

# RERA TIMES

Real Estate (Regulation and  
Development) Act, 2016



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Volume VII | Part I | January - February 2023



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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,

After over one year of fighting, there is no end in sight for the war in Ukraine. Millions of civilians are unable to return home. Many still in the country are forced to live without access to food, water, health care, and other essential supplies. We just hope that the war gets over and the life of the people of Ukraine comes to normal. It is being expected around the world that India under the leadership of Prime Minister Narendra Modi Ji can play a central role in facilitating Russia- Ukraine dialogue to end the ongoing war.

The linkage of UPI and PayNow is a new milestone in India-Singapore relations and its launch is a gift to the citizens of the two countries. A link like UPI-PayNow could serve as a model for establishing an infrastructure for cross-border payments between India and ASEAN countries. Such ASEAN collaboration on payment connectivity would benefit migrant workers, tourists, small businesses, and enterprises.

The Reserve Bank of India has granted permission to open special Vostro accounts to facilitate overseas trade in rupee. Several banks, including HDFC Bank and UCO Bank, have opened special vostro accounts and have also expressed interest to have this arrangement for the local currency trade. The move to open the special vostro accounts clears the deck for settlement of payments in Rupee for India-Russia trade, enabling cross-border transactions in the Indian currency. Certain African countries that are facing foreign exchange problems and issues with US Dollar and Euro mobilization are showing interest in the rupee (INR) trade mechanism.



The Hindenburg report on Adani Group raises serious concerns about the company's financial and operational practices, as well as its environmental impact. The report also alleges that audit of various entities within Adani Enterprises is being conducted by a small accounting firm. While Adani Group has strongly denied the allegations, it is important for investors and regulators to take these concerns seriously and to undertake a thorough investigation of the claims made in the report. It is the responsibility of large Indian corporates to ensure that homegrown, small companies get all the support they require to develop into big companies. So, it is not necessary that audit of large conglomerates get audited by big accounting firms only such as Big 4s.

The Hon'ble Finance Minister Smt Nirmala Sitharaman announced the Union budget recently. The Union Budget 2023 aimed to establish India as a forward thinking nation. This was the first budget of Amrit Kaal which had its focus on Saptarishi- 7 priorities of which major sectors are Infrastructure and investment, Green growth, Youth power and financial sector. Capital expenditure in the 2023-24 Union Budget doubled from Rs 4.26 lakh crore (\$58.2 billion) of actual expenditure in 2020-21 to Rs 10.01 lakh crore (\$122 billion) budgeted in 2023-24. The budget focused on infrastructure and promotion of tourism. The new tax limits could increase people's spending power and boost the economy in the upcoming financial year. It's an inclusive cum progressive budget with a clear focus on Digital India including on AI, Fintech, Agritech and 5G. The importance given to Green Energy transition and climate sustainability including the Hydrogen mission is praiseworthy. Finally, India's backbone of MSME entrepreneurs have been supported by greater access to credit. India's burgeoning middle class will have more cash in hand through personal tax cuts, which will lead to greater consumption.

The Rajasthan State budget introduced a 50 per cent increase in the Tourism Development Fund to Rs 1,500 crore which has come as a shot in the arm for the sector as well as the state economy. This fund would help in developing tourism facilities, creating employment for locals, attracting tourists, and various other works. Many schemes have also been announced for providing

various services to the deprived sections of the society at free of cost but this is precarious for society as a whole. Rather, some concessions and waivers in the prices could be given instead of providing free goods and services.

Wish all of you a very happy and colorful Holi.

With Regards

CA Sanjay Ghiya

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Place: - Jaipur

Date: 28/02/2023



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#### **Disclaimer:**

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**PART-I**  
**SUPREME COURT JUDGEMENT**  
**IN THE SUPREME COURT OF INDIA**

**Order dated: 9 February, 2023**

**DEBASHIS SINHA & ORS.**

**----- PETITIONER**

**VERSUS**

**M/S R.N.R. ENTERPRISE REP. BY ITS PROPRIETOR/**

**CHAIRMAN, KOLKATA & ORS.**

**----- RESPONDENTS**

**For Petitioner(s): Adv. Varun Dev Mishra, Adv. Mrinmoi Chatterjee**

**For Respondent(s): Adv. Shiv Shankar Banerjee, Adv. Madhunma Ghosh**

**Gist of Case: Builder/ Promoter is legally bound to obtain Completion Certificate (CC) for the structure even if the beleaguered EMI paying buyers take possession of their houses prior to issuance of such mandatorily required certificate.**

This appeal under section 23 of the Consumer Protection Act, 1986 (hereafter ‘the C.P. Act’, for short) calls in question the order dated 21st August, 2020 passed by the National Consumer Disputes Redressal Commission, New Delhi, (hereafter ‘NCDRC’, for short). By the impugned order, the NCDRC has dismissed the consumer complaint lodged by the appellants.

Aggrieved by the failure of the respondents - the developers of the housing complex - to provide services as promised, the jurisdiction of the NCDRC was invoked by the appellants in 2008. They alleged that despite paying full consideration amount as per market rate and despite execution and registration of deeds of conveyance in their favour, the respondents had failed, inter alia, to



provide the 'Completion Certificate', which is their statutory obligation as per the rules of the Kolkata Municipal Corporation and, in the absence of such a certificate, their occupation of the respective flats has been rendered precarious.

According to the appellants, the respondents also failed to provide them common amenities and facilities viz., playground, community hall-cum-office room, 33-foot wide concrete road, and supply of water from the KMC.

It was their further complaint that the respondents had adopted unfair trade practices by promising a playground on a land which actually belonged to a local club as well as attracted buyers by showing in the brochure/ advertisement a 'beautified lake', which never came into existence.

Further, they claimed that direction be issued for providing other facilities such as community hall, landscape gardening, generator, multi-gymnasium, water filtration plant, and gas pipeline. Additionally, compensation of Rs.1, 80, 00,000/- (Rupees one crore eighty lakh only) together with litigation cost of Rs.50, 000/- (Rupees fifty thousand only) was claimed.

The complaint lodged by the appellants was contested by the respondents by filing a written statement. Apart from objecting to the maintainability of the complaint on the grounds that the same was time barred and that a joint complaint could not have been lodged by 36 (thirty-six) flat owners, it was contended that the appellants have not paid the full consideration amounts, that certain common facilities/amenities could be provided only if all the members of the housing complex contribute for the same and that the compensation claimed was vague and imaginary. It was also contended in the written statement that most of the appellants had taken possession of the flats in 2006 without raising any objection at the material time; hence, lodging of a complaint after 2 (two) years of possession being delivered is motivated.

**Insofar as the issue of obtaining the completion certificate is concerned, it was contended that the flats having already stood transferred to the appellants by way of conveyance/sale deed(s), it was for the appellants to apply before the KMC for obtaining such certificate. The respondents also contended that since KMC had completed assessment of the flats of the appellants, it was not possible for the respondents to now apply and obtain completion certificate for the flats.**

Considering the pleadings before it as well as upon hearing the parties, the NCDRC returned findings that the respondents had shown a very casual approach and were guilty of unfair trade practice as well; yet, it was observed that the appellants had not been able to establish their claim. It also appears from the impugned order that the NCDRC suspected that the purpose of the complaint was to pressurize the respondents into paying some compensation and/or not insisting upon extra payment for the extra facilities and amenities. Also, it was held that the respondents had been able to successfully urge that the fault for not obtaining the completion certificate of the project could not be attributed to them. In this regard, the NCDRC returned a finding that reading of section 403 of the Kolkata Municipal Corporation Act, 1980 makes it clear that **it was incumbent on both the respondents as well as the appellants to not occupy the premises in the absence of the completion certificate.** As a result thereof, a finding was further returned that **both the parties had violated the law; as such, no deficiency could be attributed to the respondents on this account. Based on broadly these findings, the complaint of the appellants failed before the NCDRC.**

Court was firstly struck by the time taken by the NCDRC to decide the complaint after it reserved the same for passing orders. It took the NCDRC in excess of 10 (ten) months to dismiss the complaint.

The complaint of the appellants was that the respondents have not provided playground, community hall, beautified lake, landscape gardening, generator backup, multi-gymnasium, etc. as mentioned in the brochure/advertisement pursuant to which they expressed interest to purchase flats in the project and, thus, defaulted in providing services in relation to housing construction.

One entire paragraph in the order has been devoted by the NCDRC to highlight that the project was not that huge and talk of common areas and facilities on a grand scale was quite misplaced. An admission made by the appellants themselves in the complaint has been referred to but we have not been able to trace any admission of the complainants that the respondents promised not to deliver substantial common areas and common facilities. **Be that as it may, what the NCDRC omitted to bear in mind was that the appellants were allured to purchase flats of the nature and kind together with facilities and amenities as attractively published in the brochure/advertisement; hence, whether the project was huge or otherwise was absolutely beside the point. It was the duty of the NCDRC to ascertain, based on the materials on record, whether**

**if at all and to what extent facilities and amenities as promised were offered and/or whether there was any deficiency of service.**

That the appellants had genuine reasons to feel aggrieved was clearly documented in the report of the valuer dated 11th July, 2008 which was even acknowledged by the NCDRC, yet, a peculiar approach was adopted and the respondents absolved of their obligations by an order which appears to us to be unjustified on facts and in the circumstances.

We have found from the impugned order that it speaks of certain facilities to be made available by the respondents on payment of extra money. However, there is no such clear-cut description of facilities/amenities which the respondents asserted would be provided on payment of extra money by the appellants. NCDRC would have done well to indicate the same with clarity.

Finally, we cannot resist but comment on the perfunctory approach of the NCDRC while dealing with the appellants' contention that it was the duty of the respondents to apply for and obtain the completion certificate from the KMC and that the respondents ought to have been directed to act in accordance with law. **The observation made by the NCDRC of the respondents having successfully argued that it was not their fault, that no completion certificate of the project could be obtained, is clearly contrary to the statutory provisions.**

**It is no part of the flat owner's duty to apply for a completion certificate.** When the respondents had applied for permission/sanction to erect, the Calcutta Municipal Corporation Buildings Rules, 1990 were in force. Rule 26 of the 1990 Rules happens to be the relevant rule. In terms of sub-rules (1) to (3) of rule 26 thereof, the obligation as cast was required to be discharged 11 by the respondents. Evidently, the respondents observed the statutory provisions in the breach.

Curiously enough, the NCDRC referred to sub-section (2) of section 403 of the KMC Act only to permit the respondents to wriggle out of such obligation and arrived at a completely erroneous finding that no deficiency in service could be attributed to the respondents since both the respondents and the appellants had acted in violation of law. True it is, **the appellants ought not to have taken possession without the completion certificate; however, that was not a valid ground not to direct the respondents to apply for and obtain the completion certificate as required by law.**

For such infirmities, as noticed above, this is an appropriate case where the complaint of the appellants ought to be remitted to the NCDRC for taking a relook into the complaint in accordance with law.

**It is ordered accordingly. Since it is found that the appellants while praying for monetary compensation of Rs. 1, 80, 00,000 have failed to give detailed particulars and/or provide the basis therefor, and undoubtedly, they have also been on the wrong side of law by taking possession of their respective flats without the completion certificate, whatever might be the compulsion, we are not inclined to direct the NCDRC to decide on the compensation component. That chapter stands closed. The remand is directed only with a view to secure adherence to the promises that the respondents had made in the brochure and/or advertisement, as the case may be, and thereby cover up deficiency in service, if any, as well as the mandatory statutory provisions.**

Since the complaint is more than 15 (fifteen) years old, it would be desirable if the NCDRC decides the same as early as possible and preferably within a year of service of an authenticated copy of this order.

**PART II**

**HIGH COURT JUDGEMENT**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Order dated: 26 May, 2022**

**PRAVEEN CHHABRA**

**----- PETITIONER**

**VERSUS**

**REAL ESTATE APPELLATE TRIBUNAL**

**----- RESPONDENTS**

**For Petitioner(s): Mr. Sanjeev Sagar**

**For Respondent(s): Mr. Rajeev Mehra, Sr. Adv., Amicus Curiae.**

**Gist of Case: Real Estate appellate tribunal does not have to initiate proceedings suo-moto or on its motion.**

The petitioner who is a builder developer by profession has instituted these proceedings seeking the following reliefs: -

- a) Issue a writ, order and direction, directing the respondent to place on record all the necessary records pertaining to case titled (Suo Motu Case) REAT/0002/2021 titled as "Court of Its Own Motion Vs. Commissioners of all the Municipal Zones & Anrs.
- b) Set aside and quash the orders and proceedings in respect of (Suo Motu Case) REAT/0002/2021 titled as "Court of Its Own Motion Vs. Commissioners of all the Municipal Zones & Anrs
- c) Set aside orders dated 24/11/2021 and 17/11/2021 passed by Real Estate appellate Tribunal, New Delhi in (Suo Moto Case) REAT/0002/2021 titled as "Court of its own Motion vs. Commissioners of all the Municipal Zones & Anrs.

**It has been mentioned before the court that there are large number of projects under construction, falling within the jurisdiction of this Tribunal where the mandatory provision for registration of project under the Real Estate (Regulation and Development) Act, 2016 has not been complied with. A number of projects have been mentioned at the Bar.**

In terms of the order of 24 November 2021, the Appellate Tribunal has noticed that the Real Estate (Regulation and Development) Act, 2016<sup>2</sup> places an obligation on all developers and builders to ensure that projects are duly registered and completed in accordance with the provisions made therein. The Appellate Tribunal has observed in the aforesaid order that developers appear to have undertaken construction of projects without complying with the mandatory obligation of registering the projects with the Real Estate Regulatory Authority<sup>3</sup> and thus violating the provisions of the Act. Upon recordal of the aforesaid conclusions, it proceeded to pass the following order: -

*"Accordingly, in view of the above, all construction activity in NCT of Delhi, residential as well as commercial, falling within the scope of sub- section (2) of Section 3 of the Real Estate (Regulation and Development) Act, 2016 being undertaken without registration with the Real Estate Regulatory Authority is stayed till the registration of their project with the Real Estate Regulatory Authority. The concerned Commissioner as well as Executive Engineer of each of the Municipal Corporations. DDA and NDMC as also the Commissioner of Police through concerned SHO of the local Police Station of each area shall ensure that with immediate effect no further construction activity falling within the scope of sub- section (2) of Section 3 of the Act is continued in the absence of RERA registration. The concerned field staff shall undertake a survey of each of the properties under construction in their jurisdiction and take necessary steps in terms of this order, take photographs as also the details of the developers.*

*Furthermore, it is directed that all municipal authorities granting sanction of the building plans in respect of projects falling within the scope of sub section (2) of Section 3 of the Act shall grant the sanction, subject to their obtaining registration with the Real Estate Regulatory Authority appointed under the Act."*

**On a consideration of the provisions as made and incorporated in the Act, it is manifest that the Appellate Authority cannot possibly be recognized as conferred with the power to initiate proceedings suo-moto or on its own motion. This is evident from a reading of the provisions engrafted in the**



statute and which enumerate and circumscribe the jurisdiction of the Appellate Tribunal. The Appellate Tribunal, it must be remembered, is a creation of statute. It is not an authority which may be recognised as being vested with inherent powers. Regard must also be had to the fact that the Appellate Tribunal is not part of the hierarchy of traditional judicial institutions which constitute the judicial system of our country. It is an appellate forum whose origin and formation stems from the provisions of the Act. It is in that sense an adjudicatory authority which owes its existence and authority to a special statute. Viewed in that light it is manifest that it can neither assume nor arrogate to itself a power or authority which may otherwise not stand conferred on it by the Act. There is thus an evident and blatant assumption of jurisdiction which otherwise does not stand vested upon the Appellate Tribunal. The Court thus comes to the firm conclusion that the impugned proceedings are clearly ultra vires the Act.

