawn and they apologize for the same.

RERA also imposed penalty @ ₹ 10,000 per day for twelve days.

#### **ANAMIKA SINGH CHAUHAN V/S FAME KINGDOM AND TOMAR BUILDER BHOPAL**

ORDER DATE: 10.07.2017

MADHYA PRADESH RERA AUTHORITY

The RERA Authority can grant time to both the persons i.e. allottee and promoter to settle the issue mutually.

**NITESH KASHYAP V/S HG INFRATECH GROUP, GOVIND PARK, GWALIOR**

ORDER DATE: 17.7.2017

MADHYA PRADESH RERA AUTHORITY

The plaint filed by the other person who has not booked the flat/plot has no legal right to file the suit on behalf of his brother and mother. Accordingly, the plaint is liable to be rejected. **THE RERA AUTHORITY (MADHYA PRADESH)** has directed to refund the amount deposited by his brother and mother without extra terms and conditions.

**DINESH CHANDRA JOSHI V/S AKRITI HOUSE ECO CITY**

ORDER DATE: 21.07.2017

MADHYA PRADESH RERA AUTHORITY

Flat booked in 2013, oral possession was given 3 years and 3 months late and no written possession was given. Allottee had paid amount to the promoter, the RERA authority directed to give written possession within 7 days.

**SUNITA SHIVHAREY W/O SHRI RAM KUMAR SHIVHAREY V/S SHRI JITENDRA SINGH KHUSHWAHA AND OTHERS**

CASE FILED DATE: 19.05.2017

FINAL ORDER DATE: 18.08.2017

MADHYA PRADESH RERA AUTHORITY

Flat booked by the complainant in the year 2014 before the RERA effective date, **MADHYA PRADESH REAL ESTATE REGULATORY AUTHORITY, BHOPAL** held that if allottee had not made compliance with the terms and conditions of allotment letter issued by the promoter, then no interest and no compensation will be awarded.

**SMT. RAJNI LITORIYA D/O LATE SHRI SITARAM CHAUBEY V/S SHRI GURUMUKH DAS TULSANI S/O MANGAT RAM TULSANI**

CASE FILED DATE: 22.05.2017

FINAL ORDER DATE: 18.08.2017

MADHYA PRADESH RERA AUTHORITY

Plot allotted in the year 2016 without drawings and approvals from the competent authority was made with fraudulent intentions. The unorganized sale of plots for more than 8 units comes under section 3(2) of the RERA Act and the promoter is a colonizer. The RERA Authority can also direct to the other allottees of the adjacent plots to give the evidences to decide the issue before it. The **MADHYA PRADESH RERA AUTHORITY** has directed to the collector of the district: DATIYA to verify the facts of the complainant and other parties, make demarcation of plots and handover the possession.

**SMT. VINAMRA JAIN & SMT. SHUBHRA JAIN V/S MP HOUSING BOARD**

ORDER DATE: 21.08.2017

MADHYA PRADESH RERA AUTHORITY

The respondent raised an objection regarding simultaneous complaints filed by the complainant in two places, i.e. consumer forum and the RERA authorities, which is unacceptable. After objection being raised by the respondent, the complainant requested to withdraw its case from the RERA authority. Accordingly, complaints/complaints were rejected.

**ANURADHA MAHESHWARI V/S PRAHLAD DAS MANGAL**

ORDER DATE: 05.09.2017

MADHYA PRADESH RERA AUTHORITY

The promoter had launched a project of “Brij Vihar Colony”, Barasiya Road, Bhopal in 2006. The complainant made various grounds for not completing the project as per the sanctioned plan approved by the TNCP, particularly the colony had not been handed over to Nagar Nigam, no concrete road constructed, no construction of drainage system, seepage in water tank and no development of the playground, park

and also instead of Gau Shala propmoter constructed veterinary clinic and aurvedic medical shop. These facts were not disclosed at the time of approval of map from the competent authority. The promoter's reply was considered by the RERA authority Bhopal and Authority directed Commissioner Nagar Nigam, Bhopal (MP) to act as per Madhya Pradesh Nagar Palika (Regulations and Terms or Registration of Colonizer) Rules, 1998; Section 13(2) to enforce the development work of "Brij Vihar Colony". Further, the Nagar Nigam was directed to create lien in vacant plots under Rule 13(2) and release the plots after making full compliance of this order. The land used in the name of veterinary hospitals and ayurvedic shops is to be assigned from the unsold plot of the colony by the Nagar Nigam Bhopal. It further directed that whether the promoter activities are violating the order of the National Green Tribunal. The RERA authority asked to give compliance report within 3 months by the Commissioner of Nagar Palika Nigam Bhopal.

**KAMLESH AILANI V/S EKTA PARKSVILLE HOMES PVT. LTD.**

ORDER DATE: 06.09.2017

MAHARAHTRA REAL ESTATE REGULATORY AUTHORITY

This is the complaint filed by the complainant under Section 18 Real Estate (Regulation and Development) Act, 2016 to claim the advance payment made by them in respect of Flat No.: 607 D wing in the respondents Real Estate Project known as Brooklyn Park, also known as Ekta Parksville.

The Parties have amicably settled the dispute and have filled their consent term marked as exhibit (A). The complainants have received full amount and their claim is fully satisfied. Therefore, there remains nothing for adjudication; hence the complaint is disposed off.

**SMT. SHASHI SABLOK V/S SVS BUILDCON PVT. LTD.**

ORDER DATE: 11.09.2017

MADHYA PRADESH RERA AUTHORITY

**Whether RERA has jurisdiction over the projects only after registration: No, clarification through press release is general. The RERA prevails being specific act over the Arbitration and Conciliation Act, 1996 and Consumer Protection Act.**

**ORDER****(Dated 11.09.2017)**

1. This complaint is filed by the applicant before the Authority against non-applicant promoter SVS Buildcon, aggrieved by the fact that even though almost the entire total agreed amount has been paid towards an apartment No.104 in Block C-5 booked in the group housing project “Unihomes”, located at Kolar Road, Bhopal, way back in March 2011 the apartment has not been delivered yet, even though delivery was to be given within 24 months of the Buyer’s Agreement dated 5<sup>th</sup> May 2011. The Applicant has prayed for compensation for the delay in delivery.
2. Before we go into the merits of the case we consider it pertinent to first deal with the preliminary objections raised by the learned counsel for the non-applicant as they involve questions regarding jurisdiction, power and ambit of the RERA Act and the Authority and maintainability of the case.
3. The preliminary objections may be summarized as follows:
  - (a) That the instant complaint is premature since S.3 and S.4 of the Act make it clear that the Authority has a mandate to deal with the complaints relating to a project only *after* a project has been duly registered in accordance with the Act and Rules. Reliance has been placed upon a Press Release of the Ministry of Housing and Urban Poverty Alleviation, GOI dt 30.4.2017.
  - (b) That since the Authority has the power to grant reasonable extension to the promoter to enable completion, any decision of the Authority granting relief to the applicant would deprive the non-applicant of an opportunity to seek extension to complete the project.
  - (c) That the complaint is not maintainable before Authority since Clause 21.1 of the agreement provides for arbitration in the event of a dispute between the parties, to be governed by the provisions of the Arbitration & Conciliation Act, 1996.
  - (d) That the instant complaint involves complicated questions of both law and fact and can therefore only be adjudicated upon before a competent civil court having jurisdiction.