**PART-III**

**REPORTING OF CASE LAWS**

**MAHARASHTRA REAL ESTATE APPEALLATE TRIBUNAL**

**APPELLANT: Asha Ashok Katariya**

**RESPONDENT: M/s Jawala Real Estate Pvt. Ltd**

**CORAM: INDIRA JAIN J., CHAIRPERSON & DR. K. SHIVAJI**

**ORDER DATE: 05.05.2022**

Appellant Representative: Mr. Vikramjit Garewal

Respondent Representative: Mr. Yogendra Singh

**Gist of Case: When there is no substantial changes in the facts of the cases, amendment application cannot be rejected.**

Complainant booked flat No.6903 in promoter's project "Lodha Marquise-B" (Gamma Tower), Lower Psarel, Mumbai. Allotment letter was issued in 2013. Then on 28th August 2013 agreement for sale was executed between the parties. According to complainant agreed date of fit out possession was 31't December 2017 and with one year grace period promoter agreed to deliver possession. As possession could not delivered in time, Allottees filed complaint before MahaRERA seeking following reliefs:-

- a) Refund of entire amount with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act ").
- b) Compensation for mental agony.
- c) Compensation under Section 12 for providing false information.
- d) To penalize promoter for not obtaining prior consent of complainant for revising date of completion as 31st December 2021.
- e) Costs.
- f) Any other relief.

**During pendency of complaint, complainant filed an application for amendment seeking change in relief of refund as interest on delayed**

possession as possession was handed over by promoter on 28th October 2020 and complainant received the same without prejudice to her rights and contentions.

Upon hearing the parties learned Member, MahaRERA came to the conclusion that cause of action for seeking refund on the ground of delay in handing over possession no more survives and therefore no further action is required to be done in the complaint. Consequently application for amendment was rejected.

Appellant challenged the legality, propriety and correctness of the order on the following grounds –

- a) Impugned order is contrary to the principles of natural justice as appellant was not given an opportunity to argue the complaint on merits.
- b) Appellant has taken possession on 28th October 2020 during the pendency of complaint and in view of subsequent development, it was essential to change the relief sought in complaint so that controversy between the parties can be finally and effectively decided.
- c) Appellant accepted possession without prejudice to her rights and contention raised by promoter that possession was unconditionally taken is against the record.

In the case on hand refund was sought on the grounds of delay in handing over possession and reliefs sought by way of amendment under Section 18 are also based on alleged delay in delivery of possession of the flat. Therefore there is no substantial change so far as facts of the case pleaded in complaint and in amendment application are concerned. In this view of the matter, tribunal find apparent error in the order rejecting application for amendment and as such order deserves to be set aside.

**APPELLANT: Housing Development Finance Corporation Limited (HDFC Ltd.)**

**RESPONDENT 1: Karan Pradeep Mehta.**

**RESPONDENT 2: Pradeep Mathuradas Mehta.**

**RESPONDENT 3: Ekta Parksville Homes Pvt. Ltd.**

**CORAM: SHRI RAM R. JAGTAP, MEMBER (J) & S. S. SANDHU, MEMBER**

**ORDER DATE: 05.05.2022**

Appellant Representative: Adv. Mr. Hemant Prabhulkar

Respondent Representative: Adv Manish Gala

**Gist of Case: Adjudicating officer cannot direct refund order.**

The above appeals preferred by appellants herein arise from orders dated 8.2.2021 passed by the Adjudicating Officer (AO) in the complaints filed by Respondent seeking refund with interest and compensation for delay in possession.

Appellant is a financial institution whereas Respondent Nos. 1 and 2 are Allottees who purchased their respective flats in the project of Respondent No. 3 who is a Promoter.

As per relevant facts for the purpose of disposal of these appeals, it is not disputed that Allottees booked their respective flats in the project of Promoter for consideration as mentioned in the individual impugned orders passed by Adjudicating Officer. Allottees availed the benefit of subvention scheme of 20:80 and as a part thereof, they obtained loan from Appellant by entering into a tripartite agreement executed by appellant, promoter and each of the Allottees. As per arrangements thereunder promoter was liable to pay E.M.I. of loan till handing over possession. As per agreement for sale executed by Promoter and Allottees, possession was agreed to be handed over on or before December, 2016 with grace period of 6 months. While registering the project under RERA Promoter declared date of possession as December, 2020. Possession was delayed on account of certain reasons as recorded in the impugned orders. Allottees therefore, filed individual complaints to seek refund of the paid amount with interest and compensation.

**Complaint was first heard by learned Chairperson, MahaRERA. Pending the same, Allottees filed applications on 15.07.2019 whereby they prayed to transfer the complaints to Adjudicating Officer who only under Sections 71 and 72 of RERA has powers to adjudicate compensation under Sections 12, 14, 18 and 19 of RERA. Learned Chairperson after examining respective powers and jurisdiction of the Authority vis-a-vis the Adjudicating Officer as per relevant provisions of RERA concluded that Section 71 would come into play only when Authority is of the view that compensation is required to be adjudged. He rejected the applications as no case for compensation as prayed for was made out. An order passed on the point of jurisdiction in complaint**

**came to be challenged by the concerned Allottees before the Hon'ble Bombay High court vide Writ Petition No. 3434 of 2019.**

Pending decision in the Writ Petition as above, matters in the captioned 3 complaints were heard by learned Chairperson with the consent of parties. As Allottees continued with their insistence for withdrawing from the project the complaints came to be transferred to Adjudicating Officer for adjudication of interest and compensation vide interim order dated 16.01.2020. During hearing on transfer, Promoter inter alia raised the issue of jurisdiction of Adjudicating Officer to consider and decide the claim for refund of the amount. On coming to conclusion that Adjudicating Officer has the jurisdiction, Adjudicating Officer passed separate orders in the individual complaints of Allottees on 08.02.2021. One such order passed in one of those complaints is extracted as under for highlighting nature of reliefs granted in the said complaints.

- a) Respondent No.1 is directed to pay to complainants, Rs 36, 04,650/- plus Rs.1,17, 09/- if the EMI payable by respondent were paid by complainant, except the EMIs paid by respondent which were payable by complainant, along with the interest at the rate of 10.40% p.a. from the date of payments till final realization under Section 71(3) and 72(b) and (c) of RERA.*
- b) Respondent No. 1 to pay Rs.50, 000/- to the complainants for mental harassment suffered.*
- c) Respondent No.1 to pay Rs.20, 000/- to the complainants as costs of this complaint.*
- d) Respondent No.1 to pay above amounts within 30 days from the date of this order.*

Heard learned counsel for the parties.

Learned counsel for Appellant i.e. the HDFC Ltd. inter alia urged the contentions as follows to support its challenge to the impugned orders.

- a) As may be seen from Para 2 of the order, the flats purchased by Allottees have been mortgaged with Appellant to secure loan obtained by Allottees pursuant to tripartite agreements executed by Allottees and Promoter under subvention scheme which is not denied by Allottees.*

- b) As per terms of the said agreement, Appellant is entitled to directly receive the refund of loan amount advanced to Allottees and the said terms have been overlooked by AO while passing the impugned orders.
- c) While listing the complaints for hearing on 10. Lt.2020 AO gave no notice to Appellant and no link was also sent for virtual hearing. Thus the ex-parte orders against appellant are passed by AO in complete denial of natural justice.
- d) Accordingly, Appellant being an aggrieved 'person' as per provisions of Section 2(g) of RERA is entitled to file Appeal against the impugned orders as the same were passed without notice or hearing to Appellant.

Learned counsel for Promoter while opposing the impugned orders contended that;

- a) It can be clearly seen from complaints, particularly clause 5 (a) thereof that Allottees have inter alia sought refund of the amount and EMI for six months along with interest. Allottees also have sought refund of amount paid towards stamp duty, registration charges etc. with interest in further clauses of prayer in para 5 of the complaints.
- b) Furthermore, reference to refund is also included in the issue No. 3 for consideration by AO framed as to whether complainants (Allottees) are entitled to the reliefs as claimed?
- c) As held in the recent judgment of the Hon'ble Supreme Court of India in the case of M/s Newtech Promoters and Developers Pvt. Ltd. V/s. State of Uttar Pradesh and Ors. Etc. AO has no jurisdiction to decide claim for refund with interest. The impugned orders granting refund passed without any jurisdiction by AO are therefore null and void and need to be quashed and set aside.

Learned Counsel for Allottees supported the orders by contending as follows:

- i. Despite notice, Appellant failed to appear in the complaints. Appellant has also concealed the order dated 08.12.2020 passed by Hon'ble Bombay High Court in Writ Petition No. 3434 of 2019 filed against the order dated 29.09.2019 in the Allottees' applications. It may be noted from the said order that the Appellant was respondent No. 5 in the said Writ Petition and was also duly represented. It is apparent that though appellant had



knowledge of the remand of the matter by the Hon'ble High Court, Appellant failed to appear not only before the Authority it but before the AO also. Appellant cannot therefore seek quashing of the impugned orders on account of alleged denial of natural justice.

- ii. As far as jurisdiction of AO is concerned, the Hon'ble Supreme Court of India in para 86 of its judgment in the case of Newtech has held that AO has the jurisdiction to decide compensation and interest. It may also be noted that the issue of refund has been decided by the Authority in paras 7 and B of the interim order dated L6.0t.2020 and the complaints were then transferred to AO for adjudging compensation and interest. This fact is concealed by Appellant.

**The point arise in the appeal is that whether the impugned order and the relief sought are sustainable in law.**

**Tribunal opined that the impugned orders passed by AO deciding the refund and interest is in clear violation of the various orders passed by this Tribunal and contrary particularly to the settled position of law now held in Newtech. The same cannot be sustained in the eyes of law and call for interference. We therefore feel it appropriate to refer the complaints for de novo consideration of the Authority. In that view of the matter, as the impugned orders are null and void for want of jurisdiction no reliefs against the said orders can be considered in Appeal.**

**APPELLANT: Mr. Rajan Rayu Kelekar**

**RESPONDENT: M/s. India bulls Real Estate Limited**

**CORAM: SHRIRAM R. JAGTAP, MEMBER (J) & S. S. SANDHU, MEMBER**

**ORDER DATE: 05.05.2022**

Appellant Representative: Mr. Ashutosh Marathe

Respondent Representative: Mr. Kunal Mehta

**Gist of Case: Promoters cannot be allowed to take advantage of their own wrong to deny their liability of not executing agreement. Disputes between promoter & Allottees are settled under RERA. RERA bars the jurisdiction of civil court in respect of these disputes.**

Appeal emanates from order dated 13.12.2019 passed by learned Member, Maha RERA) in the complaint preferred by Appellants (hereinafter referred to as Allottees) to seek refund of the amount paid with interest and compensation under Section 18 as possession was not handed over by December, 2021 as allegedly agreed by Respondents.

In the complaint proceedings, respondents (hereinafter referred to as Promoters) denied claim of Allottees about any agreed date for possession since there was no agreement for sale executed in favor of Allottees. Promoters also disputed the claim of short fall in the area as alleged by Allottees and denied therefore their liability for interest as demanded by Allottees. **Considering the fact that no agreement mentioning the date of possession was executed, the Authority passed the order thereby declining the claim for refund with interest and compensation under Section 18 (3) of MahaRERA.** However, in view of more than 10% amount paid by Allottees the Authority directed the parties to execute agreement within 30 days failing which the Promoters were directed to refund the booking amount within one month. The said order is subject matter of present Appeal.

Learned counsel for Allottees urged the contentions as follows.

- a) Despite the fact that project was registered in July, 2021, Promoters neither issued any allotment letter nor executed agreement even after receiving approximately 40.62 lacs (19.900/o) against the total consideration of Rs. approximately 1.93 crores in violation of Section 13 of MahaRERA which mandates execution of agreement before receiving 10% amount.
- b) Promoters also violated Section 11 (3) (a) and (b) by not disclosing to Allottees stage wise time schedule of completion of project along with other civil infrastructure, water, electricity etc.
- c) Promoter purposely withheld crucial information about their inability to secure 'Tree Committee Approval 'for more than 1 years from date of registration of project and the same was shared only on 30'08.2018. Despite this, the Authority took no cognizance of Promoters' failure on this count.
- d) Promoters informed the Allottees that saleable area of the flat would be 1169 sq. ft. whereas in the draft agreement the area was mentioned as 976 sq. ft. it became clear that Promoters are charging for the area not even shown in the agreement and without delivering the area of 1874 sq. ft. promised at the time of booking in December, 2016.

- e) As Promoters have failed to deliver possession by December, 2021 as promised as have revised the said date to 2024, Allottees have been constrained to cancel the allotment to take refund with interest and/or compensation.

Learned counsel for Promoters opposed contentions of Allottees by submitting affidavit in reply to Appeal, written and oral arguments as follows:

- a) From application form, on the basis of which claim to booked flat is made, it is clear that it is an its application for provisional reservation of flat. As the parties did not intend application to be a binding agreement, no relief can be enforced under Section 18 of RERA passed thereon in the absence of agreement as envisaged there under.
- b) There is no delay as there was no agreement mentioning date of possession. . In any event, in the absence of any agreement as contemplated under Section 18 no claim for reliefs as prayed for in complaint/Appeal can be maintained on the basis of an alleged oral agreement for possession by December, 2021.
- c) Allottees who rely upon application form are also bound by its terms in clause 20 which provides for force majeure factors for extensions in period for possession. As Allottees themselves have accepted the lack of permission by Authority, delay of 18 months on account thereof is required to be excluded and the said period was factored in the draft agreement while offering possession by August, 2023.

Reasons for the above findings on the points for consideration are as under.

**Point No. I**

The transaction for booking of flat in December, 2016 has taken place during the period of MOFA and just before the RERA which came into effect from 01.05.2017. It is now well settled that on registering the incomplete projects under Section 3 of RERA, provisions of RERA are attracted to all such projects. The project of Promoters in which Allottees booked the flat squarely falls in that category and hence is covered under the provisions of RERA including the requirement for execution of agreement under Section 13 by Promoter for having received more than 10% amount of the total consideration as directed by the Authority. It is noteworthy that Promoters have not filed any Appeal challenging the said view taken by the Authority in the impugned order.

The sole ground on the basis of which Promoters never assured to deliver possession by December, 2021 neither in application nor by executing any agreement mentioning therein the said date of possession.

**It is observed that even considering that application was executed prior to RERA period under MOFA regime, Promoters were not absolved of liability to comply with provisions of Section 3 (2) of MOFA as per clause 'F' of which it is made obligatory on Promoters to specify in all transactions with purchasers the date by which possession of flat is to be handed over , Promoters have not only committed violation of the Provisions of MOFA but also of Section 13 of RERA as they failed to execute agreement for sale despite having registering the project. Therefore, Promoters cannot be allowed to take advantage of their own wrong to deny their liability of not executing agreement with 24 months as undertaken in Application Form.**

It is also observed as held by the Hon'ble Supreme Court of India in Foltune Infrastructure (Now Known as M/s Hicon Infrastructure) & Anr. Vs., Trevor D'Lima & Ors. t(2018) 5 SCC 4421 and Ors. various judgments that Allottees cannot be made to wait indefinitely beyond reasonable period of 3 years Allottees therefore who booked flat in December, 2016 are entitled to possession at least by December, 2021.

**The most reprehensible part of the contentions of Promoters is the argument that application form does not constitute a valid and binding agreement and therefore Allottees have to approach Civil Court and not RERA for seeking the relief for any violation of the terms of application form.** It is in background of such wrongdoings as elaborated in the judgment of Neel Kamal Realtors (supra), the RERA is promulgated to secure and safeguard the interests of Allottees. Now all reliefs arising from the dispute relating to transactions between Promoters and Allottees are to be decided under RERA. **RERA bars the jurisdiction of Civil Courts in respect of the said disputes.** In view thereof, question of Allottees to approach Civil Court for getting their claims decided does not arise and as entitled Allottees have rightly approached the Authority to seek refund of amount under Section 18 read with Section 12 and 13 of RERA.

We are of the considered view that Allottees are entitled to refund of the paid amount with the interest as they cannot be made to wait indefinitely till 2023 or 2024 for possession having booked the flat way back in 2016. In the complaint, Allottees have also sought compensation. As the said issue has not been examined

by the Authority having no jurisdiction therefor, Allottees may approach the concerned forum for adjudication of their claim for compensation.

**APPELLANT: Mrs. Sushama Nitin Koparkar and Pradeep Bhanudar**

**RESPONDENT: Glory Construction LLP.**

**CORAM: SHRIRAM R. JAGTAP, MEMBER (I) & S.S. SANDHU, MEMBER (A)**

**ORDER DATE: 17.06.2022.**

Appellant Representative: Adv. Mr. Amit Kumar Tiwari

Respondent Representative: Adv. Mr. Pratik Parmar

**Gist of Case: Intent due to alleged delay in possession is not an open ended affair that can be raised any time. Authority is not competent to award compensation.**

Appellants in the appeals at Sr. Nos. 1 & 2 (hereinafter referred to as the Allottees) purchased flats in the project of Respondent (Promoter, for short), vide agreements dated 05.04.2018 and 25.01.2017 respectively consequent to which possession was given on 18.04.2018 and July, 2018 respectively. It is alleged that not only possession was given with various structural defects there were several other issues which caused grievances to Allottees. According to Allottees, despite several complaints raising the said issues, Promoter failed to pay heed to resolve the same. As a last resort, they filed complaints under Sections 11, 14 (3), 17, 18, etc. of RERA

The appellant sought for the compensation for the above reasons.

Promoter/ appeared in the complaint and submitted denial-cum-undertaking of dated 05.02.2020 committing to complete all the amenities by 15.05.2020. Consequently, common order dated 5.2.2020 in these two complaints along with complaint of another Allottees came to be passed reflecting the relief of interest for delayed possession as possession was already handed over after obtaining Occupancy Certificate (OC). Further directions were given to promoter to give possession letter and to complete all amenities as per its written undertaking dated 05.02.2020. It is the said order that is challenged in these Appeals.

The points which arise for determination is as under:

1. Whether allottees in Appeal at Sr.No.2 is entitled to interest for delay in Possession?

It is indisputably evident from the record that in the said matter, Promoter had already obtained OC and handed over possession to Allottee in July, 2018. Thereafter, though there has been dispute between the parties concerning the amenities, no grievance was ever raised regarding delayed possession to claim interest by Allottee before any forum. The claim is raised for the first time in the complaint filed on 31<sup>st</sup> August, 2019 and never before. It is thus obtained that Allottee had no dispute in respect of delayed possession for more than one year after possession.

It cannot be accepted that claim for interest due to alleged delay in possession is an open ended affair that can be raised any time. Such a claim if not raised simultaneously at the time of taking possession or within a reasonable period immediately after possession cannot or sought not be accepted and entertained. An afterthought exercise such as the case under consideration would lead to endless disputes affecting interests of real estate sector adversely which RERA seeks to safeguard.

Therefore, the claim of the allottees for interest for the delayed period cannot be accepted.

#### **RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL**

**APPELLANT: Builder Alliance Pvt. Ltd.**

**RESPONDENT: Rajasthan Real Estate Regulatory Authority**

**CORAM: HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA (RETD.) CHAIRPERSON, HON'BLE MR. BRIJESH KUMAR DANGRA, MEMBER (JUDICIAL), HON'BLE MR. B.D. JAT, MEMBER (TECHNICAL).**

**ORDER DATE: 19.07.2022**

Appellant Representative: Adv Ankit Bishnoi

Respondent Representative: Adv Gaurav Gidwani

**Gist of Case: Neither obtaining completion certificate nor applying for extension of registration after the due date of completion of project will attract penalty.**

Material skeletal factual matrix is, that the appellant/promoter was served with a notice dated 06th January, 2021, for imposition of penalty by Rajasthan RERA, Jaipur, and for taking over the project for arranging completion of its remaining



development works, with the assistance of third party and proposed interim directions. Even after having received the notice, the appellant/promoter did not respond to them.

The project was launched by the appellant/promoter, with RERA Registration No. AJ/P/2017/488, and was to be completed by 31st December, 2018. **Neither the "Completion Certificate" was submitted nor was any extension of registration sought by the appellant in accordance with law, for the project involved herein. The suo-moto proceedings initiated by the Rajasthan RERA, Jaipur, on Complaint No.F.3(461)RJ/RERA/P/2017, concluded on 08th October, 2021, with infliction of penalty of Rs.1,00 lakh (Rupees one lakh only), of which the appellant is aggrieved of.**

Learned counsel for the appellant/promoter did not dispute the fact that notice dated 06th January, 2021, was received by the appellant/promoter admitted the service of notice and the fact that no response to the notice was filed. Further, for hearing on the complaint, in the suo moto proceedings, a notice was also served through e-mail on 05th August, 2021 at 12:30:25, but the appellant abstained from appearance, before the Authority below in the proceedings, is also not denied.

Referring to "Completion Certificate" dated 12th July, 2022, laid before this Tribunal along with an application to take the same on record, with a copy to the counsel for the respondent-RERA, Jaipur; learned counsel would submit that the project is complete, and therefore, the penalty inflicted vide impugned order needs to be quashed.

**Learned counsel further contended that an application for issuance of "Completion Certificate" was submitted by the appellant before Jaipur Development Authority on 26<sup>th</sup> August, 2019, with a specific reference to earlier application, but the necessary "Completion Certificate" was not issued by the 'Competent Authority', that is, JDA, and therefore, the penalty inflicted is bad in the eye of law. Further, the fact that the appellant neither responded to the notice nor appeared before the Authority in the suo moto proceedings; was not on account of inadvertence but owing to sickness. It is also added the appellant has been appearing before the Authority in other matters instituted against the appellant/promoter. Hence, lenient view ought to have been taken and proceedings must have been dropped rather than**

**inflicting penalty and that too, to the tune of Rs.1.00 lakh (Rupees one lakh only).**

On the contrary, Mr. Gaurav Gidwani, while supporting impugned order and penalty inflicted, contended that from a glance of notice dated 06th January, 2021, it will be evident that the project "GRANDEUR GROUP HOUSING" was not complete by the expected date as disclosed in the registration application dated 31st December, 2018. Further, the Authority, in no uncertain terms, informed the appellant for imposition of penalty and taking over the possession of the project and to arrange for its completion, since the project lapsed as no "Completion Certificate" was submitted by the expected date of completion, that is, 31st December, 2018.

Responding to the plea in the backdrop of application dated 26th August, 2019 instituted for issuance of a "Completion Certificate", learned counsel would urge that though, the application makes a reference to earlier application, but the plea is without any factual foundation. Further, the application was not accompanied by required fee, therefore, it is only an eyewash to create an evidence of the project being complete. Referring to deposit of fee for obtaining "Completion Certificate" placed on record at page 14 of the miscellaneous application instituted with a prayer for taking the documents on record; it is contended that soon after the deposit of required fee for issuance of "Completion Certificate" on 07th June, 2022; the "Completion Certificate" was issued on 12th July, 2022; as is available at page 7 of the miscellaneous application. Thus, it is apparent on the face of the record that the appellant is trying to take advantage of his own wrong. That apart, fact remains that the project was not completed by the expected date of completion, that is, 31st December, 2018, and therefore, infraction of the provisions of Real Estate (Regulation and Development) Act, 2016 (for short, "Act of 2016"), is apparent on the face of record for which penalty has been rightly inflicted, and that too, after affording an opportunity of hearing to the appellant ensuring compliance of principles of natural justice. Hence, appeal of the appellant merit rejection with exemplary costs.

**From the materials available on record, and as admitted by both the sides, it is evident that there is no evidence of deposit of required fee along with application dated 26th August, 2019, that was submitted for obtaining "Completion Certificate" by the appellant. The subject project was not completed by the expected date of completion, that is, 31st December, 2018.**

No application was instituted by the appellant/promoter for validation of the registration or extension of time for completion of the project before the Raj-RERA, Jaipur. Hence, the project was an "Ongoing Project" and necessary steps ought to have been taken by the appellant once the project was not completed by the expected date of completion, that is, 31st December, 2018.

For all the reasons aforesaid, and in view of the materials available on record, so also taking note of the admitted factual matrix that the appellant did not respond to notice issued on 06th January, 2021, for imposition of penalty by Raj-RERA, Jaipur, and for taking over the project for arranging its completion with interim directions, so also in view of the admitted fact that the appellant failed to appear in the suo moto proceedings resulting into infliction of penalty, despite service notice; speaks volumes of the conduct of the appellant, **for he did not care even to respond to the notice or entered appearance before the Authority below in the proceedings initiated suo moto.** We see no illegality warranting any interference by this Tribunal in exercise of appellate jurisdiction. The appeal is without any substance and merits rejection.

Accordingly, appeal of the appellant is hereby dismissed with cost of Rs. 20,000/- (Rupees twenty thousand only), to be deposited with the State Legal Services Authority, Rajasthan High Court, Bench at Jaipur, within a month and file a report in the Registry of this Tribunal.

#### **THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

**COMPLAINANT: Argus Flat Owners Association**

**RESPONDENT: ARG Developers Pvt. Ltd.**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 30.05.2022**

Complainant Representative: Adv Pranjul Chopra, Adv Sameer Sharma

Respondent Representative CA Himanshu Goyal, CA Praneti Agarwal

**Gist of Case: It is the duty of this Authority is to get the stalled projects completed up to occupancy stage.**

Complaints have been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and relate to a real estate project called 'ARGUS', which is located near Gopalpura Flyover on Tonk Road

in Jaipur and is registered with this Authority as a group housing project, vide registration No. RAJ/P/2017/149 dated 05.09.2017. Accordingly, there are, in all, 62 flats and 3 commercial units, making a total of 65 saleable units in the project. The estimated date of completion of the project declared at the time of registration was 30.06.2019, which was extended upto 30.06.2020 on compelling grounds other than force majeure and was further extended upto 30.06.2021 on the ground of force majeure (Corona pandemic) under section 6 of the Act.

While, as per the completion certificate issued by the respondent architect on 13.04.2021, the project stood completed within the extended period of registration, the respondent developer has not been able to obtain an occupancy certificate for the project till date. And, that is where the project is stuck for the last one year, with no solution in sight. Hence, the present complaints, seeking intervention of this Authority to take the project to the stage of occupancy certificate so that all the allottees are able to occupy the flats allotted to them in this project.

#### Case of the complainant association

The respondent landowner and the respondent developer executed between themselves a registered development agreement on 03.07.2014, for the construction of a multistoried residential complex to be called 'ARGUS'. But, when the respondent developer miserably failed to deliver on its promises under the said development agreement (as amended vide supplementary agreement dated 27.03.2015), it executed and got registered on 14.09.2020, a further agreement with the respondent landowner, called 'the third supplementary development agreement', by virtue of which, the respondent landowner agreed to take upon himself the whole task of completing the project in a time-bound manner. The respondents had not procured a written prior consent of the allottees before executing such an understanding and merely informed orally, that too after a couple of months. The main grievance of the complainants is that, as per the agreement for sale executed by the respondent developer with the allottees, the said project was to be completed and possession handed over to the allottees by 30.06.2019 and, with the inclusion of the grace period, latest by 30.12.2019. As per the aforesaid third supplementary development agreement, the respondent landowner was to complete the project; and thereupon completion certificate was to be obtained by the respondent developer by 31.01.2021 and occupancy certificate by 30.06.2021. But, the respondent landowner has also miserably failed to complete the project and the project is lying incomplete. The temporary

electricity connection procured by respondents has also been cut-off by the electricity authorities due to non-payment of bills.

The complainant association has further stated that the respondent architect has issued a completion certificate dated 13.04.2021, whereas the project remains far from being complete. Major works such as flooring, sanitary fittings, doors and windows, remain incomplete; and basic amenities such as POP, paint, uPVC windows, proper staircase, lighting of common area, LPG and electricity lines, parking area and power backup, have also not yet been provided. The work in common areas such as yoga deck, swimming pool, club house and gymnasium is also not complete and whatever work has been completed, it has been done using sub-par material, contrary to what was mentioned in the brochure. The complainant association has also stated that, according to section 6 of the Act, the extension, cannot be granted for more than one year in aggregate, but the respondents have been provided 2 extensions, aggregating to a period of 2 years. Many allottees are living in rented accommodation and have also taken loan and are paying a huge sum every month as EMIs; and the delay in giving possession, as was envisaged under the agreements for sale, has been causing an irreparable loss to them every day.

**The complainant association has prayed for the following relief:**

- 1. To revoke the registration of the project and to put the respondent landowner and the respondent developer under defaulters' list;**
- 2. To allow the complainant association to complete the remaining works of the project on its own and to provide the scheme for the same;**
- 3. To direct the respondent landowner and the respondent developer to pay the rental amount to the allottees;**
- 4. To direct lodging of an FIR;**
- 5. To direct investigation into accounts of the respondent landowner;**
- 6. To direct the respondent landowner and the respondent developer to pay EMIs to the lending institutions of the allottees;**
- 7. To direct them to pay differential amount between the material used and the material specified to be used; and**
- 8. To direct investigation against the respondent architect.**

In a rejoinder to the reply of the respondent landowner, the complainant association has further stated that a competent authority, viz., Registrar of Societies, has issued the certificate of incorporation of the compliant association,

which the respondent landowner has challenged only after the filing of their present complaint. The registration certificate was issued on 17.08.2021, but the process to form the association had started 3-4 months prior. On 22.06.2021, upon successful submission of documents to Registrar of Societies, the association members had informed the respondent landowner and the respondent developer. The respondent landowner had then welcomed the formation of the complainant association and congratulated its members vide his e-mail, dated 01.07.2021, placed on record.

### Case of the complainant society

The case of the complainant society (i.e., complainant in the complaint at S. No. 2 above), represented through its President Shri Shankar Venkutham, is that it is a duly registered society under the provisions of the Rajasthan Apartment Ownership Act, 2015 (hereinafter called 'the Apartment Act') and the rules and bye-laws made thereunder. The project 'ARGUS' is a multistoried residential complex consisting of two basements and 17 floors, with total 62 residential flats and 3 commercial units. The complainant society is having 20 members and the complainant society is the only legally registered society of the allottees.

The respondent developer could not complete the project as he siphoned off more than 27 crore rupees from the money which was required to be invested in the project. In this context, an FIR, registered as FIR No. 223/2020 dated 01.07.2020, was lodged by the respondent landowner against the respondent developer.

It has also been stated that the respondent developer has proceeded malafidely and has initiated a proxy litigation by creating an illegally incorporated 14-member association, called Argus Flat Owners Association, and getting it file the complaint at S. No. 1 above.