4. The Authority has heard both applicant and non-applicants. We frame the preliminary issues in summary as follows:

**(a) Whether S.3 and S.4 of the Act require that the Authority would have the mandate to adjudicate on a complaint only after the project which the complaint relates to has been duly registered in the Authority, and the complaint is therefore premature ?**

**(b) Whether any decision of the Authority granting relief to the applicant deprive the non-applicant of seeking an opportunity for extension of time to complete the project ?**

**(c) Whether it is an Arbitrator appointed under the Arbitration and Conciliation Act, 1996 or the Real Estate Regulatory Authority (RERA) constituted under the Real Estate (Regulatory and Development) Act, 2016 which is the competent body to adjudicate on a complaint filed by complainant?**

**(d) Whether the RERA is a suitable forum for adjudication on the present complaint, or does jurisdiction lie only with a competent civil court ?**

5. All preliminary issues mentioned above are being analysed and decided in sequential order in the following paragraphs.
6. We deal here with issue (a). If the claim that the Authority has jurisdiction over the project after, *and only after*, it has been duly registered were to be accepted, it would result in an absurd situation, e.g. supposing a project which required registration chose not to apply for registration; or if it did apply for registration, but was refused registration on the grounds that it did not comply with the essential requirements of clear land title, or statutory permissions etc., still the Authority would be barred from acting against the promoter on the grounds that the project was not registered! It would mean that having committed one default of the law (ignoring the requirement to apply for registration, or having applied, failing to qualify for registration), this very act of default would now protect the defaulter from any penal action and insulate the defaulter from legitimate claims from aggrieved customers. Such an absurd reading of the law cannot be maintained. The right reading of S.3 and S.4, and

in fact all other relevant sections of the Act, would be to interpret them to hold that the mandate of the Authority extends to all such projects *as require registration* under the Act, or which fall within the purview of the relevant sections of the Act (such as the five year guarantee against structural defects, workmanship etc). Thus, if a project requires to be registered, then irrespective of whether it has applied for or been registered or not, the promoter would be obligated under the act and Rules.

7. Relying on a Press Release to interpret an Act is not an acceptable practice. In any case, the Press Release talks about the normal course of events, i.e. all projects complying with the requirements, applying for and obtaining registration, and then disputes arising. The release does not talk of the several special cases that may arise. This argument of the non-applicant cannot therefore be sustained. In the event, Learned Counsel for the non-applicant informs the Authority that they have applied for registration in RERA prior to the deadline of 31<sup>st</sup> July 2017, and hence the entire argument now remains only a theoretical one.
8. We shall now deal with issue (b). The project in question is admittedly delayed way beyond the delivery date assured in the Agreements signed between the non-applicants and the applicants. Even if while dealing with the application for registration submitted by the promoter to the Authority the Authority does grant the promoter some more time to complete the project, such grant of more time cannot obliterate the legitimate claims of the non-applicant which are being made under the provisions of an agreement already signed. The promoter cannot be absolved of his obligations under an agreement he has signed and under which he has accepted funds. The extent of his obligations, the extent of the buyers' obligations, and the extent of relief they are entitled to, are all issues to be dealt with separately, and depending on the facts of each case – but the broad principle that any date that the Authority may permit for completion of the project while examining the registration application of the non-applicant would not, and cannot, extinguish the claims of the applicants under agreements already signed, would have to be upheld.
9. Now to take up issue (c), i.e. the question of whether the Arbitration Act or the RERA Act would be applicable in the instant case. The Real Estate (Regulation and Development) Act, 2016 was enacted and enforced with the aim and objective of

regulation and promotion of the real estate sector and ensuring sale of plots, apartments or buildings as the case may be, in an efficient, fair and transparent manner, for protection of the interests of the consumer. The Act establishes an adjudication mechanism for speedy dispute redressal in the real estate sector. It is also clear that a dispute between a real estate promoter and an allottee is specific in nature and the adjudicating mechanism established under the Act is exclusively for adjudicating such dispute between real estate consumers and promoters, whereas the Arbitration and Conciliation Act, 1996 (hereafter referred to as Arbitration Act) is general in nature regarding any dispute between two parties to a contract. It is a cardinal principle of law that a specific law regarding any subject matter has an overriding effect over any general law. This principle is well encapsulated under legal maxim "*generalia specialibus non derogant*" meaning that the provisions of a general statute must yield to those of a special one. The Arbitration Act (*lex generalis*) in so far as it relates to disputes between two parties to a contract is a general law. Arbitration Act has not been enacted for the special purpose relating to disputes between real estate promoters and consumers whereas RERA Act, (*lex specialis*) is enacted exclusively for the resolution and adjudication of disputes involving real estate promoters and allottees. Hon'ble Supreme court in **Gujrat Urja Vikas Nigam Ltd vs. Essar power Ltd (2008) 4 SCC 755**, on the issue raised whether any provisions for dispute resolution between the licensees and generating company contained in the Electricity Act, 2003 will prevail over the provision of the Arbitration Act, held that the provisions of the Electricity Act are special and hence override the general provisions of the Arbitration Act, applying the very same principle that a special law prevails over a general one. Furthermore, it is a well-settled proposition of natural justice encapsulated in the legal maxim "*lex posterior derogate legi priori*", that "the later law overrides the previous law". In the present case, the RERA Act, is younger than the Arbitration and Conciliation Act, 1996. *In fact when the agreement for sale was entered into, the RERA Act was not available to either of the parties and therefore it is conceivable that they possibly put in the clause relating to arbitration in the absence of any other legal alternative.* But the situation now is totally different. With the enactment of the RERA Act, the legal

alternative has not only been made available, but it has been made mandatorily applicable not only to all future projects but also to all on-going ones. Hence regarding the present complaint, it is crystal clear that the Authority (and its Adjudicating Officer) is fully competent to adjudicate in the present case.

10. Furthermore, we note that S.88 of the RERA Act states that the Act is in addition to, and not in derogation of, the provisions of any other law for the time being in force. Exactly this point of law has been dealt with by the Hon'ble Supreme Court in **National Seeds Corporation vs. M. Madhusudhan Reddy & Anr. (2012)2 SCC 506**. After taking into consideration Section 8 of the Arbitration Act and the provisions of the Consumer Protection Act the Court held that since the remedy available under the Consumer Protection Act was in addition to, and not in derogation of, the provisions of any other law for the time being in force, the complaint filed in the Consumer Forum would be maintainable despite there being an arbitration clause in the agreement to refer the dispute to an arbitrator. This same authoritative pronouncement of the Supreme Court was reiterated by a three members bench of the **National Consumer Disputes Redressal Commission in DLF Ltd. Vs. Mridul Estate Pvt. Ltd., R.P. No.412 of 2011 decided on 13.5.2013** and again by the **National Consumer Disputes Redressal Commission in Sunil Kumar Sengar & Anr. Vs. M/s Unitech Ltd. Case No.427 of 2014 decided on 8.6.2015**. Again S.89 of the Act clearly mentions that the RERA Act has overriding effect over any other law for time being in force in matters related to disputes between real estate promoters and allottees. On the basis of above mentioned case law and legal maxims, we conclude that in the present matter of dispute the RERA Act will apply rather than the Arbitration Act, and that the Authority has proper jurisdiction and the complaint is maintainable whereas Arbitration and Conciliation Act, 1996 is not applicable to the present dispute.
11. And now for issue (d). The Real Estate (Regulation and Development) Act, 2016 has been passed by Parliament based on its powers to legislate for the country on subjects that are included in the Concurrent List (List 3) of the 7<sup>th</sup> Schedule to the Constitution of India. Once assented to by the President and published in the Gazette of India, the Act is binding on all. It is very clear from the Statement of Objects and