### The complainant society has prayed, in main, that

1. **It is in the interest of justice that the remaining work be allowed to be completed by the respondent landowner, while simultaneously directing the respondent developer to abide by all the terms and conditions of the contracts executed between him and the respondent landowner;**
2. **As stated by the so-called complainant association in their complaint that an amount of Rs. 13.82 crores is pending to be paid by the allottees, they**



**may be directed to pay that amount so as to enable the respondent landowner to complete the pending work;**

- 3. The respondent bank may be directed to allow the respondent landowner to operate the project bank account and to withdraw monies therefrom for the project or otherwise; and**
- 4. As the respondent landowner has already submitted his scheme for completion of the impugned project in the pending complaint of the complainant association, the respondent developer be directed not to create any obstruction and let the respondent landowner complete the project.**

**Landowner Case of the respondent**

**In brief, the case of the respondent landowner is that the complainant association does not have any locus to pursue its present complaint as it is not a legally incorporated association and its incorporation is in violation of the provisions of section 13 of the Apartment Act and the bye-laws framed thereunder.**

He further states that there exist total 62 flats in the entire building and the provisions of the Apartment Act require 2/3rd of allottees/home-buyers/transferees to form an association. There were only 33 allottees in the project and the complainant association has been formed merely by 7 allottees. Also, only a promoter can form an association and get it registered, whereas, in the present case, the promoters were not aware of formation of any such association. The respondent landowner himself has 12 flats in the said building and is, therefore, entitled to become a member of the legally constituted flats owners' association, but no notice of such association being formed was given to him.

The respondent landowner has also stated in his reply that he is neither a promoter nor a co-promoter, but merely a landowner who has agreed to complete the work of the respondent developer at the risk and cost and consequences of the latter.

**Pursuant to the inability of respondent developer and the execution of third supplementary development agreement dated 14.09.2020, the respondent landowner took over the development work of the project by putting in additional funds to the tune of Rs. 15.66 crore plus interest; and, instead of**

**supporting completion of the project, the respondent developer continued to create all possible hurdles in connivance with the respondent bank.** The respondent bank froze the loan account despite the respondent landowner having repaid the loan, along with the interest, to the tune of Rs. 24 crore, till October 2021.

**Accordingly, the respondent landowner has prayed that the complaint of the complainant association be dismissed with exemplary costs. Alternatively, claims of the complainant association may be allowed only against the respondent developer; and the complainant association, the respondent developer and the respondent bank, all three may be directed not to interfere in the project and let the respondent landowner complete the project.** He has also, in his reply, prayed that he may be given 60 days of unhindered permission/access, along with the direction for clearance of all dues by the allottees, in order to complete the project and thereafter further 120 days to obtain the occupancy certificate.

#### Case of the respondent developer

The respondent developer has submitted a short reply to say that **he is ready and willing to lend a helping hand to the complainant association, if this Authority directs him to do so, in completing the remaining works and obtain occupancy certificate for the project.**

#### Case of the respondent architect

The case of the respondent architect is that **he has issued completion certificate of the impugned project in terms of the provisions made in point No. 16 of the Building Regulations, 2020 of Jaipur Development Authority, notified on 07.01.2021**

#### Case of the respondent bank

The respondent bank has filed preliminary objections to the application of the complainant association to add the respondent bank as a party to their complaint. The case of the respondent bank is that in the year 2014, they were approached by the respondent developer, for availing term loan of Rs. 27 crore and overdraft limit of Rs. 5 crore, aggregating to Rs. 32 crore.

The respondent developer's loan account was declared as NPA by the respondent bank on account of default in payment. Subsequently, a notice under section 13(2) of the SARFAESI Act was issued by the respondent bank.

**The respondent bank has further stated that it cannot be stopped from proceeding further and taking over possession of the mortgaged property over which it has exclusive charge.**

**The respondent landowner filed his objections to scheme of the complainant association and alleged that the complainant association is in connivance with the respondent developer.** Furthermore, the complainant association is illegally incorporated and that too by only 14 allottees.

Since the respondents had their reservations on/ objections to the scheme for completion of the project as filed by the complainant association, at the hearing held on 11.04.2022, counsels of the respondent landowner, the respondent developer and the respondent bank were all asked to submit for consideration of the Authority, if they have a better scheme for completion of the project, with advance copy to counsels of all other parties. In response to this opportunity given to the respondents, the respondent developer and the respondent bank have chosen not to file any counter scheme of their own. But, the respondent landowner has filed an alternative scheme for completion of the project.

Counsel of the complainant society has stated that it has been registered under the Apartment Act and deserves to be recognized as legally constituted association of allottees of the project. The Apartment Act has overriding effect over the Act (RERA Act). The complaint filed by the complainant association is not maintainable as the said association is not a legally constituted association; and, therefore, the scheme submitted by it cannot be considered by the Authority.

#### Issues for Consideration and our Observations and Findings thereon

**Having heard all the parties at length and having perused entire record of the case, we find that the project is stalled mainly because of the inter se dispute that has arisen between the respondent landowner and the respondent developer. It is all too evident that the respondent developer could not complete the project within the time declared by him at the time of registration of the project, mainly on account of shortage of funds, which appears to have been occasioned by the prevalent market conditions resulting**

in poor sales. Faced with the shortage of funds, he entered into the third supplementary development agreement with the respondent landowner and handed over the project to him for remaining development with the understanding that the respondent landowner will bring in the desired funds and complete the project to enable the respondent developer obtain completion certificate by 31.01.2021 and occupancy certificate by 30.06.2021. But, then, having done some work, the respondent landowner also failed to garner further resources, ran out of funds mid-stream and could not take the project forward from the stage of completion certificate to the stage of occupancy certificate. Now, essentially, the position of the respondent landowner is that he cannot complete the project upto occupancy stage unless the allottees are directed to pay all or at least 90% of the due amount in advance. Meanwhile, most of the allottees have got dissatisfied with the respondent landowner and lost their trust in him. The things have come full circle and now most of the allottees want the respondent developer to again take full charge of the project, complete the works now remaining incomplete, and take it to the occupancy stage.

#### Maintainability of the Complaints

Both the complainant association and the complainant society are certainly voluntary consumer associations registered under law and are aggrieved because the respondent developer and the respondent landowner have not been able to complete the project within the time promised by them. The impugned project is registered under the Act and various violations of the Act are alleged in the complaints. Thus, both the present complaints are found to be maintainable before this forum under section 31 of the Act and this forum has the jurisdiction to hear and decide these complaints.

#### Completion Certificate

The only definition of completion of a project known to the Act, is whether a completion certificate has been issued for the project by or on behalf of the competent authority. In the present case, the completion certificate of the project has been issued on 13.04.2021 by the respondent architect, who is empanelled, registered and authorized by the State Government to issue completion certificates on behalf of the competent authority. Therefore, for the purposes of the Act, the project stands completed on that date.

**We have held on so many occasions in the past that this Authority is not the competent forum to decide the veracity of completion certificates issued by or on behalf of the competent authority.** There is an Appellate Tribunal provided under the Jaipur Development Authority Act, 1982, the Act governing the competent authority for the impugned project, i.e., the Jaipur Development Authority (JDA); **and if the complainants have to challenge the veracity of the completion certificate issued by the respondent Architect, they have to approach the said Appellate Tribunal for redressal of their grievance.** Insofar as this Authority is concerned, the completion certificate in question is a conclusive proof of the fact of completion of the project.

#### Revocation of Registration

**In the present case, as explained above, the project stands completed; and, therefore, the provisions relating to revocation of registration provided under section 7 of the Act invoked by the complainant association are not applicable to the present case.**

#### Applicability of section 8 of the Act

The complainant association has invoked section 8 of the Act,

But, in the present case, the project stands completed within the extended validity of its registration and, thus, the **registration of the project has neither lapsed nor can it be revoked. As such, the provisions of the said section 8 do not ipso facto apply to the present case.**

#### Association of the Allottees (Resident Welfare Association)

**From a reading of above provisions of the Apartment Act, it is clear that it is primarily the duty of the promoter to form an association of the allottees, but in case the promoter fails to get the association registered, the allottees/purchasers/transferees of the apartments in the building can form and get the association of the allottees registered at their level.**

**While there can be an association of the allottees for more than one project, there cannot be more than one association of the allottees for any one project.** Thus, the impugned project can have only one association of the allottees and it has fallen on us to determine which of the two associations, if any, is representative of the allottees in general, having the membership of a majority of the allottees, and,

therefore, deserves to be recognized as the association of allottees for purposes of the Act.

The complainant society represents a minority of the allottees; and, therefore, cannot be accepted as an association of the allottees for purposes of the Act. On the other hand, the complainant association has membership of a majority of the allottees; and is, therefore, entitled to be recognized as the association of the allottees, or Resident Welfare Association, of the impugned project, for purposes of the Act.

#### The Scheme for completion of the project

On the directions of the Authority, the complainant association has submitted a scheme for completion of the project and a counter scheme has been submitted by the respondent landowner.

**The scheme of the complainant association enjoys a wider support, is more feasible and, therefore, has much better chances of success.**

#### Third Supplementary Development Agreement

The respondent developer and the respondent landowner have executed the third supplementary development agreement on 14.09.2020, where under the respondent landowner agreed to infuse funds into the project and complete the project subject to various terms and conditions agreed between the parties to the said agreement. On examination of the said agreement, we find that two of the stipulations of the said agreement are unlawful and, therefore, not acceptable to this Authority, even though mutually agreed between the parties thereto. One is the change of developer of the project and the other is the assignment of unsold flats/units in the project to the respondent landowner.

#### Conclusions

- 1. Both the present complaints, having been filed by registered voluntary consumer associations, are maintainable before this forum under section 31 of the Act.**
- 2. Argus Flat Owners Association, the complainant association, has the membership of a majority of the allottees in the project and is, therefore,**

recognized as the association of the allottees envisaged under section 11(4)(e) of the Act and as the Resident Welfare Association envisaged under the Apartment Act. Argus Residents Welfare Society, the complainant society, is not representative of a majority of the allottees in the project and, therefore, cannot be accepted as the association of the allottees or the Resident Welfare Association.

3. This Authority is not the appropriate forum to decide the inter se disputes between the respondent developer and the respondent landowner. We can only enforce the obligations of the respondent developer and the respondent landowner, as one part, that they have towards the allottees or other stakeholders in the project, and vice versa.
4. The respondent developer, being promoter of the project is found to have violated section 15 of the Act in executing the third supplementary development agreement and deserves to be penalized under section 61 of the Act.
5. In the case of stalled projects, such as the present case, the association of the allottees holds the key to decide fate of the project. The scheme presented by the Argus Flat Owners Association, therefore, deserves our due consideration.
6. The scheme submitted by the complainant association is found generally acceptable on the following grounds:
  - (1) The complainant association deserves the first right of refusal;
  - (2) On merits, the scheme of the complainant association is found to be more feasible than the alternative scheme presented by the respondent landowner; and
  - (3) The scheme requires the respondent developer to complete the project upto occupancy stage, which is in tune with the scheme of the Act that requires the registered promoter to obtain the completion certificate and the occupancy certificate and he cannot be freed from this obligation, unless:



- (i) **2/3rd of the allottees consent to it in writing that the registered promoter be changed and replaced by the landowner or any other person as a new promoter; or**
  - (ii) **the association of the allottees wants to take over the project or to transfer it to a third party for completing the remaining development works of the project.**
- 7. The completion certificate issued by the respondent architect is a valid proof of completion of the project and no case is made out or can be made out against him before this forum, which is not competent to examine the veracity of completion certificates issued by or on behalf of the competent authority.**
- 8. The respondent bank deserves the protection of this Authority in securing its legitimate rights in the project as a secured creditor. At the same time, the respondent bank cannot be allowed to go for an overkill and jeopardize the project if the project has the hope of coming to fruition and, at the same time, bank's security interest is not compromised.**
- 9. A major duty of this Authority is to get the stalled projects completed up to occupancy stage, so that allottees in the project can get possession of the allotted units and their other entitlements under the Act. To this end, the Authority is fully empowered under section 37 and section 38 of the Act.**

**COMPLAINANT: Suo Moto**

**RESPONDENT: Samanvay Infrabuild LLP**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 01.08.2022**

Complainant Representative: None

Respondent Representative None

**Gist of Case: Project lapsed and to be taken over by authority for completion by third party.**

A show cause notice was issued to the respondent on 03.02.2021, in each of the present two matters, under section 8 and section 61 read with section 11 (4) (b) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the

Act') for having failed to complete its registered projects, 'Atmosphere Grand-I' and 'Atmosphere Grand-II' within the validity of their registration, which expired on 31.10.2020. The aforesaid show cause notices were duly served on the respondent, but no reply was filed on behalf of the respondent in either of the two matters. Thereafter, notices for hearing were issued to the respondent from time to time, but he has repeatedly failed to appear for the hearing. A notice for today's hearing was issued to the respondent in both the matters on 03.06.2022, which got duly served on the respondent by speed post on 10.06.2022 at 16:06:01 hrs., but the respondent has yet again failed to appear for the hearing fixed for today. We, therefore, conclude that the respondent has no defence to make and is deliberately avoiding the present proceedings.

**From a perusal of record of the case and online record of the Authority, we find that the respondent has failed to complete the impugned projects within the date (31.10.2020) that was declared by him under section 4(2)(I)(C) of the Act. No completion certificate or occupancy certificate has been submitted; no Quarterly or Annual Progress Reports have been filed; and no application for extension of registration has been made by the respondent till date.**

On 21.03.2022, an interim order was passed by the Authority directing the Registrar of the Authority to attach and takeover possession of both the projects and submit a report on ground reality of the projects.

From a perusal of the record, we find that the Registrar has not yet attached and taken over possession of the projects. However, a site inspection report dated 19.04.2022 has been placed on record. According to this report, the project is lying abandoned. No construction has been done in the last few years. Earlier, some construction has been done at stilt and ground floor level. No further construction is happening. One of the partners of the promoter firm is missing for the last 3 or 4 years. Thus, the project is lying incomplete and unattended.

In view of the aforesaid facts, we conclude that both the impugned projects have lapsed on 31.10.2020. Apart from a penalty under section 61, the respondent deserves to be ousted from the project to enable the Authority get the project completed with the assistance of a third party, under section 8 of the Act.

Therefore, in exercise of the powers conferred on the Authority under section 37 and section 38 of the Act, the following directions are hereby issued:

- 1. A penalty of Rs. 10.00 lakh is imposed on the respondent under section 61 for having failed to complete the impugned projects within the validity of their registration and thereby violating section 11(4)(b) of the Act. He shall deposit the penalty amount with the Authority within 45 days from the date of issue of this order; and**
- 2. The respondent shall be ousted from the project and the project shall be taken over by Registrar of the Authority in the possession of the Authority for getting its remaining works completed with the assistance of third party under section 8 of the Act. He shall do so within 45 days from the date of issue of this order.**

**COMPLAINANT: Suo Moto**

**RESPONDENT 1: Executive Officer, Nagar Palika, Chaksu**

**RESPONDENT 2: Anandi Lal Lalpuria Construction Pvt. Ltd**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 08.08.2022**

Complainant Representative: None

Respondent Representative None

**Gist of Case: Penalty imposed on Nagar Palika, Chaksu for not getting the profit registered.**

In the present matter, a show cause notice was issued to Respondent No. 2 on 22.07.2020 and then to Respondent No. 1 on 24.12.2020, under section 59 read with section 3 and section 61 read with section 11(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') for having advertised, in "Rajasthan Patrika" Jaipur edition dated 15.02.2020 its EWS/LIG housing project at Chaksu under CMJAY, without obtaining prior registration thereof.