Reasons as well as the provisions of the Act itself in particular the first proviso to sub-section (1) of section 3 of the Act that the Act is applicable to on-going projects, that is projects for which completion certificate by the competent authority has not been issued by the date of coming into force of Section 3 of the Act, i.e. May 1<sup>st</sup>, 2017. It is an admitted fact that 'Unihomes' is a real estate project which is incomplete as on date, therefore, as we have already shown, it comes under the definition of on-going as provided under the RERA Act and so it certainly comes under the purview of the Act. Now S.79 of the Act itself states: "*Bar of jurisdiction. – No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*" This being the definitive legal position, this last preliminary objection of the non-applicant too is set aside.

12. **We have thus dealt with all the preliminary objections raised by the non-applicant in the reply and found none of them valid for the reasons detailed above. We hold that the instant project "Unihomes" is an ongoing project within the meaning of the Act and the Rules, that the Authority has the mandate and jurisdiction to consider the application and grant relief as deemed fit, that such an action would not deprive the non-applicant of any legitimate opportunity for extension, and that neither the Arbitration Act would apply, nor would the matter lie in the jurisdiction of a civil court rather than that of the RERA.**
13. We shall now deal with other issues and the merits of the case.
14. In para 6 of the reply, the non-applicant has alleged that the applicant has not presented true and correct facts. But the non-applicant has been unable to show which points claimed by the applicant are not true or are incorrect. In fact, the dates of signing the agreement (5.5.2011), the amounts paid by the applicant to the non-applicant (Total of Rs. 14,48,502 paid between 18.3.2011 and 5.5.2011), and the period of delivery mentioned in the agreement (24 months from date of signing of Buyer's Agreement), are undisputed and admitted by the non-applicant, and therefore

it seems that the response that they are untrue and incorrect is merely a routine response without substance.

15. In para 6.b of the reply the non-applicant has submitted that as per clause 3.3 of the Agreement timely payment of the installments was the essence of the agreement, however the complainant failed to make timely payments. It is shocking that the non-applicant has reply to this Authority in such a routine fashion and make allegations without substantiating them. The schedule required that Rs. 14,07,138 be paid within 45 days of the Agreement. By the non-applicants own admission, proved by the receipts issued by him, a larger amount of Rs. 14,48,502 (representing 93% of the entire amount) was paid *prior* to signing the Buyer's Agreement on 5th May 2011. Therefore how can the allegation be made that the installments were not paid on time? From this para and the preceding para it seems that the non-applicant is simply making routine replies to the petition without regard to the facts of the case.
16. While admitting that the project has got delayed by several years, the non-applicant has submitted that the reasons for this include demonetisation, shortage of sand, NGT directives etc. However, none of these constitute *force majeure*, and therefore the allottees cannot be made to suffer for this. The non-applicant is in the business of building real estate projects, and these are business risks which the non-applicant is expected to bear.
17. The non-applicant offered to compensate the complainant for the delay in handing over possession of the unit as per clause 4.5 of the Agreement, and assured that the possession of the unit would be delivered as soon as possible. However, no definite date was offered by the non-applicant for this. In the interests of justice the Authority granted a month's time for the non-applicant to make a just and reasonable offer to the applicant to compensate her for the delay in delivery as well as back it up with a convincing assurance of completion by a definite date.
18. However, after the period granted, learned counsel for the non-applicant submitted that they were unable to arrive at a satisfactory compromise.
19. The facts of the case are undisputed. The applicant has paid practically the full amount for the unit booked, and made this payment prior to the signing of the Agreement on 5-5-2011, in which it was promised that possession the unit would be

delivered within 24 months, i.e. by 5.5.2013. This has not happened, due to the fault of the non-applicant builder. It is also not clear whether work is going on at the site, because the non-applicant has been unable to give any revised date for the delivery of the flat. Clauses 4.7 and 4.10 of the Agreement refer to the possibility of the inability of the builder to construct or deliver the flat to the allottee, in which case it is assured that the entire amount would be refunded along with 10% per annum simple interest from the dates on which the amounts were received by the builder. On the other hand clause 4.5 assures monthly compensation at the rate of Rs. 5 per square foot of super built up area (981 sq.ft.) for every month of delay that is there in delivery of the unit beyond the promised date. The question of adjusting this in future installments does not arise, since practically the whole amount has already been paid by the applicant to the non-applicant.

20. The Authority therefore concludes that the very least that the applicant is entitled to is relief under clause 4.5 of the Agreement (if he remains within the project) or under clauses 4.7/4.10 of the agreement, (if he moves out of the project) since the builder is unable to deliver the unit, as well as any additional compensation as may be thought fit and proper.
21. Therefore, under Rule 26(3) of the M.P. Real Estate (Regulation and Development) Rules, 2017, the case is transferred to the Adjudicating Officer to expeditiously decide the compensation under Section 18 of the Act.

**Shri Anthony de Sa**  
Chairman

**Shri Aniruddh D Kapaley**  
Member

### PART-III: Notification & Circulars

राजस्थान रियल एस्टेट रेग्यूलेटरी ऑथोरिटी, जयपुर

क्रमांक प.4(1)RJ/RERA/2017/डी-41

जयपुर, दिनांक :- 05.09.2017

#### आदेश

रियल एस्टेट (रेग्यूलेशन एण्ड डवलपमेन्ट) एक्ट, 2016 की धारा 3 के तहत ऑनगोईंग प्रोजेक्ट्स का पंजीकरण उक्त अधिनियम लागू होने की दिनांक से 3 माह की अवधि में किया जाना अनिवार्य था। यह निर्धारित अवधि दिनांक 31.07.2017 को समाप्त हो चुकी थी। प्राधिकरण द्वारा आदेश दिनांक 10.08.2017 के द्वारा उक्त अवधि दिनांक 31.08.2017 तक मय पैनल्टी के बढ़ायी गयी थी। दिनांक 31.08.2017 के पश्चात् ऑनगोईंग प्रोजेक्ट्स के पंजीकरण हेतु निम्नानुसार शास्ति निर्धारित की जाती है:-

1. दिनांक 31.08.2017 के पश्चात् 30.09.2017 तक आवेदन करने पर पंजीकरण शुल्क एवं प्रोजेक्ट लागत का 2 प्रतिशत अथवा पंजीकरण शुल्क की दस गुणा राशि जो भी अधिक हो शास्ति के रूप में ली जाये।
2. दिनांक 30.09.2017 के पश्चात् आवेदन करने पर पंजीकरण शुल्क एवं प्रोजेक्ट लागत का 10 प्रतिशत शास्ति ली जाकर पंजीकरण किया जावे।

#### **URBAN DEVELOPMENT DEPARTMENT**

JAIPUR, DATED: 17.02.2017

#### **ORDER**

In exercise of the powers conferred by third proviso of sub-section (1) of section 20 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016) the State Government hereby designate the Addl. Chief Secretary to the Government, Department of Urban Development and Housing, Government of Rajasthan as the Real Estate Regulatory Authority until the establishment of a Regulatory Authority under section 20 of the said Act.

**GOVERNMENT OF RAJASTHAN**  
**URBAN DEVELOPMENT DEPARTMENT**

JAIPUR, DATED: 15.05.2017

**NOTIFICATION**

Whereas, the first proviso to sub-section (4) of section 43 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016), stipulates that until the establishment of an Appellate Tribunal, the State Government shall designate any Appellate Tribunal functioning under any law for time being in force to be the Appellate Tribunal to hear appeals under the said Act.

Now, therefore, in exercise of the powers conferred by the first proviso to sub-section (4) of section 43 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016), the State Government hereby designates the Food Safety Appellate Tribunal, Jaipur, established under sub-section (1) of section 70 of the Food Safety and Standards Act, 2006 (Central act No. 34 of 2006), as the Real Estate Appellate Tribunal for the purposes of the said Act.

**UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY**

14/U.P.RERA-2017

DATED: 31/08/2017

*The RERA Authority Lucknow had extended the period for Registration of ongoing projects upto 30.09.2017 by charging 1% fees on estimated cost on project through Order No. 14/UPRERA/2017 dated 31.08.2017.*

उत्तर प्रदेश भू-संपदा विनियामक प्राधिकरण के समक्ष चालू परियोजनाओं (on going project) के पंजीकरण के संबंध में उ0प्र0 भू-संपदा विनियामक प्राधिकरण के कार्यालय ज्ञाप संख्या-10/यू0पी0रेरा-2017 दिनांक 01.08.2017 एवं शुद्धि पत्र संख्या-11/यू0पी0रेरा-2017 दिनांक 02.08.2017 द्वारा सम्प्रवर्तको (Promoters) को अपनी चालू परियोजनाओं (on going project) के पंजीकरण हेतु आ रही समस्याओं के दृष्टिगत सम्यक् विचारोपरान्त up-rera के समक्ष चालू परियोजनाओं (on going project) के पंजीकरण हेतु निम्नानुसार अतिरिक्त समय प्रदान करने का निर्णय लिया गया है:-

(1)	01.08.2017 से 15.08.2017 तक	निःशुल्क
(2)	16.08.2017 से 31.08.2017 तक	भू-संपदा परियोजना की अनुमानित लागत के 01 प्रतिशत शुल्क के साथ।
(3)	01.09.2017 से 15.09.2017 तक	भू-संपदा परियोजना की अनुमानित लागत के 05 प्रतिशत शुल्क के साथ।
(4)	16.09.2017 से 30.09.2017 तक	भू-संपदा परियोजना की अनुमानित लागत के 10 प्रतिशत शुल्क के साथ।

2—उक्त के संबंध में सम्प्रवर्तको (Promotoers) द्वारा चालू परियोजनाओं के पंजीकरण हेतु प्रदान किये गये अतिरिक्त समय को बढ़ाने की मांगों के दृष्टिगत सम्यक् विचारोपरान्त उक्त कार्यालय ज्ञाप संख्या-10/यू.पी.रेरा-2017 दिनांक 01.08.2017 एवं शुद्धि पत्र संख्या-11/यू.पी.रेरा-2017 दिनांक 02.08.2017 में निम्नवत् संशोधन किये जाने का निर्णय लिया गया है:—

01.09.2017 से 30.09.2017 तक	भू-संपदा परियोजना की अनुमानित लागत के 01 प्रतिशत शुल्क के साथ।
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3—उपर्युक्त सन्दर्भगत आदेश इस सीमा तक संशोधित समझा जाय।

## **MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

MAHA-RERA/LA/32/2017

DATE: 11.05.2017

### **DEFINITION OF CO- PROMOTER**

During the online registration process, it has been observed that several promoters enter into arrangement with individuals/ organizations, by which the said individuals/ organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale. For example, a landowner may handover his land to a promoter and in return be entitled to 20% of the apartments developed or 20% of the revenue generated from sale of apartments or an investor gives money to the promoter at an initial stage of project launch and through an arrangement with the promoter gets entitled to a 20% share of the total area developed, which is constructed by the promoter but marketed and sold by the investor. However, in such scenarios, the sale proceeds to these individuals/ organizations should not be considered as cost of the project and withdrawn from designated bank account merely by the virtue of this arrangement. For the purpose of

withdrawal from the designated Bank Account, these individuals/ organizations should be considered as promoters and hence shall be termed as Co-Promoters.

In exercise of the powers vested in Maha RERA under regulation No. 38 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, the following definition of Co-Promoter is being notified:-

Co-Promoter means and includes any person(s) or organization(s) who, under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a share of total revenue generated from sale of apartments or share of the total area developed in the real estate project. The liabilities of such Co-Promoter shall be as per the agreement or arrangement with the Promoters, however for withdrawal from designated Bank account, they shall be at par with the promoter of Real Estate Project.

Further, the arrangement or agreement of Co-Promoter(s) with promoter should clearly detail the share of Co-Promoter(s) and a copy of the said arrangement or agreement should be uploaded on the Maha RERA (Regulations and Development) (Registration of Real Estate project, Registration of Real Estate Agents, Rate of Interest and Disclosures on website) Rules, 2017. Further, each of the Co-Promoters/ Individuals/ Organization, entitled to share of the total area developed, should open separate Bank account for deposit of 70% of the sale proceeds realized from the allottees.

## **MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

ORDER NO.: 02

DATE: 25.05.2017

### **OFFICE ORDER MAKING LOCAL ADDRESS MANDATORY**

For registering projects/agents in Maharashtra, for administrative convenience and in case of emergencies for urgent correspondence, promoters/real-estate agents should have a local address in Maharashtra even though they are headquartered outside Maharashtra. The promoter/real estate agent should enter his local address in Maharashtra while registering in the online application. Also if the Director/Authorized Signatory or other functionaries of the Promoter's enterprise are based out of Maharashtra, a local address within Maharashtra needs to be entered.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 01/2017

DATE: 25.05.2017

**CLARIFICATIONS REGARDING PROJECT REGISTRATION PROCESS**

This clarification is issued to overcome the common mistakes committed by the promoters while filing the project registration and to ensure speedy registration:

1. Declaration in Form B should be provided as per the prescribed format. Promoters are not allowed to remove or add any clause in the declaration.
2. In case of documents uploads, if a field is not applicable, then a self-declaration to the same effect shall be uploaded. Example: In case there are no encumbrances, a self-declaration to the same should be uploaded.
3. It is hereby clarified that the period of 30days mentioned in Section 5 of the Act shall start only from the day on which the application for registration, complete in all respect, is received in the office of MahaRERA.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 01/2017

DATE: 31.05.2017

MahaRERA/Secy/File No. 27/53/2017

**CLARIFICATION REGARDING LICENSE NUMBER OF ENGINEER**

The Engineer, who fulfils the criteria of qualification as defined in section 2(4) of RERA Act 2016, may not necessarily possess License Number, as there is no mandatory procedure of issuing Licenses to the Engineers, who prepare the plans and estimates and record the measurements of work done in the project.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 2/2017

DATE: 31.05.2017

**RECOGNITION OF HEADS OF FINANCE DEPARTMENT OF GOVERNMENT CONTROLLED DEVELOPMENT AUTHORITIES, AUTONOMOUS BODIES, ETC.**

Various public authorities/ government undertakings like Mhada, Cidco etc. are also developing housing colonies and are required to register the real estate projects undertaken by them with MahaRERA as they fall within the definition of promoter.