A reply was submitted on behalf of Respondent No. 2 that he is not the promoter of the project. He is associated with the project only in the capacity of a contractor. Based on the documents submitted by Respondent No. 2, vide this Authority's order dated 28.06.2021, the aforesaid notice issued to Respondent No. 2 was discharged and the present proceedings were dropped as against him. From record of the case, it became evident that the promoter of the project was Nagar Palika, Chaksu (Respondent No. 1) and the impugned advertisement was issued by it. Shri Azra Sousan, who was present on behalf of Respondent No. 1 on 28.06.2021, stated that the Nagar Palika will soon submit an application for obtaining

registration of the project. Respondent No. 1 was, therefore, directed to submit online application for registration of the project within one month from the date of order (28.06.2021), failing which, the Authority warned of a penalty on Nagar Palika under section 59(1) and prosecution of its Executive Officer under section 59(2) of the Act.

**But, despite directions as aforesaid, no application for registration of the impugned project has been filed by Respondent No. 1 till date. Notices for today's hearing have been served on the Executive Officer of Nagar Palika, Chaksu and also Director, Local Bodies, but none is present on their behalf. Nor has any compliance report or reply been filed on their behalf.**

**Having perused record of the case, we find that Respondent No.1, Nagar Palika, Chaksu, has advertised its impugned project without obtaining prior registration thereof. In fact, no application for registration has been filed with this Authority till date, despite the directions of the Authority issued on 28.06.2021. Therefore, we hold that Respondent No.1 has violated the provisions of section 3 of the Act and is liable to be penalized under section 59(1) and prosecuted under section 59(2) of the Act.**

**In view of the above observations and findings, a penalty of Rs. 8.00 lakh is imposed on Nagar Palika, Chaksu under section 59(1) for violation of the provisions of section 3 of the Act. Respondent No.1 is directed to deposit the penalty amount with this Authority within 45 days from the date of issue of this order.**

**Registrar and Prosecution Officer of the Authority are directed to launch prosecution against the Executive Officer of Nagar Palika, Chaksu in the court of jurisdiction, under section 59(2) of the Act.**

**COMPLAINANT: Rajendra Prasad Sharma & Ors**

**RESPONDENT: Akriti Landcon Pvt. Ltd.**

**CORAM: HON'BLE SHRI SALVINDER SINGH SOHATA, MEMBER**

**ORDER DATE: 17.08.2022**

Complainant Representative: Mr. Mitesh Rathore

Respondent Representative: Mr. Prateek Rawat

**Gist of Case: Extension provided by the authority of registration for completion is never to be taken against home buyers for entitlement of interest on delayed possession.**

A common order in the cases were passed by the Authority vide order dt. 04.03.2021. Against the order Appeals were preferred by the respective complainants before the Hon'ble REAT. The Hon'ble REAT has allowed Appeal No. 35/2021 Subodh Kumar Srivastava and Appeal No. 36/2021 Rajendra Prasad Sharma vide order dt. 20.05.2022 and aforesaid directions issued by the Authority are set aside and cases are remanded back for afresh adjudication.

The factual matrix of the cases is, as under:-

Description	Rajendra Prasad Sharma Comp. No: RAJ/RERA/C-2018-2513	Subodh Kumar Srivastava Comp. No: RAJ/RERA/C-2018-2514
Date of agreement	19.09.2015	19.11.2014
Consideration	41.00 lac (Excluding tax)	34.00 lac (Excluding tax)
Paid amount	42,91,138 (Including tax)	33,88,646/- (Including tax)
Expected delivery	March, 2017subject to force majeure	May, 2017
Flat No.	B-306 4 BHK-II	B-407 2.5 BHK
Area of unit	1994.86 sq. ft.	1386.69 sq. ft.
Relief: Possession of flat, interest, litigation cost, interest on EMI and compensation.		

A residential project “Shreenath Oasis” situated at Kherli Phatak, Station Road, Kota was being developed by the respondent. The project is registered with the Authority bearing Registration No. RAJ/P/2017/318.

**It is apt to mention here that both the complaints are not having intended to exit from the projects. They are interested to take over the possession in the light of terms and conditions of the agreement for sale executed between the parties mentioned aforesaid. The promoter respondent was not able to construct the project as per the period specified in the agreements. Therefore, the complainants approached before the promoter along with the various other buyers of the flats in the project with regard to expedite the construction work and hand over the possession after completion of the project.** Complainants also alleged in the complaints that promoter has violated the provisions of section 12 and 14 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as ‘the Act’) as size of the allotted units is reduced during the construction of the project.

Respondent filed its reply in the respective cases and averred therein that due to scarcity of Bajri and raw material with regard to construction, project was not completed in the specified period mentioned in the agreement and promoter is eligible to seek relaxation under the provisions of force measure. It is vehemently declined through the reply that size of the flats is never reduced and the contention in this regard are misconceived by the complainants. **During the registration process completion of the project was informed to the Authority in the month of July, 2018 and subsequently, extension under the statutory provision is allowed keeping in view the force measure status. Promoter also categorically mentioned that statutory approval were provided delayed by the UTT Kota.**

Therefore, construction was not carried out as per the envisaged plan. Promoter managed the funds from his own resources for completion of the project. Complainants have delayed the payment of installments, despite that respondent is agreed to pay interest for delayed period at prescribed rates under the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as ‘the Rules’). Accordingly, promoter respondent prayed for dismissal of the complaints in the light of provisions enumerated in section 18 (1) of the Act.

On the basis of Appeal No. 360/2019 in the matter of SCI Aditi Power Pvt. Ltd. and Ors V/s Karnataka Electricity Regulatory Commission and Ors, decided on 14.07.2021 by the Appellate Tribunal for Electricity, New Delhi that promoter may

not be penalized for the period which is taken by statutory Authority for providing mandatory approval. In the instant case, it is apparent on the face of record that UIT Kota vide directions dt. 21.10.2013 and subsequently, on 13.07.2015, permissions for project i.e. B+G+10 floor (30 meter) height were allowed. Promoter respondent claims that floor 11 to 14 were allowed vide directions dt. 11.01.2017. Learned Advocate on behalf of promoter respondent claimed that once the permission for floor No. 11 to 14 was allowed in the month of January, 2017, it was not possible to complete the project within the specified period mentioned in the aforesaid agreements i.e. March, 2017 or May, 2017. On the basis of aforesaid judicial pronouncement, Advocate on behalf of respondent prayed that interest may not be imposed for delayed delivery. **Learned Advocate Mr. Mitesh Rathore retorted on the ground that the issue was already considered by the Hon'ble REAT. Therefore, the Authority is not having empowered to re-agitate the issue with regard to delayed approval by the statutory Authority i.e. UIT, Kota. We are having the considered view, once Hon'ble REAT at para No.7, it is categorically mentioned that with regard to delay for statutory approval on the part of the UIT Kota is not sustainable. Thus, the Appellate Authority has applied its mind, we are deprived of the jurisdiction to intervene in the findings made available by the Hon'ble REAT.**

**In catena of cases, the Authority itself has declared that an extension provided by the Authority with regard to validity of Registration for completion of the project is never to be taken against home buyers with regard to entitlement of delayed interest against the deposits made by them.** The extension of validity is an administrative act and it never debars the allottees to claim the interest as per the delivery of possession or offer is specified in the terms and conditions of the agreement for sale. In the case in hands a definite period for handing over the possession is mentioned there in agreements for sale. **Therefore, promoter is bound to pay the delayed interest w.e.f. expected date of delivery of the unit to the complainants.**

An issue was raised by the complainants that a different date for various buyers of the project is mentioned in the agreements and they claim a similar date should have been declared by the promoter. We had gone through the record made available on both the files that a memorandum prepared in the month of March, 2018 is available on the file with regard to complainant Subodh Kumar Srivastava. In the said memorandum aforesaid complainant and various other complainants had mentioned that in some of the agreements, it was averred in the agreements that project was likely to be completed in the month of March, 2016. We are

having the firm view that none of the other agreements for sale are made available before the Bench. Therefore, in lack of conclusive proof, we may not ascertain that promoter has promised to complete the project upto the month of March, 2016. In the instant cases a conclusive proof through the agreement is before us that project was likely to be completed in the month of March, 2017 or May, 2017. Accordingly, respective complainants are only entitled to claim delayed interest in the context of content of agreements.

**With regard to relief for rental charges paid by complainants and installments of EMIs for the delayed delivery both the relief are covered under the compensation claims.** With regard to compensation, Authority is not having jurisdiction, therefore, complainants are having liberty to raise the issue before the competent fora.

Promoter raised the contention that on 15.06.2019 both the complainants were asked to undertake, internal finishing work of flats. On the basis of this, we are not inclined to absolve responsibility of the promoter for delay in completion of project. Unless an offer for possession or actual delivery is not made under statutory provisions, section 11 (4) and 19 (10) of the Act, aforesaid communication is not helpful to promoter.

On the basis of foregoing discussions, it is apparent on the face of record that **promoter has miserably failed to complete the project as specified in the terms and conditions of the agreements.** Complainants never opted for exit of the project and they intend to take over the possession after completion of the project. **Therefore, it is a fit case to allow delayed interest to the complainants'** w.e.f. expected date of delivery of possession mentioned in the respective agreements of the complainants.

Accordingly, the complainants are allowed and respondent promoter is directed to expedite the construction work of the project. Meanwhile, promoter is directed to pay interest @ 7.5% of highest MCLR of SBI+2% w.e.f. expected date of delivery of possession mentioned in the agreement till actual delivery or offer for possession within 45 days. Complainants are having liberty to approach before the competent fora with regard to compensation as mentioned herein above. With regard to litigation, no cost is awarded.

**COMPLAINANT: Avalon Projects a unit of GRJ Distributors and Developers Pvt. Ltd**



**RESPONDENT: Sanjay Kumar Singh & Ors.**

**CORAM: HON'BLE SHRI SALVINDER SINGH SOHATA, MEMBER**

**ORDER DATE: 17.08.2022**

Complainant Representative: Mr. Rubal Tholia

Respondent Representative: Mr. Swaroop Das

**Gist of Case: Promoter has competency to cancel the allotment if timely payment is not made.**

On the earlier hearing, learned Advocate on behalf of applicant assured the Bench that after seeking directions from his client withdrawal of the application may be sought. The learned Advocate was asked to argue on maintainability of the complaints with reference to observations made by the Hon'ble Supreme Court in case of M/s Newtech Promoters and Developers Pvt. Ltd. with regard to provisions of section 11 (5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act').

Under the aforesaid statutory provisions, promoter is empowered to cancel the allotment, if any breach of the terms and conditions of agreement is made by the complaint and respective allottees are not paying due installments against their allotted units. The promoter has come forward for seeking directions against the aforesaid allottees.

**The provisions mentioned herein above empower the promoter to cancel the allotment and Hon'ble Supreme Court in case of M/s Newtech Promoters and Developers Ltd. V/s State of U.P. decided on 11.11.2021 in para No.80 has interpreted that the promoter is competent enough to cancel allotment and allottee is allowed to challenge such cancellation before the Authority, if feel aggrieved. In case of Amit Colonizers Ltd. V/s Bhuly Devi case No. RAJ/RERA/C/2021/4076 order dated 25.02.2022, the same issue also came for consideration before the Authority and it was observed that promoter is having competency to cancel the allotment and allottees may approach before the Authority against the cancellation order by the promoter. Therefore, it is imperative that the promoter has to take coercive measures at their own level.**

In the light of aforesaid discussions, promoter was not intended to continue with this litigation. Accordingly, prayer for withdrawal is allowed. Hence, complaint is dismissed as withdrawn.

**COMPLAINANT: Suo Moto**

**RESPONDENT 1: Shree Krishna Associates & Ors.**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 22.08.2022**

Complainant Representative: None

Respondent Representative: CA Amit Kumar Kedia and Ors.

**Gist of Case: Registration of the project is not required in case the project is completed, Completion certificate & Occupancy certificate are obtained and the project is not yet marketed by the promoters.**

In the present matters, a show cause notice was issued to the respondents on 28.07.2022 under section 59 read with section 3 of the RERA, 2016 for having advertised their real estate projects without obtaining prior registration thereof.

The main points made by them are as under:

1. That the completion certificates were obtained before any marketing or advertising was done for the said projects, and as such no violation of Section 3 of the said Act have been made.
2. That authority has been made to regulate responsibilities of completing the project and as such the project is already completed and such there remains nothing for the authority to regulate.
3. That registering a completed project would not be in tandem with Form-G as it is set of futuristic promises. Also registering a completed project would compel the promoters to provide false details.
4. That registration under RERA is valid only till completion certificate is obtained and such no registration is required once such certificate is received.
5. That banks do not provide loans if there is no registration between date of completion and date of sale. This contention is hence meaningless.
6. That Registration in RERA is valid upto the date of completion of the project which in itself means that once the project is completed no registration is required.
7. That Section 3(2)(b) of the Act exempts such projects from getting registered wherein the completion certificate has been obtained.

The provisions of Section 3 does not make it clear whether the contentions of the respondents are correct and such Section 3 is open to interpretations to decide the

question whether or not a project that has been completed after 01.05.2017 but before it is advertised or marketed or any plot, apartment or building therein is booked, allotted or sold, is required to be registered under the Act.

The court interpreted that the said section 3(1) does not prohibit construction or development of the project without first getting it registered under the Act provided that approval has been obtained from the competent authority, so long as he does not make any advertisement, marketing, booking, sale or offer for sale, or invitation to purchase in respect of any plot, apartment or building in the project. **A contravention of section 3(1) would happen only if the promoter does not get the project registered and, before getting the project registered, makes any advertisement, marketing, booking, sale, offer for sale, or invitation to purchase in respect of any plot, apartment or building in the project.**

**As per Section 3(1) read with Section 5(3), the projects where the promoter does not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building therein, as the case may be, before completing the project, i.e., before obtaining completion certificate for the project, do not require to be registered under the Act.**

The Authority decided to test the above findings with the application of the Heydon's Mischief Rule, for which the true intention of the enactment was sought.

The intent of RERA and the mischief that it seeks to remedy have been aptly summed up by the Hon'ble Bombay High Court, in its judgment dated 06.12.2017 passed in Writ Petition No. 2737 of 2017 "Neelkamal Realtors Suburban Pvt. Ltd. and anr. versus Union of India & ors.". **As per this case law, the main purpose of the Act is to achieve completion of projects in a time bound manner, and this main purpose of the Act is automatically served, even without registration. Thus, we can say that it is not the intention of the Act that such completed projects be registered.**

Based on the above examination it has been found **that the whole Act has been so made that, neither by its expression nor by its intent, it envisages registration of a completed project where no advertisement, marketing, booking, sale, offer for sale or invitation to purchase is made before its completion, i.e., where no seller-buyer relationship has, directly or indirectly, developed between the promoter and the prospective buyers before the project is completed.**

**Hon'ble Bombay High Court has decided on 01.03.2021 in the matter of "Macrotech Developers Limited vs The State of Maharashtra and Ors."** that if an ongoing project that was not completed as on 01.05.2017 but got completed within the window of three months, i.e., upto 31.07.2017, it is not required to be registered under the Act. This means that if an ongoing project got completed before its registration fell due, it is not required to be registered under the Act. Using the same logic, the new projects that get completed before their registration falls due should also not require to be registered under the Act. Hence, new projects are not required to be registered if they are completed before any advertisement, marketing, booking, allotment, sale or offer for sale, or invitation to purchase in respect of any unit therein is made by the promoter.

**The following directions are provided by the Authority:**

1. That no registration is required in case the project is marketed only after it is completed. However to fortify his claim that the promoter of such project, if he so wants, may submit the details, make the declarations and apply for an exemption certificate to the Authority on payment of a specified fee to be specified for the purpose.
2. The Authority shall operationalize an online application module for the purpose with the next 60 days, also covering other projects which do not require registration under the Act.
3. That in case marketing was done, a penalty and prosecution would be attracted under Section 59.
4. That no extension in registration is required to sell the unsold units once a project is completed.