The above referred public authorities are State Government controlled autonomous bodies having heads of their respective finance department i.e. Finance Controller, Chief Accounts Officer, etc. Such financial heads of public authorities, government undertakings shall be recognized by Maharashtra Real Estate Regulatory Authority as, deemed to be Chartered Accountants, for the purpose of registration with MahaRERA.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 3/2017

DATE: 07.06.2017

**DECLARATION TO BE SUBMITTED BY PROMOTERS TO THE BANK**

Under the provisions of Rule 5 of 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 promoter is required to submit the said certificates to the scheduled bank operating the separate account, for the purposes of withdrawal from time to time. Since, the promoter is required to get his designated separate account audited within six months after the end of every financial year it will not be proper to submit these certificates with the said bank. These certificates would be necessary to be retained with the promoter for the purpose of auditing.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 4/2017

DATE: 14.06.2017

**CLARIFICATION ON CALCULATION OF CARPET AREA AS DEFINED UNDER SECTION 2(K) OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016**

As per section 2(k) of the Real Estate (Regulation and Development) Act, 2016, carpet area of the apartment to be sold by the promoter is defined as “Carpet area” means net usable floor area of an apartment, excluding the area covered by

external walls, area under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but including the area covered by the internal partition walls of the apartment.

For the purpose of the Real Estate (Regulation and Development) Act, 2016, “walls” would mean walls made of Reinforced Cement concrete (RCC) or plain concrete or Shear wall(s) or wall made from bricks or blocks or precast materials or drywalls or walls made of any material or composition of one or more of any of the materials and shall include column(s) within or adjoining or attached to the wall.

Therefore, for the purpose of calculation of carpet area under clause 2(k) of the Real Estate (Regulation and Development) Act, 2016,

All walls which are constructed or provided on the external face of an apartment shall be regarded as ‘external wall’.

All walls or independent columns constructed or provided within an apartment shall be regarded as “internal partition wall”.

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

ORDER NO.: 04

DATE: 27.06.2017

### **CLARIFICATION REGARDING THE PERIOD WITHIN WHICH PROMOTER HAS TO TRANSFER THE TITLE BY EXECUTING CONVEYANCE**

In respect of ongoing projects, which require to be registered under RERA, the agreements which are executed prior to May 1 2017 shall be governed by the provisions of MOFA Act, 1963 and for execution conveyance, the period prescribed in the MOFA Act, 1963 and Rules made there under will be applicable. The Act states that a promoter shall transfer the title to the society in accordance with the agreement executed and if no period for the execution of conveyance is agreed upon then the promoter shall execute the conveyance within the period provided in Rule 9 of the MOFA i.e. within 4 months of the date on which the corporate society registered. However, all agreements for sale executed post May 1, 2017 for all real

estate projects, irrespective of whether they require registration or otherwise, shall be governed by RERA with respect to the model form of agreement, as well as section 17 of the Act for transfer of title in favour of legal entity of allottees and the conveyance should be executed within three months from the date of issue of occupancy certificate.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO. 5/2017

DATE: 28.06.2017

**CLARIFICATIONS ON OPERATING DESIGNATED BANK ACCOUNT**

With respect to withdrawal of amount deposited in separate bank account:-

1. The Development Cost/Cost of Construction of the project should not include marketing and brokerage expenses.
2. Interest payable to financial institutions, scheduled banks, non-banking financial institution or money lenders on construction funding or money borrowed for construction should be added to total cost of construction. The principal sum should just be mentioned in the Form for information purpose. The Principal sum should not be added to the total cost of construction.

Projects already registered or applied for registration under MahaRERA before issuance of this circular, may not have factored in the above clarification while preparing estimated costs. For such projects, MahaRERA does not expect the estimated costs to be reworked. However, while reporting incurred amount in quarterly updates, the abovementioned considerations should be taken into account.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 7/2017

DATE: 04.07.2017

**CLARIFICATION ON CA CERTIFICATE**

Maharashtra Real Estate (Regulation and Development) Rules require that for the purpose of withdrawal of amounts deposited in the Designated Bank Account in respect of New Project and Ongoing Project, the promoter shall submit the following three certificates to the scheduled bank operating the Designated Bank Account:

- (i) Certificate from the project Architect in Form 1 certifying the %age of completion of construction work;
- (ii) Certificate from the Engineer in Form 2 for the actual cost incurred on the construction work; and
- (iii) Certificate from a practicing Chartered Accountant other than the statutory auditor, in Form 3, for the cost incurred on construction cost and land cost.

Regulation 4(a) of the General Regulations provides that the annual report on statement of accounts shall be in prescribed Form 5 which shall be duly certified by the chartered accountant who is the statutory auditor of the Promoter's enterprise.

For the purpose of removing ambiguity, various terms which are to be used in the certificates to be issued by Chartered Accountant have been interpreted by the rules and regulations as under:

- To determine the fair market value of the Acquisition Cost of Land or Development Rights or Lease Rights in the Real Estate Project, the Acquisition Cost shall be the "indexed Cost of Acquisition". Indexed Cost of Acquisition shall mean an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the Land or Development Rights or Lease Rights in the Real Estate Project is registered or the year in which the first Commencement Certificate is issued in respect of such Land, whichever is earlier.

- Where the Land or Development Rights or Lease Rights became property of the developer or became available to the Developer before 1<sup>st</sup> day of April, 2001, the cost of acquisition would mean the ASR value of such Land or Development rights or Lease Rights as on 1<sup>st</sup> day of April, 2001. Cost inflation index in relation to a year, means such index as the Central Government may, by notification in the Official Gazette, specify, in this behalf under section 48 of the Income Tax act.
- The Acquisition cost shall also include the amount of interest incurred on the borrowing done specifically for purchase of Land or Acquiring Development Rights or Lease Rights.
- Cost under Rehabilitation scheme or construction cost of rehabilitation buildings shall include cost incurred for construction of construction area, which is to be handed over to
  - (i) Slum dwellers under slum rehabilitation scheme,
  - (ii) Tenants under redevelopment of tenanted properties,
  - (iii) Apartment owners of the building which is under redevelopment and who are to be provided with the alternative accommodation,
  - (iv) Government or concessionaire in Public Private Partnership project
  - (v) Appropriate Authority under various schemes under Development Regulations.
- The amount of interest incurred on the borrowing done specifically for construction of rehabilitation component in rehabilitation scheme shall be included in the interest payable to financial institution etc. under the head of Land Cost.
- The indirect taxes collected by the Promoter from the Allottees in the nature of GST/Service Tax/VAT etc can also be deposited in a bank account other than the Separate Bank account and shall be dealt with as per the provisions of the statute governing such indirect taxes.
- It may be noted that Income Tax paid by the promoter of a Real Estate Project, shall not be allowed to be claimed as cost of the Real Estate Project.

- The Separate Account to be opened for RERA, shall be a no lien account. The excess monies lying in the Separate Bank account can be put in fixed deposits with the same bank.
- Cancellation amount(s), if any, to be paid by the Promoter to the Allottees on cancellation of booking/allotment of the Apartment, should be treated as cost incurred for the project and same can be withdrawn from the Separate Bank Account, to the extent of 70% of the amounts to be paid to the allottee on cancellation.
- The Compensation/Interest paid by the promoter to the Allottees should be treated as cost incurred for the project and hence the entire sum required to be paid by way of compensation/interest to the Allottee can be withdrawn from the Separate Bank Account.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

CIRCULAR NO.: 08/2017

DATE 17.07.2017

**STANDARD OPERATING PROCEDURE FOR UPDATING REGISTERED PROJECTS AND REVISING/CORRECTING INFORMATION WITH RESPECT TO REGISTERED PROJECTS AND REGISTERED REAL ESTATE AGENTS”**

A Standard operating Procedure (SOP) is laid down for updating registered projects and correcting information with respect to registered projects and registered real estate agents.

The promoter should ensure that project details are updated on regular basis, as and when there are updates and at least once in ninety days.

The documents once uploaded by the promoter, during registration or project update, cannot be deleted. However, promoters can add additional documents in each of these upload sections.

## **PART-IV: RERA NEWS**

### **ECONOMIC TIMES**

01.08.2017

#### **RERA DEADLINE ENDS. ONLY 15 STATES HAVE NOTIFIED RULES, 6 STATES ARE ONLINE**

Even though all states were supposed to have notified their RERA rules by July 31, 2017, only 15 out of the existing 29 states have complied by this deadline. However, all 7 Union Territories have notified them. What is more, the Central RERA has been diluted by many states regarding the inclusion of ongoing projects. Several states have notified the RERA rules but kept many ongoing projects out of the ambit of the Act even though the occupancy certificates have not been received for those projects. The status update is: Out of 29 states and 7 UT's, only 15 states have notified the final rules of the Real Estate Regulatory Authority (RERA), while all 7 UT's have notified them.

### **ECONOMIC TIMES**

08.08.2017

#### **BANKS TO SHUT OUT BUILDERS WITHOUT RERA LISTING**

Builders who have been thinking of way to beat the new Real Estate Regulation Act are fast running out of time as banks, in consultation with the Reserve Bank of India, have decided not to extend loans to those projects which have not been registered under RERA.

**ECONOMIC TIMES**

22.08.2017

**REALTY WAKES UP FROM A SLUMBER, HINTS AT REVIVAL**

A slew of measures initiated by the Government such as interest subvention on affordable housing, steps to eradicate black money and prop up end users demand for residential real estate are translating into better sales in the country's top 8 cities, indicating a revival in growth, several reports by property consultants and research firms have suggested.

Given that interest rates are lower and property prices have not moved up for long, homebuyers are showing keen interest in buying houses on the back of incentives provided by the Government.

**RAJASTHAN PATRIKA**

23.08.2017

**THE BUILDERS ADAPTED BANKRUPTCY TO AVOID RERA**

Due to Rigid provisions of RERA Act and criminal provisions in RERA, the promoter adapted dubious methods for not completing their projects and adapting Bankruptcy Law to avoid implementation of RERA.

**RAJASTHAN PATRIKA**

24.08.2017

**INCREASE IN INVESTMENT IN REAL ESTATE ON ACCOUNT OF RERA**

In first 6 months of 2017 investment in real estate through equity is higher compared to previous years i.e. 16,000 crores. The Government can provide the fund to the allottees where some projects has been jeopardized because of shortage of fund and implementation of RERA.

**DAINIK BHASKAR, JAIPUR**

27.08.2017

**4 MONTHS OF RERA IMPLEMENTATION HAS GONE BY, AUTHORITY IS STILL DEPENDENT ON ADDITIONAL CHARGE**

It has been 4 months since RERA has been implemented, even then till date Government has not constituted its Appellate Authority. This is impacting the process of issue of registration certificate. For ongoing projects as on 01.05.2017, three months were given to register the project whereas as far as the new projects are concerned, Ground breaking ceremony can only be performed after registration of the project. Officers' opinion regarding delay in constitution of Appellate Authority is that except for Maharashtra, every other state is facing the same situation. Government has received upto 450 applications for project registration but due to consumption of time in documentation proceedings only 95 certificates have been issued till date.

**DAINIK BHASKAR, JAIPUR**

DATE: 03.09.2017

**RERA WILL CAUSE INCREASE IN COSTS OF HOUSES NO. OF PROJECTS WILL DECLINE BY 75%**

Implementation of Real Estate Authority, RERA in its full phase from 1<sup>st</sup> August, 2017 has resulted in various changes. Its short term impact will lead to increase in prices for buyers. Developers are facing serious trouble in raising finance through banks and financial institutions.

According to the experts in the area of RERA, few projects will be launched in the upcoming year; the figures can reduce up to 1/4<sup>th</sup>. Considering the long term prospects, RERA will be quite beneficial.

National President of CREDAI, Jakshay Shah said that the approvals for electricity, water etc is mandatory for project registration, which is very time consuming; and without registration financial institutions are not providing the required finance. CREDAI Chairman, Geetambar Anand stated that except for Maharashtra and Madhya Pradesh, no state has prepared well for RERA. For most of the states, even the Rules have not yet been notified. Mr. Prakash Jhalla, Chairman of Direct Tax Committee, CREDAI explained that 70% of project related amount is now mandatorily to be set aside in separate bank account. In this scenario, funds would be required for other work. The loans would be available at a higher interest rate, which will result in increased capital cost.

**DAINIK BHASKAR, JAIPUR**

03.09.2017

### **NO FURTHER EXEMPTION IN RERA, BACK DATED POSSESSION LETTERS AS A ROUTE TO ESCAPE FOR BUILDERS**

The time limit given for registration of on-going projects under RERA , has now officially ended. According to the provisions of RERA, such projects are now vulnerable to a penalty amounting to 10% of the project cost. For instance, a project worth Rs. 10,00,00,000 can be penalised for an amount up to Rs. 1,00,00,000. The exemption for registration of projects that are ongoing as on 01.05.2017 can be provided only on one condition: If completion certificate is attained prior to 1<sup>st</sup> May, 2017 or 60% of flats have already been possessed by the buyers. In such situation, developers are escaping from RERA by issuing possession letters to buyer having dates prior to 1<sup>st</sup> May, 2017.

ACS of UDH and RERA Chairman, “Mukesh Sharma” said that RERA cannot take up proceedings without filing of complaint. If any developer issue possession letters on a back date, then that is wrong and it should not be done. Buyer on the other hand, will lose his rights after signing such possession letter. If there is a problem, complaint should be filed. RERA will take required actions.