**COMPLAINANT: Rajesh Gupta**

**RESPONDENT: Parth Infratech Ltd, Satyanarayan Gupta & others**

**CORAM: HON'BLE SHRI SALVINDER SINGH SOHATA, MEMBER**

**ORDER DATE: 26.08.2022**

Complainant Representative: Mr. Mitesh Rathore

Respondent Representative: Mr. Anurag Jain

**Gist of Case: Making false statement in the court & to deceive the court is contempt of court.**

In these cases similar question of law and identical facts are involved. Therefore, the cases are being disposed of by a common order.

A development agreement was executed between complainant Rakesh Gupta and representative of the promoter project Shree Enclave on 08.11.2012. The land related to the project Khasra No.87 measuring 5 Bigha 07 Biswa village Harnathpura was originally in the Khatedari of Ram Narain S/o Baksha and Bhura S/o Manna having equal share. Complainant Rajesh Gupta through registered sale deed dated 09.06.1983 and 04.06.1983 purchased the land from the original tenants and his name was entered as Khatedar of the aforesaid land. Out of Khasra No. 87/1 purchased through sale deed dated 09.06.1983 measuring 2 Bigha 09 Biswa equal to 6197 sq. mtrs was converted on 18.04.2012 as non-agricultural purposes and 526.10 sq. mtr. land was allowed to be kept open to sky due to High Tension Electric Lines. **Therefore, for area of 5612.88 Sq. Mtr., a lay out plan for construction of real estate project was approved by the JDA. The aforesaid agreement dated 08.11.2012 is to develop the aforesaid converted land.**

After promulgation of the Act, complainant filed a complaint on 02.01.2018 before the Authority to issue directions against developer promoter to register the project with the Authority and do not transfer the assets of the project without registration of the project under the statutory provisions and averred therein that an application for issuance of completion certificate with respect to project prior to commencement of RERA is already filed before the competent authority i.e. J.D.A., Jaipur. In support of reply an application dated 28.04.2017 endorsed to Dy. Commissioner (Zone-7), J.D.A. and application dated 14.07.2016 endorsed to Additional Chief Town Planner, J.D.A., for issuance of completion certificate with regard to Block-B of the project is annexed for issuance of completion certificate.

The then Registrar of the Authority enquired with regard to facts of the case and mentioned in the Enquiry Report that despite providing six opportunities to promoter for making available the completion certificate of the project, respondent failed to submit the required documents and proved that project was not liable to be registered before the Authority. The then designated Authority after perusal of record made available at that point of time by the party passed an order on 25.07.2018 and observed as under:-

**“As the respondent could not prove that his project is exempted from registration under sub-clause (3) of explanation of rule 4, the project is ongoing project which required registration under section 3 of the Act.”**

### **ORDER**

**“The Respondent is directed to register the project as an ongoing project with RERA and provide project cost within 10 days.”**

**Despite issuance of the aforesaid directions by the Designated Authority, promoter respondent never approached before the Authority, therefore, complainant filed an application on dt. 22.04.2019 and 10.05.2019 for execution of the aforesaid order dated 25.07.2018 and prayed that promoter respondent has not made any compliance of the directions of the Authority, therefore, necessary action to be taken against the respondent promoter to ensure the compliance of the aforesaid order.**

**A notice for execution of the order was issued on 18.06.2019 against the promoter. Promoter replied the aforesaid notice on 19.08.2019 and mentioned therein that respondent company has applied for registration of the project as ongoing project on 31.07.2019 and accordingly, process for issuance of registration certificate is undergoing with the Authority.** It is evident that the facts mentioned herein above, promoter applied for registration for whole of the area of “Shree Enclave” project, but subsequently, promoter respondent approached before the Authority alleging that the Block-A of the project is under construction and Block-B is already completed and completion certificate is obtained, therefore, Authority provided the registration No. RAJ/P/2020/1193 with regard to Block-A of the project only.

After getting information by the complainant that only Block-A of the impugned project is registered by the promoter, an application was filed before the Hon’ble Chairperson of the Authority on 10.07.2020 and it was directed “Registrar/D.R. (Legal) put up notice”. After examination of the record with regard to aforesaid application, the impugned notice dated 05.08.2020 (case no.2) is issued against the promoter to explain why the Block-B of the project is not registered with the Authority and promoter was directed to explain status why a penalty under the provisions of section 3 read with section 59 and 60 be imposed for non-compliance/non-registration of the project.

Meanwhile, another application by the complainant on 13.10.2020 with regard to Complaint No. RAJ-RERA-C-2018-2113 was filed before the Hon’ble Chairperson which was annexed with the file listed for hearing on 05.11.2020. Respondent promoter filed reply on 05.11.2020 on the day fixed for hearing for notice dt. 05.08.2020. A copy of an application dated 01.06.2016 endorsed to Sr. Town Planner, J.D.A., was also annexed which disclosed that Block-A of the

project is completed and request for issuance of completion certificate made is annexed. In the another document dated 14.07.2016 endorsed to the Additional Chief Town Planner of J.D.A., a request for issuance of completion certificate for Block-B of the project is made. Meanwhile, another application is received from complainant on 30.07.2020 alleging false information provided by promoter for incomplete project which is taken on record. **It is alleged therein that the registration certificate issued for Block-A is not for complete project (excluding Block-B). The promoter is a defaulter and is providing false information to the Authority to linger on the registration of the project with regard to Block-B. In the aforesaid reply, it is averred that promoter respondent applied for registration of Block-A of the project only and Block-B of the project was already completed and request for issuance of completion certificate accordingly was already made before the J.D.A. Authorities on 01.06.2016 and 14.07.2016 respectively. The Block 'B' of the project was already completed prior to promulgation of the Act, therefore, under (clause-iv and v) of explanation to Rule 4 of RAJ RERA Rules, 2017 is excluded/exempted for registration and prayed for withdrawing and quashing the impugned notice dated 05.08.2020 and declare exclusion/exemption for registration of Block-B of the project.**

**During the course of hearing on 12.02.2021 respondent promoter claimed that an application dt. 14.07.2016 prior to promulgation of the Act for issuance of completion certificate was submitted before the J.D.A., therefore, exclusion for registration of the project Block-B is available, but counsel of the complainant requested to examine the veracity of the aforesaid applications. Therefore, case was further adjourned. Applicant provided the copy of documents dt. 03.05.2021 with Annexures which revealed that application dated 14.07.2016 is not available in file No.F.180/2012 of the file office of Additional Chief Town Planner, J.D.A., and it was never received the said application. It is also reported that completion certificate was never issued by the aforesaid Authority.**

Respondent promoter reiterated the facts mentioned there in earlier set of reply dated 05.11.2020 that Block-A was liable to be registered and accordingly, registered with the Authority. Block-B of the project was already completed and application for issuance of completion certificate before the J.D.A., was already filed on 28.04.2017 and a completion certificate is issued by empanelled architect Mr. P.N. Bhargava. In the light of all development work was already completed, therefore, in the light of averments in the reply Block B of the project was not

liable to be registered and prayed to drop the proceedings initiated against the promoter.

With regard to case file No.3 (RAJ-RERA-2020-3705) complainant filed a subsequent application on 29.07.2020 with the prayer that respondent may register the entire project with the Authority and not to sell any of the flat in the project without obtaining completion certificate. Respondent promoter filed the reply and aforesaid factual status was narrated in the reply and in addition to that it was averred that complainant is the land owner of the property on which the impugned project is being developed and under the definition of promoter under section 2(zk) of RERA Act 2016 land owner is also under the category of promoter. The land owner being a co-promoter of the project under the directions issued by the Authority itself on 30.06.2020, the complaint filed by him is ab initio void and prayed to drop the proceeding. The copy of completion certificate with regard to Block-B dated 17.10.2017 and copy of administrative directions dated 30.06.2020 is annexed with set of reply.

Heard either of parties at length and carefully scrutinized the records and made thoughtful consideration upon rival submission of either of parties.

During the discussions, the following legal objections were raised. Therefore, we deem it appropriate to discuss prior to devolve the merit of the case on the preliminary issues-

**It is contended with vehemence by representative of the respondent promoter that:**

- A. Complainant Rajesh Gupta is a land owner and in the capacity of co-promoter is not having competency to file a complaint before the Authority. Therefore, either of the complaints were liable to be dismissed.

It is claimed that Mr Rajesh Gupta being a co promoter of the impugned project is not entitled to lodge a complaint before the Authority. In this regard we examined the record and found that while initiating registration process of the project, the land owner and **complainant Mr Rajesh Gupta was never mentioned in the application for registration of the project as a co-promoter.** Under the scheme of Act unless a co promoter is registered with the consent of promoter, the Authority may not treat any of the person, despite being a land owner - a recognized co-promoter. **In the**



**instant case, accordingly, the land owner may not be treated as co-promoter.**

- B. It is also argued that vide order dated 21.08.2019 learned Full Bench of the Authority has dropped the execution proceedings. Therefore, issue may not be agitated time and again for seeking compliance of the order dated 25.07.2018.

The order dated 25th July 2018, a judicial pronouncement, is passed by the then Designated Authority. In the matter nothing is produced before the Authority on record that aforesaid order is modified or amended on the basis of an appeal or a writ preferred by the promoter before the competent authority. In lack of any direction passed by the superior authority/court with regard to amendment of aforesaid order, the Executing Authority at his own level on the request of the promoter is not empowered to amend/modify the contents of directions. It is to be kept in mind that promoter himself has reported before the learned Full Bench of the Authority that an application dt 31.07.2019 for registration of the project consisting 134 apartments was filed and requisite fee is remitted. **Therefore ld Full Bench in good faith dropped the execution proceedings against order dt 25.07.2018 vide orders dt 21.08.2019. Subsequently, after getting information and knowledge with regard to partly registration of the project learned Chairperson of the Authority has directed for issuance of the notice dt 05.08.2020. The promoter himself has deviated from the stand taken by him for registration of the project and subsequently prayed a part Block- A of the project for registration against the factual status of application dt 31.07.2019 for registration. The conduct of promoter is contrary to provisions of Section 115 of the Indian Evidence Act 1872.**

After ascertaining the preliminary objections, we find it appropriate to scrutinize the case on the basis of factual status and arguments by all parties advanced before us. We may sum up the involved issues in the following manner:-

### **1. Is Order 25.07.18 complied with in totality?**

**We have discussed herein above the wholesome project was liable to be registered and during course of hearing before the Designated Authority , it was never reported that the impugned project was segregated in**

**phases** and the record mentioned herein above proves that a claim before JDA authorities was issuance of completion certificate for whole project. An application for registration of ongoing project was filed on dt 31.07.2019 which consists all 134 apartments of the project and total area of project but subsequently only so called block-B is declared complete and on the basis of completion certificate obtained on dt 17.10.2017 exclusion/exemption was sought contrary to the provisions of the statutes. **Thus, it is obvious that directions dt 25.07.2018 were never adhered by promoter.**

**2. Is administrative cell of the Authority empowered to override the effect of judicial orders?**

We have already highlighted that the directions dt 25.07.2018 are having binding effect for execution of judicial pronouncement. The judicial pronouncements are never modified by executing **agency in administrative capacity due to not having overriding jurisdiction.** The directions dt 25.07.2018 were passed by application of mind and scrutiny of record during judicial process.

**3. The effect of application for registration for whole project -134 apartment?**

**The whole project should have been registered in pursuant to order 25.7.2018** which was never agitated in appeal /writ before competent Forum or no rectification application was filed before the Authority. Therefore, all legal options were exhausted and in lack of revised/amendment order, the block B of the project may not excluded for registration.

**4. The Completion Certificate dt 17.10.2017, post promulgation of the Act was legally issued?**

It is vehemently being reported that an application before competent authority was moved for issuance of completion certificate but it is not proved that a requisite fee for issuance of such certificate was remitted. It is strange to note that empanelled architect was approached by promoter on dt 10.10.2017. With a request to issue completion certificate. Mr P N Bhargava pursuant to the said written request issued completion certificate

on dt 17.10.2017 and prescribed fee INR 1,45,020/- is deposited on dt 16.10.2017 with JDA. **Therefore, we are not convinced that an application for issuance of completion certificate was moved in a legal manner before competent forum.** It is also to be taken under consideration that town planning cell proved through information provided under RTI vide letter dt. 03.05.2021 that neither such application dt 14.07.2016 was received for issuance of completion certificate nor it was ever issued.

**5. The effect of non-remittance of specified fee along with application dt 28.04.2017 to JDA?**

**The said application is not to be treated legal and interest of promoter can't be protected on very ground.** Subsequently, an application to empanelled architect dt 10.10.2017 is moved. It is to be kept in mind that insufficiency or inadequacy of evidence existed in instant case. It was required to prove that aforesaid application was filed before JDA authorities along with requisite fee for issuance of completion. In lack of these vital document provisions of Explanation (iv) attached to Rule 4 of RERA Rules 2017 may not be pressed into service in favour of promoter respondent. Whether or not there is evidence to support a particular issue has always been considered as a question of law. The authority may not proceed on a fundamental misconception of the law and the matter in regard to which the opinion against promoter had to be formed.

**6. Is subsequent application dt 10.07.2020 for compliance of order dt 25.07.2018 is maintainable. ?**

The compliance of the aforesaid order was not properly adhered therefore complaint approached before the Authority to make reasonable compliance. A notice dt 05.08.2020 is issued to explain status for non-compliance of the aforesaid order. **The Authority empowered to cognizance for non-compliance of its orders.**

**7. Was Examination by project cell justified for exclusion of block- B, Promoter submits revised details of project admeasuring area 2629.62 Sq. Mts., and claimed only 80 apartments were proposed for registration with regard to block A of the project only? Promoter claimed exclusion /exemption of registration of block -B of the project**

on the ground of completion certificate issued on dt 17.10.2017, was issued post promulgation of the Act.

#### **8. Whether Exclusion/exemption available with regard to block B of the project?**

The iota of record mention therein in reply of earlier complaint or made subsequently available is not sufficient to prove that part block B of the project was not liable to be registered. It is otherwise proved that due to misconceptions promoter avoided to register the aforesaid block B despite being liable to be registered with the Authority. A completion certificate for block B was not obtained from competent authority prior to promulgation of the Act and as examined herein above exclusion was not available to the said block B under provisions of Explanation (iv) attached to Rule 4 of the Rajasthan RERA Rules 2017. The said certificate is obtained on dt 17.10.2017 and requisite fee is remitted on dt 16.10.2017 i.e. post promulgation of the provisions of the Act, therefore, block B of project is liable to registration. **Hence, a false information by promoter is proved and through tendering of false affidavit/ undertakings promoter can't get any relief. It is observed by Hon Supreme Court in case of Re Perry Kansagra | SMC(C) 3 OF 2021 (2022 LiveLaw (SC) 576) that the tendering of affidavits and undertakings containing false statement would amount to contempt of court. A person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. Therefore aforesaid annexed affidavit to application for registration of project may not be considered to substantiate claim of promoter.**

#### **9. Is violations towards statutory provisions available?**

**The discussions herein above make it imperative that the impugned project as a whole was an ongoing project and it was liable to be registered by influx provisions of the Act.** Promoter despite directions for registration of the project avoided to register block B of the project. In this way with regard to non-registration of the said block violation of Section 3 of the project is proved hence promoter requires to register the Block 'B' of the project under the prevailing provisions of the statute.