**TIMES OF INDIA**

04.09.2017

**JAYPEE HOMEBUYERS GET BIG RELIEF AS SUPREME COURT STAYS  
NCLT INSOLVENCY ORDER AGAINST BUILDER**

The Supreme Court has stayed the NCLT order for initiating insolvency proceedings against the Jaypee Infratech giving a major relief to more than 30,000 homebuyers. More than 30,000 home-buyers got a major relief today as the Supreme Court stayed the insolvency proceedings against real estate firm Jaypee Infratech.

The National Company Law Tribunal (NCLT), Allahabad had passed an order for insolvency proceedings against Jaypee Infratech at the instance of its financier IDBI.

The Supreme Court also issued notice to embattled firm and others on a plea filed by homebuyers, who have not yet received possession of their dream flats booked with the company.

A bench comprising Chief Justice Dipak Misra and Justices A M Khanwilkar and D Y Chandrachud also sought the response of the real estate company, the RBI and others. The bench posted a batch of matters for further proceedings on October 10.

## **PART-V: Miscellaneous**

### **DRAFT ARCHITECT'S CERTIFICATE**

**(On Letterhead)**

**(FOR WITHDRAWAL OF MONEY FROM DESIGNATED ACCOUNT)**

#### **RERA REGISTRATION NO.:**

**Subject:** Certificate of Percentage of completion of Construction work of “PROJECT NAME” situated on .....admeasuring ..... sq.mts. area being developed by **M/s** .....

I/We \_\_\_\_\_ have undertaken assignment as Architect for certifying Percentage of Completion of Construction Work of the “PROJECT NAME”. The percentage of the work to be executed with respect to each of the activity of the entire project is detailed in **Annexure-A**.

Based on Site Inspection, with respect to the aforesaid Real Estate Project, I/We certify that as on the date of this certificate, the Percentage of Work done is ..... percent.

**Signature & Name of Architect**

**(License No. ....)**

**Date:**

**NAME OF PROJECT  
ANNEXURE-A**

ADDRESS:

**RERA REGISTRATION No.:**

**TOTAL PROJECT COMPLETION ANALYSIS**

<b>S.No</b>	<b>Description</b>	<b>% OF COMPLETION</b>	
1	Site Development & Boundary Wall Construction		%
2	Construction of Site Office & Marketing Office		%
3	Excavation		%
4	Foundation & PCC		%
5	2nd Basement		%
6	1st Basement		%
7	Ground Floor		%
8	Upper Ground Floor		%
9	First Floor		%
10	Second Floor		%
11	Third Floor		%
12	Fourth Floor		%
13	Fifth Floor		%
14	Sixth Floor		%
15	Seventh Floor		%
20	Brick Work		%
21	Plaster Work		%
22	MEP services		%
23	Common Area Finishing Work		%
<b>TOTAL WORK COMPLETED</b>		<b>100</b>	<b>%</b>

Signature & Name of Architect  
(License No.....)

**DRAFT ENGINEER'S CERTIFICATE (On Letter Head)**

(FOR THE PURPOSES OF WITHDRAWAL FROM DESIGNATED ACCOUNT)

PROJECT NAME: -

RERA REGISTRATION NO.:-

ADDRESS:-

PROMOTER NAME:-

ADDRESS:-

This is to certify that I/We have undertaken assignment of certifying estimated cost and actual expenses incurred on site construction for the Real Project mentioned above.

1. We have estimated the cost of the completion of the civil, MEP and allied works, of the Building(s) of the project. Our estimated cost calculations are based on the drawings/plans made available to us for the project under reference by the Promoter, Developer and Consultants and the Schedule of items and quantity for the entire work as calculated by the Quantity Surveyor appointed by the Promoter, and the fair assumption of the cost of material, labour and other inputs made by developer, and the site inspection carried out by us.
2. We have calculated Total Estimated Cost for completion of the project under reference at Rs..... including cost of development of common facilities. The estimated Total Cost of project is with reference to the Civil, MEP and allied works required to be completed for obtaining occupation certificate/ completion certificate for the building(s) from the concerned Competent Authority under whose jurisdiction the above mentioned project is being implemented.
3. The actual cost incurred on the project as on date is Rs.....
4. The total value of work done is (in percentage) as on date.

Signature of Engineer

Name:

(License No or Authority.....)

Date:

**DRAFT CHARTERED ACCOUNTANT'S CERTIFICATE**  
**(ON LETTER HEAD OF CHARTERED ACCOUNTANT)**

**TO WHOMSOEVER IT MAY CONCERN**

On the basis of information and documents produced before us by the management of M/s.....project.....(RERA Registration No.), we hereby certify that M/s.....is eligible to withdraw Rs..... from designated account. Details are as follows:

<b>S.No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Total estimated cost of Project (As per Engineer's Certificate)	
2.	% Completion of Construction work completed (a) As per Engineer's Certificate (b) As per Architect's Certificate; Whichever is lower	
3.	Total amount received from allottees till date	
4.	70% of row (3)	
5.	Total Amount eligible for withdrawal as on date (1 X 2)	
6.	Amount already withdrawn	
7.	Balance amount available for withdrawal (5-6)	

This certificate is being issued on specific request of M/s ..... for RERA compliance only.

Place:

Date:

For XYZ & Co.

FRN:

CA

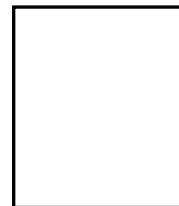
(Partner)

(M.No.....)

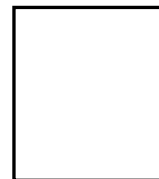
Allotment No. - .../...../...../.....

### **DRAFT ALLOTMENT LETTER**

The particulars of the allottees(s) are given below:



1. (I). SOLE OR FIRST APPLICANT (S) Mr./Mrs./Ms. \_\_\_\_\_  
 S/W/D \_\_\_\_\_  
 Nationality \_\_\_\_\_ Age \_\_\_\_ years, Profession \_\_\_\_\_  
 Resident status: Resident/ Non-Resident/ Foreign National of Indian Origin \_\_\_\_\_  
 Income tax Permanent account no. \_\_\_\_\_  
 Mailing address \_\_\_\_\_  
 \_\_\_\_\_  
 Tel no. \_\_\_\_\_ Mobile no. \_\_\_\_\_  
 Office address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ Tel nos. \_\_\_\_\_  
 Email ID \_\_\_\_\_



(II). JOINT OR SECOND APPLICANT (S) Mr./Mrs./Ms. \_\_\_\_\_  
 S/W/D \_\_\_\_\_  
 Nationality \_\_\_\_\_ Age \_\_\_\_ Years, Profession \_\_\_\_\_  
 Resident status: Resident/ Non-Resident/ Foreign National of Indian Origin \_\_\_\_\_  
 Income tax permanent account no. \_\_\_\_\_  
 Mailing address \_\_\_\_\_  
 \_\_\_\_\_  
 Tel no. \_\_\_\_\_ Mobile no. \_\_\_\_\_  
 Office address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ Tel nos. \_\_\_\_\_  
 Email id \_\_\_\_\_

OR

\*M/S\_\_\_\_\_

A partnership company duly registered under the Indian partnership act 1932 through its partner Authorized by resolution dated\_\_\_\_\_ Shree/SMT/\_\_\_\_\_ copy of the resolution signed by all partners required.