**In the light of foregoing discussions promoter has not adhered the provisions of the Act .**The project as a whole should have been registered as applied vide application dt 31.07.2019. The promoter is not allowed to modify the contents of application for registration pursuant to dropping of execution proceedings vide order dt 21.08.2019 based upon information provided to Ld. Full Bench by promoter. The conduct and demeanor of the promoter is contrary to Rule of Estoppel and completion certificate was obtained on 17.10.2017therefore block B being a part of ongoing project was also liable to be registered along with block A of the said project. Hon'ble Supreme Court observed in case of My Palace Mutually Aided Cooperative Society vs B. Mahesh | 2022 Live Law (SC) 698 | CA 5784 OF 2022 | 23 August 2022 that “In exercising powers ...., **A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.**” Accordingly, directions dt 25.07.2018 were never agitated, therefore, attained finality thus notice dt 05.08.2020 was justified. These proceedings are in continuation to compliance of order dt 25.07.2018 and order dt 21.08.2019 is not having otherwise affect in view of the conduct of promoter.

In view of discussions held herein above, promoter is directed to register block B of Shree Enclave project with Authority as an ongoing project. Notice dt 05.08.2020 is disposed accordingly. The subsequent complaint accordingly dismissed as infructuous. A penalty against the promoter upto the tune of Rs. 2 lac is imposed in addition to prescribed fee for violation of statutory provisions.

**COMPAINANT: Trimurty landcon**

**RESPONDENT: Vishal Jain and ors.**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 10.10.2022**

Complainant Representative: Adv Shubham Arora

Respondent Representative: Adv Mitesh Rathore and ors.

**Gist of Case: Authority directed allottees to pay the due maintenance charges and desist from doing any act which hinders the peace of the project.**

The project has already been completed and he has already obtained completion certificate and also occupancy certificate for the project on 04.05.2020. There are 216 flats in the project, out of which 207 have been sold and 9 flats are yet to be sold by him. A total of 186 flats are occupied.

Trimurty Ariana Mutual Welfare Society, Respondent No. 26, was formed and registered on 21.05.2019 with the Registrar of Societies vide Registration No. COOP/2019/JAIPUR/104259, for the maintenance of common areas, spaces, amenities and services. The society is functional and the allottees who have paid the requisite charges are its member.

Under the agreement for sale, it was made clear that all the residents shall be required to pay membership fee of the maintenance society and amount towards corpus fund, besides monthly maintenance charges based on the area of the respective unit @ Rs. 3/- per sq. ft. (Super Built Up Area) and the component of monthly maintenance charges, accordingly calculated, has been specifically mentioned in the agreement for sale executed with each allottee. As per section 19 (6) read with section 13 of the RERA Act, it is the responsibility of every allottee to pay all requisite charges as specified in the agreement for sale. Furthermore, as per section 19 (7) of the RERA Act, every allottee is liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under the said section 19 (6). Respondent allottees have defaulted in payment of the due maintenance charges. Few of them have not paid even the membership fee. It is also contended that there are some more allottees who have defaulted in timely payment of maintenance charges but they have not indulged in unlawful activities as the 25 respondent allottees have; and are, therefore, not made a party to the present complaint. Respondent allottees, without any contractual or legal right to use the common amenities, etc., have made a gang with malafide and ulterior motives to harass the promoter, put undue pressure on him and avoid payment of the maintenance charges; and to that end they are doing constant, deliberate, unwanted activities that not only fall within the definition of “actionable nuisance” but also attract penal provisions under the law of the land. It is further contended that promoter as such has nothing to do with the maintenance issues when maintenance society has been duly formed.

Therefore, the complainant has sought the relief as to direct all the respondent allottees to pay and clear all their outstanding as against the society and be restrained to not to raise derogatory and defamatory slogans against the promoter and It be further clarified that still who fail to pay their due amount of maintenance

charges and other charges to the society then society may submit the status report before the authority for further necessary directions/actions.

**Authority heard the contention of the parties in detail and directed the respondents allottees to comply with the provisions of sub-section (6) and sub-section (7) of section 19 of the RERA Act and pay their overdue maintenance charges to the association of allottees, namely, 'Trimurty Ariana Mutual Welfare Society' at the monthly rate stipulated in the agreement for sale/ sale deed, along with interest, within 15 days from the date of issue of this order; and to accordingly pay the amount of maintenance charges every month in future, calculated accordingly, until the rate of contribution to common expenses for the project is determined by the said association; and to comply with clause 15 (iv) of the agreement for sale and clause 16.2 of the sale deed; and desist from doing any act which disturbs the peace and tranquility in the project.**

**They are also directed not to cause any hindrance in peaceful enjoyment of the property by the allottees in general. In particular, they are directed not to cause any hindrance in the promoter exercising his right to enjoy or sell the nine unsold flats in the project. They shall not put any flexes or hoardings in the project premises with a view to discourage prospective buyers of the unsold flats. They are also directed to remove all the flexes, hoardings, etc., that they have put in the project premises and to do so within 15 days from the date of issue of this order.**

**COMPLAINANT: Sharad Bhandari**

**RESPONDENT: OM Metals Consortium Pvt. Ltd.**

**CORAM: HON'BLE SHRI SHAILENDRA AGARWAL, MEMBER**

**ORDER DATE: 11.10.2022**

Complainant Representative: CA Himanshu Goyal and Adv Anurag Jain

Respondent Representative: None

**Gist of Case: Interest is allowed for delay in handing over possession of the unit to the allottee.**

An agreement for sale was executed between the complainant and the respondent on 07.06.2013, according to which, a construction linked payment was agreed between the two and the possession of the flat was agreed to be given on 06.09.2016 including the grace period. The complainant argued that in compliance

with the payment scheme, the complainant made a total payment of Rs.227.11 lakh till December, 2015 which amounts to 100 percent payment vis-a-vis the sale consideration amount as promised in the agreement. However, the respondent did not fulfil his part of the agreement and even though the entire sale proceeds was deposited by the complainant in December, 2015 itself, the respondent failed to complete the project by the agreed date. In fact, the respondent did not commence the construction of the project as per the stipulated date and till date, even though more than six years have passed, the unit has not been delivered.

The complainant further argued that the respondent instead of delivering the project and handing over the unit in time, has demanded additional amount of money in spite of the fact that they have deposited the entire amount as agreed to in the agreement for sale. They further argued that the project is now about 80 percent ready but the respondent is not giving the final touch to the project and delaying handing over the possession for some Malafide intention unknown to the complainant. Citing section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') they prayed for payment of interest on the amount paid by the complainant to the respondent for the period of delay and compensation. They also sought the directions from this Court to the respondent to complete the project at the earliest and hand over possession of the unit. In their prayer, they also asked for a waiver of Rs.26.29 lakh demanded by the respondent as additional charges.

The complainant does not want to withdraw from the project and wants a peaceful procession of the apartment. The email from the respondent on record admits that an interest amount is due to be paid by the respondent to the complainant. However, this has not been paid. In view of the above, since the allottee does not withdraw from the project as the project is more than 80 percent complete and the possession can be handed over soon enough, Authority directed the respondent promoter to pay an interest for every month of delay from September, 2016 till the handing over of the possession of the flat on the amount paid by the complainant at the rate prescribed in the Rajasthan Real Estate (Regulation & Development) Rules, 2017 at SBI highest MCLR + 2%, i.e.,  $7.30 + 2 = 9.30\%$  from the date of possession of the flat i.e., September 2016 till the date the interest amount is made to the complainant.

**Authority also directed the respondent to complete the project within a period of six months and hand over the possession of the allotted unit to the complainant with the condition that for the delay of every month, the interest**



on the total amount paid by the complainant to the respondent, will continue to be paid by the respondent. In case the respondent does not hand over the possession of the unit as directed above, the Authority would be free to take penal action against the respondent in terms of the provisions of law.

**COMPLAINANT: Suo Moto**

**RESPONDENT: Trimurty Colonizers & Builders & ORS**

**CORAM: SHRI NIHAL CHAND GOEL, HON'BLE CHAIRMAN**

**ORDER DATE: 09.01.2023**

Complainant Representative: None

Respondent Representative: Adv Amit Ahuja

**Gist of Case: Once the project is completed, certain provisions relating to pre-completion requirements shall not apply.**

In the present matters, a show cause notice was issued to the respondents on 01.08.2022 under section 60 read with section 4(2)(I)(D) and section 61 read with section 11(2) and section 13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') for (i) having advertised their registered and completed projects without mentioning therein registration number of the project and website address of the Authority; (ii) not executing and registering agreements for sale before accepting more than 10% of sale consideration; and (iii) not depositing 70% of the amount received from the allottees in the separate bank account of the concerned project.

The following arguments were made by the respondents:

1. The completion certificates for the projects have been obtained and uploaded on the RERA web portal. Occupancy Certificate have also been obtained. So the respondents are no longer needed to mention the RERA registration number and website address in any subsequent advertisements.
2. Since the project is completed, the amount realized from the customers is no longer needed to be deposited in a separate bank account.
3. Since the project is completed, they can directly execute a sale deed and accept, in one go, total sale consideration amount of the unit(s) that are sold.

Contention of respondent were heard in detail.

As per Section 4(2)(i)(d), to ensure that funds collected from the allottees are utilized for completion of the registered project and are not siphoned off or diverted to other ventures, seventy per cent of the amounts realised from the allottees shall be deposited in a separate account in bank, withdrawal from which account shall be in proportion to the percentage of completion of the project. **And as such since the project is 100% completed, the respondent can immediately withdraw the whole amount from the said separate bank account.**

As per Section 13, the Act mandates that the promoter shall enter into a written agreement for sale with the allottees, detailing out the various terms & conditions of the sale. Once a registered project is completed, most of the provisions of Section 13 and the agreement of sale are rendered irrelevant since they are made with the presumption that the project is not yet completed. And as such to execute the agreement for sale the promoters have to give false information, which cannot be the intention of the act. **Thus, the provisions of section 13 become meaningless once the registered project gets completed. When a project is completed and, besides completion certificate, occupancy certificate has also been obtained and, thereafter, if a buyer is willing to make down payment of the balance or total cost of the allotted plot, apartment or building, as the case may be, the promoter can straight away execute a conveyance deed or sale deed in favour of such buyer and, in that case, no agreement for sale may need to be executed.**

Effectively, when a project is completed and completion certificate as well as occupancy certificate have been obtained, the requirement of executing and registering an agreement for sale before accepting more than 10% of the sale consideration, automatically stands dispensed with. If, however, the buyer is not willing to or is not in position to pay the whole amount in one go and the buyer and the promoter do want to execute an agreement for sale and since, in a completed project, it is just not possible to execute the agreement in the prescribed form, an agreement can be suitably worded, executed and registered on mutually agreed terms, while ensuring that nothing contained therein is in derogation of or inconsistent with any other provisions of the Act and the Rules.

**As per Section 11(2), the promoter has to, even after the project has been completed, mention the RERA Registration No. and website address of the Authority in all advertisement and marketing materials, so long as the promoter continues to advertise/market the project for selling the unsold units. As such, by omitting registration number of the project and website**

**address of the Authority from the advertisement issued by them on 22.07.2022, the respondents are found to have acted in violation of section 11(2) of the Act.**

**As such the Authority directed that the a total penalty of Rs. 10,000/- is hereby imposed under section 61 of the Act, which will be shared and borne equally by the three respondents and deposited with the Authority within 45 days from the date of issue of this order.**

**PART-IV**

**NOTIFICATION & CIRCULARS**

**HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM**

**No. HARERA/GGM/Acctts/2021-22/11**

**Dated: 06.05.2022**

As provided in the Real Estate (Regulation and Development) Act, 2016 that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

In compliance of the section 4(2)(1)(D) of the Act 2016 quoted above the promoters are mandated to submit audited financial accounts with the Authority within six months after the end of every financial year. However, 2020-21 being a challenging year due to outbreak of novel coronavirus in the entire country the promoters have been granted extension of time limit for submitting their audited statement of accounts upto 31.12.2021 vide Authority's notification dated 06.12.2021.

Hence in view of the outbreak of novel coronavirus in the country during the financial year 2020-21 and the extension of time limit for holding annual general meeting granted by the Ministry of Corporate Affairs., Govt. of India vide its memorandum dated 23.09.2021, the Haryana Real Estate Regulatory Authority, Gurugram hereby directs all the concerned promoters to submit their audited statements of accounts for the financial year 2020-2021 latest by 20.05.2022 failing which penal action under section 60 & 63 of Real Estate (Regulation and Development) Act 2016 shall be initiated without further notice.

Issued under the directions and approval of the authority.

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

**No. FI(S)RJ/RERA/2018/1352**

**Dated: 16.05.2022**

Secretary,  
Rajasthan Realtors Association  
308, 3rd Floor, Plot No. I,  
Felicity Tower, Sahakar Marg,  
Lal Kothi, Jaipur- 302005

**Subject:** Notice for renewal of registration by real estate agents.

As you are aware, the registration granted to real estate agents under Section 9 of the Real Estate (Regulation and Development) Act, 2016 remains valid for a period of five years from the date of registration, in accordance with Rule 11 (3) of the Rajasthan Real Estate (Regulation and Development) Rules, 2017.

To be able to continue to work as a registered real estate agent beyond years, under Rule 12(1) of the said Rules, all registered real estate agents are required to apply for renewal of their registration at least three months prior to the expiry of the registration granted.

This Authority has started a facility of online renewal and also decided that those real estate agents who fail to apply online for renewal of registration, at least three months before the expiry of registration would have to pay a penalty of Rs. 1000/- in the case of individual/ proprietorship and Rs. 5000/- in the case of partnerships and companies.

However on your representation, it has been decided that no delay penalty will be charged for applications submitted online upto 30.06.2022. That is to say that all registered real estate agents whose registration has expired or will expire on or before 30.09.2022 can apply upto 30.06.2022 without payment of any penalty. Even those registered real estate agents whose registration expires after 30.09.2022 are welcome to apply for renewal upto 30.06.2022 or as soon as possible, without waiting for the due date of three months prior to expiry.

Application for renewal has to be submitted online and no such applications or related documents need to be sent to this Authority in hard copy. In fact, the

Authority will not accept any application for renewal in hard copy/paper form.

At the time of renewal of their registration, the real estate agents can also correct/update, without any additional fee/charges, their address, mobile no., email-ID or other details that were submitted at the time of registration.

You are requested to inform all your members accordingly and encourage them to apply for renewal of their registration latest by 30.06.2022 or at least three months before the expiry of their registration.