PAN:\_\_\_\_\_

Registration no. (If any):\_\_\_\_\_)

OR

\*\*M/S\_\_\_\_\_ a company registered under the Companies Act, 1956/2013 having its corporate identification no. \_\_\_\_\_ and having its registered office at\_\_\_\_\_ through its director Shri/Smt.\_\_\_\_\_ authorized by board resolution (Copy of board resolution along with a certified copy memorandum & articles of associations required)

PAN No. \_\_\_\_\_

(\*\*Delete whichever is not applicable)

2. This has reference to your Application No .../..... dated .....for allotment of a flat /Unit in “.....(name of project)” situated at Khasara No..... of Revenue Village ....., Tehsil....., City....., State.....
3. It is a matter of pleasure to inform you that based on your application, you have been allotted a flat/unit no- .....on .....floor in block ..... having carpet area ..... sq. mtr. on the below mentioned terms and conditions :
  - (i.) The Total Price for the Flat/ Unit based on the carpet area of Sq. ft.....is Rs.....

Break-up of Total Price is as under:

- A) Basic Price : ₹.....
- B) Electricity & Power backup charges : ₹.....
- C) Total power backup (installation charges) : ₹.....
- D) Interest free maintenance security deposit : ₹.....
- E) Preferential location charge : ₹.....
- F) Pre Paid Meter Charges : ₹.....
- G) Other Charges : ₹.....

- (ii) The Total Price above excludes Taxes (GST or any other taxes) which may be levied, in connection with the Project. The allottee will be liable to pay GST or any other taxes extra as applicable on actual basis on each instalment payable.

Provided that in case there is any change/ modification in the taxes, the subsequent amount payable by the Allottee(s) to the Promoter shall be increased/ reduced based on such change/ modification:

- (iii) The allottee shall make the payment to the Promoter as per the payment plan as mentioned in point no 5.

4. The stage wise time-schedule of completion of the Project/ Phase thereof including the provisions of civic infrastructure like water, electricity, sanitation and all other above-mentioned internal/external development works is as under:-

Stage	Date by which the works are proposed to be Completed	Details of works to be completed

## 5. "SCHEDULE OF PAYMENT"

Final total price Rs. \_\_\_\_\_ (rupees only)

## A: CONSTRUCTION LINKED PLAN

S.No.	Activity	% Age of basic price	Amount
1.	On Application	Application Amount	
2.	Booking Amount / On Allotment	10% of total price (less Application amount)	
3.	On start of excavation	7.5% of total price	
4.	So On.....		

## B. ANY OTHER SUITABLE PLAN

Cheque /Demand Draft to be drawn in favour of .....

**STANDARD TERMS AND CONDITIONS****1. NATURE OF BOOKING**

a) This is a provisional booking for Flat/Unit in the project -  
"....."

b) The provisional booking do not convey any right, title of interest of whatsoever nature in favour of purchaser unless and until required documents such as allotments/ Agreement etc. are executed.

**2. REGISTRATION, TAXES & OTHER CHARGES**

a) Registration charges, stamp duty charges or any other charges leviable by any authority and incidental expenses there to as applicable at the time of registration shall be extra and is to be borne and paid by the allottee on demand by the promoter at the time of registration of agreement/conveyance deed.

- b) The Company shall periodically intimate to the allottee, the amount payable and the allottee shall make payment demanded by the promoter within the time and in the manner specified therein.
- c) If the unit is assessed separately the allottee shall pay directly to the Governmental Authority and if the Unit is not assessed separately then the same shall be paid on pro-rata basis and the determination of the proportionate share by the promoter and demand shall be final and binding on the allottee.

### **3. MODE OF PAYMENT**

All payments from outstation locations are to be paid through Demand drafts only. Drafts/local cheques are to be made payable to (name of company).

### **4. DELAYED PAYMENTS**

Interest at the rate prescribed under Rajasthan RERA Rules, 2017 will be charged on all delayed payments from the due date for the delayed period from the allottee.

### **5. GOVERNING LAW:**

That the rights and obligations of the parties under or arising out of this Application form shall be construed and enforced in accordance with the Act, rules and regulations made thereunder including other applicable laws of India for the time being in force.

### **6. DISPUTE RESOLUTION BY ARBITRATION:**

All or any disputes arising out of or touching upon or in relation to the terms of this Application form or its cancellation including the interpretation and validity of the terms hereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussions, failing which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the Parties.

The Applicant hereby confirms that it shall have no objection to the appointment of such Sole Arbitrator and the Applicant hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the said Sole Arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's Corporate offices or at a location designated by the said Sole Arbitrator (who shall be a retired Judge of any Court in India) in the State. The language of the arbitration proceedings and the Award shall be in English. The Award of the Sole Arbitrator shall be final and binding on the Parties. Both the Parties will share the fees of the Arbitrator in equal proportion. The courts will have exclusive jurisdiction to entertain dispute between the parties.

- 7. If booking amount is not paid within 30 days of issuance of this allotment letter then booking will be stand cancelled and application amount will be forfeited without any intimation.**

This document is hereby issued on this date..... Under the seal & signature of the M/s.....

**AUTHORIZED SEAL &  
SIGNATURE**

## **MADHYA PRADESH (RERA)**

### **GUIDELINES FOR PERMISSIBLE EXPENSES THAT CAN BE CHARGED TO THE DESIGNATED ACCOUNT (Undated)**

- **Basic Principles:**

- Broadly speaking, the cost of land and the cost of on-site construction can be charged to the designated account.
- The basic principle is that **only** actual out-flows can be charged to the account, **not** notional values or future payments.
- Marketing/Advertising costs and loan repayment/interest payments to financial institutions are **not** permissible to be charged against the 70% of the designated account.

#### **A. LAND:**

Actual amount paid for land at the time of purchase (not current notional value, even though this may be used for fixing the price of apartments);

If land is ancestral or received as inheritance or gift, then the permissible charge to the designated account will be nil.

In case of JV when landowner is someone other than the promoter, amounts actually paid to the owner of the land are permissible. If payments are made instalments, then the charge to the designated account can be made as and when the payments are actually made. They cannot be frontloaded.

Stamp duty, registration costs and legal fees actually paid for such transactions can also be charged.

**B. Fees:**

Fees paid to any statutory authority to obtain project approval or registration (such as fees paid to RERA, Town and Country Planning Department, Municipal/Local authority or panchayat) maybe charged to the account.

Fee paid to architect/structural engineer/technical consultant are permissible, provided these are specifically for this project, and these experts are not salaried employees of the Promoter. Only such fees as are directly attributable to the project are permissible.

**C. On-site Construction:**

Only such payments as are directly related to construction are permissible.

Cost of bringing water and electricity to project site is permissible.

Depreciation cost of machinery and equipment used on a project site or hire and maintenance charges for the same is permissible. Consumables, such as diesel, lubricants etc. and electricity to run the equipment are also permissible.

Cost of material actually purchased.

Cost of project-related labour actually paid (excluding cost of salaries of employees of the company) is permissible to be charged to designated account.



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