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

Rajasthan RERA

**राजस्थान रीयल एस्टेट रेग्युलेटरी ऑथोरिटी**

द्वितीय एवं तृतीय तल, आरएसआईसी विंग, उद्योग भवन,  
तिलक मार्ग, सी-स्कीम, जयपुर - 302005

फोन नं. - 0141-2851905 वेबसाईट & <http://rera.rajasthan.gov.in>

क्रमांक: एफ.4(1)आरजे/रेरा/2017/पार्ट/डी-1351

दिनांक : 16-05-2022

**आदेश**


दी रीयल एस्टेट (रेग्युलेशन एण्ड डवलपमेंट) एक्ट, 2016 की धारा 37 एवं दी राजस्थान रीयल एस्टेट रेग्युलेटरी ऑथोरिटी रेग्यूलेशन, 2017 के अनुच्छेद 23(3) के अन्तर्गत ऑथोरिटी को प्रदत्त शक्तियों के क्रम में निम्न निर्देश जारी किये जाते हैं :

दिनांक 10.08.2020 को जारी किये गये आदेश क्रमांक 5900 के बिन्दु 6 के अनुसार, प्रमोटर द्वारा रजिस्टर्ड प्रोजेक्ट को रिवोक किये जाने (Revocation of Registration) बाबत प्रस्तुत आवेदनों पर, पंजीकरण शुल्क की 50% राशि बतौर प्रोसेसिंग फीस एवं पंजीकरण शुल्क की 50% राशि बतौर स्टैण्डर्ड फीस देय है।

उक्त आदेश के आंशिक संशोधन में, यह निर्धारित किया जाता है कि प्रोजेक्ट रजिस्ट्रेशन के Revocation हेतु प्रस्तुत आवेदनों पर अब कोई प्रोसेसिंग फीस देय नहीं होगी, परन्तु निम्न प्रकार स्टैण्डर्ड फीस देय होगी :-

1. पंजीकरण शुल्क के बराबर राशि, यदि प्रोजेक्ट के रजिस्ट्रेशन की वैधता समाप्त नहीं हुई है या उसे समाप्त हुए 1 वर्ष से अधिक का समय नहीं हुआ है।
2. पंजीकरण शुल्क की 1½ गुणा राशि, यदि प्रोजेक्ट के रजिस्ट्रेशन की वैधता को समाप्त हुए 1 वर्ष से अधिक परन्तु 2 वर्ष से अनाधिक समय हुआ है।
3. पंजीकरण शुल्क की 2 गुणा राशि, यदि प्रोजेक्ट के रजिस्ट्रेशन की वैधता समाप्त हुए 2 वर्ष से अधिक का समय हो गया है।

यह आदेश ऑथोरिटी के अध्यक्ष महोदय के अनुमोदन से जारी किया जा रहा है। यह पैण्डिंग प्रकरणों पर भी लागू होगा, परन्तु निर्णित मामले इसके आधार पर पुनः नहीं खोले जाएंगे।

  
(रमेश चन्द्र शर्मा)  
रजिस्ट्रार

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY****No. MahaRERA/Secy/File No.27/174/2022****Dated: 05.07.2022****Subject:** Regular Updates on Registered Projects by Promoters

One of the key objectives of Real Estate (Regulation and Development) Act, 2016, as mentioned in Long Title of the Act, is to "ensure sale of plot, apartment or building, as the case may be, or sale of real estate Project, in an efficient and transparent manner" The Act focuses on bringing greater transparency through disclosure of information on regular basis for public viewing, through online portal. Accordingly, MahaRERA has, always worked towards ensuring maximum information is available for public view, thereby empowering homebuyers to make informed decisions.

Whereas MahaRERA had issued an Order no: 18/2021 dated 28 July 2021 on Quarterly updates for registered projects. However, there was a need to simplify the various updates and categories them as per required frequency of updation.

Therefore, as a step towards ensuring that Real Estate Projects related data is updated and current, MahaRERA is laying down following process for Project Updates:

- MahaRERA has categorized all the updates to be provided by the Promoter in seven categories namely :
  - i. Quarterly Updates
  - ii. Annual Updates
  - iii. Updating of Forms for Withdrawal of Money from Designated Bank account
  - iv. Other Regular updates from time to time
  - v. Updates on Completion of Project with Form 4 & OC
  - vi. Updates on Conveyance of Project (3 months after OC)
- Quarterly Updates:
  - i. MahaRERA shall implement "Financial Quarter Based Project Progress Reporting System" for all MahaRERA registered real estate Projects. Promoters shall file Quarterly Progress Reports (QPR) as per



Financial Quarters within 20 days of the Quarter End (Due Dates will be 20th of July, October, January and April respectively).

- ii. Promoter shall provide Quarterly updates on the following:
  - Incremental Changes in various building plan approvals (if any)
  - Status of the Project: Physical Progress of the Project
  - Present Status of Booking of Plots/ Apartments/Units
  - Present Status of Booking of Garages
  - In case no withdrawal of amount from designated bank account in that quarter, then promoter shall submit a self-certification confirming the same. In this self-certification, promoter shall also mention the amount of money deposited in this account during the same quarter.
- Annual Updates:
  - Within six months after the end of every financial year, the promoter shall provide Annual Statement of Accounts in Form 5 in prescribed format.
  - Within three months after the end of every financial year, the promoter shall provide Form 2A: Quality Assurance Certificate in the prescribed format.
- Updating of Forms for Withdrawal of Money from Designated Bank account:
  - i. For the purpose of withdrawal of amount from the designated bank account, the promoter is required to submit three certificates (Form 1, Form 2 and Form 3) to the scheduled bank. Copy of these Forms shall also be submitted to MahaRERA through online portal as and when they are submitted to Banks at the time of each withdrawal.
- Other Regular Updates from time to time
  - i. Promoter shall update other details as and when they are changed ( if at all) including:
    - Changes in Encumbrances Report & updated CERSAI Reports.

- Changes in Project Professionals including Architect, Engineer, Chartered Accountant, Real Estate Agents
  - Formation of Legal Entity/ certificate (Society/Co (Op) etc.) within a period of three months of the majority of allottees having booked their plot or apartment or building.
  - Litigation Details
- Updates on Completion of Project
    - i. On Completion of Registered Project, the Promoter shall provide following updates:
      - Form 4 - Architect Certificate certifying Completion of Registered Project with OC number
      - Occupancy Certificates issued for the project
- Updates on Conveyance of Project (3 months after OC)
    - i. Disclosure signed by both promoter and association of allottees confirming conveyance of real estate project.
- Most of the above-mentioned updates, shall be made immediately available for public viewing to enable greater transparency and citizen empowerment. Homebuyers can track and evaluate the progress, of their real estate project, online on regular basis.
  - Amended pursuant to the directions issued by the Authority in its meeting held on 22nd October 2021. Accordingly, Order No. 18/2021 dated 28th July 2021 stands substituted with this order.
  - This order is to be implemented with immediate effect.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

**No. MahaRERA/Secy/File No.27/ 204/ 2022**

**Dated: 27.07.2022**

**Subject:** Declaration about Separate Bank Account 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, here in after referred to as "MahaRERA" or as "the Authority".

And whereas, the Government of Maharashtra has also 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 (Regulations) to carry out the purposes of the Act.

And whereas, under Section 34 of the Act, one of the function of the Authority is to register and regulate real estate projects and real estate agents registered under 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, the 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, every promoter at the time of registration of a real estate project in the application for registration has to provide the bank details of the separate bank account to be maintained in a scheduled bank for the purpose of depositing seventy per cent of the amount realized for the real estate project from the allottees, from time to time.

And whereas, this separate bank account should be an exclusive, a no-lien bank account and the amounts deposited and withdrawn from this bank account should be in consonance and in compliance with Section 4 (2)(I)(D) of the Act, Rule 5 of the Rules, Regulation 3 of the Regulations as well as the Orders and Circulars of MahaRERA.

And whereas, it has been noticed by MahaRERA that in some cases the state bank account is not an exclusive bank account and / or has an attached lien on the same and / or the amounts deposited in the said accounts not in accordance with the Provisions of Section 4 (2)(I)(D) of the Act and /or the amounts deposited is withdrawn and used contrary and in violation of the above mentioned provision, Rule 5 of the Rules, Regulation 3 of the Regulations as well as the Orders and Circulars of MahaRERA.

And whereas, in order to ensure that there is complete compliance of the provisions of the Act, the Rules and Regulations made thereunder as well as the Orders and Circular of MahaRERA the following directions are issued.

Every promoter at the time of registration of a real estate project in addition to providing the bank details of the separate bank account in the application for registration shall provide a Declaration about the separate bank account for the real estate project on the Letterhead of the promoter in the manner as detailed in Format 'A' annexed hereto.

This Order shall come into force with immediate effect.

**Format 'A'**

Declaration about Separate Bank Account for real estate projects.

(On the Letterhead of the promoter)

A. Name of the Promoter Organization: \_\_\_\_\_

B. Name of the Project:\_\_\_\_\_

1. I/We are aware that as Per section 4(2)(I)(D) of Real Estate (Registration and Development) Act, 2016, promoters are required to open a separate account in a scheduled bank to for the purpose of depositing seventy per cent of the amounts realized for the real estate project from the allottees, from time to time.

2. Accordingly, I/ we have a separate bank account for this real estate project / phase of real estate project the particulars whereof are as follows:

Account Name:\_\_\_\_\_

Account Number: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Branch Name: \_\_\_\_\_

IFSC Code: \_\_\_\_\_

3. We hereby confirm that the aforesaid bank account:

- a) is a separate bank account, exclusively for depositing seventy per cent of amounts realized for the real estate project from the allottees, from time to time;
- b) is a no-lien account and no loan / charge / encumbrance can be undertaken against the amounts deposited in this bank account;
- c) the amounts in this separate bank account shall be withdrawn and used in consonance and in compliance with Section 4(2)(I)(D) of the Act, Rule 5 of the Rules, Regulation 3 of the Regulations, the Orders as well as the Circulars of MahaRERA and in compliance of Circular No.391202-1 dated 28.12.2021 read with Circular No. 39A / 2022 dated, 17 .03.2022;
- d) shall be audited within six months after end of every financial year and shall upload on MahaRERA promoter web page the statements of accounts duly certified and signed by a chartered accountant in practice.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

**No. MahaRERA/Secy/File No.27/221/ 2022**

**Dated: 12.08.2022**

**Subject:** Submission of proforma of the allotment letter and agreement (or sale at the time of registration of a real estate Project in compliance of Clause (g) of Sub-section 2 of Section 4 of the Real Estate (Regulation and Development) Act, 2016.

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 03.03.2017 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, under Section 34 of the Act, one of the function of the Authority is to register and regulate real estate Protects and real estate agents registered under 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, the 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, Sub-rule (1) of Rule 10 of the Rules states that for the purpose of Sub-section 2 of Section 13 of the Act the agreement for sale shall be in conformity with the provisions of the Act the Rules and Regulations made thereunder and shall be in accordance with the model form of agreement at Annexure 'A'.

And whereas, Sub-rule (2) of Rule 10 of the Rules states that any application letter, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building & prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale under the Act or the Rules and Regulations made there under.

And whereas, Clause (g) of Sub-section 2 of Section4 of the Act mandates every promoter to upload along with the application made to MahaRERA for registration of a real estate project, the proforma of the allotment letter, agreement for sale and the conveyance deed proposed to be signed with the allottees.

And whereas, every promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee the information as more specifically mentioned in Sub-section 3 of Section 11 of the Act.

And whereas, considering the provisions of the Act the Rules and Regulations made thereunder as well as the salutary purpose of the Act MahaRERA, had constituted a committee under the Chairmanship of Member-1, MahaRERA with representatives from Self-Regulatory Organization of promoters and Mumbai Grahak Panchayat as its Members in order to formulate and finalize a model allotment letter.

And whereas, the committee after due deliberations, having considered the suggestion and objections received from stakeholders as well as the provisions of the Act, the Rules and Regulations made thereunder has finalized the model allotment letter.

And whereas, the Authority in its meeting held on 27.05.2022 has approved the model allotment letter.

And whereas, in view of the approval accorded by the Authority to the model allotment letter, Order No. 30/2022 bearing No. MahaRERA/Secy/File No. 27/136/2022 dated 03.06.2022 was brought into force.

And whereas, in the above-referred Order the proforma of the allotment letter proposed to be signed by the promoters with the allottees was annexed as Annexure '1'.

And whereas, subsequent to the uploading of Order No. 30/ 2022 dated 03.06.2022 at MahaRERA website it was felt just and necessary by MahaRERA that Clauses 3 and 12 of the proforma of the allotment letter annexed as Annexure '1', to the said Order required certain modification.

And whereas, on the required modification being undertaken, the amended model allotment letter was submitted for approval of the Authority.

And whereas, the Authority in its meeting held on 24.06.2022 has approved the model allotment letter.

And whereas, there have been representations from various stakeholder to permit certain amendments and changes in the model allotment letter in view of the

differing circumstances of different properties offered for sale. The Authority after having considered this has concluded that in the interest of transparency and fair dealing permissions can be given to make amendments to the model allotment letter on the condition that deviations are brought to the notice of the allottees in simple and understandable language. This would not only provide flexibility in the conduct of business but would also ensure information symmetry to enable the allottees to make an informed decision.

And whereas, in view of the above the following directions are issued:-

- a) The proforma of the allotment letter proposed to be signed by the promoters with the allottees shall be in accordance with model allotment letter as approved by the Authority in its meeting held on 24.06.2022 the copy where of is annexed hereto as Annexure 'I'.
- b) Promoters shall henceforth upload the allotment letter, as at Annexure 'I', hereto when applying for registration of a real estate project.
- c) If promoters choose to execute with an allottee an allotment letter that is not in accordance with the proforma of the allotment letter as approved by the Authority in its meeting held on 24.06.2022, then the deviations/modifications in the proforma of the allotment letter as proposed by promoters shall be highlighted in different colour and accordingly be uploaded along with a deviation sheet mentioning/indicating therein the deviations/ modifications while seeking registration of the real estate project so as to enable the allottees to make an informed decision.
- d) Promoters shall also upload as is being presently done, the proforma of the agreement for sale proposed to be signed with the allottees that may be as per the model form of agreement at Annexure A of Rule 10 of the Rules or the proforma of the agreement for sale as may be modified and adapted by promoters on case to case basis having regard to the facts and circumstances of each case.
- e) In the event there are any deviations/ modifications in the proforma of the agreement for sale as proposed by promoters and the model form of agreement at Annexure A of Rule 10 of the Rules, then such deviations / modifications shall be highlighted in different colour and accordingly be uploaded along with a deviation sheet mentioning/indicating therein the deviations/modifications while seeking registration of the real estate project so as to enable the allottee to make an informed decision.
- f) Non-compliance of the above or if the deviations / modifications proposed by promoters in the proforma of the allotment letter or the proforma of the



agreement for sale as uploaded is / are contrary to the provisions of the Act, the Rules and Regulations made thereunder, then the application of the promoter for registration of the real estate project shall be liable to be rejected subject to compliance of the mandate as provided in the proviso to Section 5 of the Act.

This Order shall supersede Order No. 31/2022 bearing No. MahaRERA/Secy/ File No.27 / 164 / 2022 dated 01.07.2022.

This Order shall come into force with immediate effect.

### **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

**No. F.10(132)UDH/3/2009/Part1**

**Dated: 23/08/2022**

G.S.R.67 .-In exercise of the powers conferred by section 84 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016), the State Government hereby makes the following rules further to amend the Rajasthan Real Estate (Regulation and Development) Rules, 2017, namely:-

1. Short title and commencement
  - a) These rules may be called the Rajasthan Real Estate (Regulation and Development) (Amendment) Rules, 2022.
  - b) They shall come into force at once.
2. Amendment of FORM-G.— In FORM-G appended to the Rajasthan Real Estate (Regulation and Development) Rules, 2017,-
  - i. After the existing term 18 and before the existing term 19, the following new term 18A shall be inserted, namely:-

#### **18A. THE RAJASTHAN APARTMENT OWNERSHIP ACT, 2015:**

The Promoter has assured the Allottee(s) that the project in its entirety is in accordance with the provisions of the Rajasthan Apartment Ownership Act, 2015 (Act No. 12 of 2019) and that the Promoter shall comply with the provisions of the said Act and rules and regulations made thereunder. The Promoter has further assured the Allottee(s) that

the various other Acts, rules and regulations prevailing in the State of Rajasthan shall always be complied with by him in the Project.""; and

- ii. The existing Note given below the term 32 shall be substituted by the following Note, namely:-

"Note: Any other terms and conditions as per contractual understanding between the Parties may be included. However, such terms and conditions should not be in derogation of or inconsistent with the terms and conditions set out herein as part of this Form or the provisions of the Act or the rules and regulations made thereunder. If any clause of the draft Agreement for Sale prepared and submitted by the Promoter at the time of registration of the project for public viewing or as actually executed between the Parties is found to be in derogation of or inconsistent with the terms and conditions set out herein as part of this Form or the provision of the Act or the rules and regulations made thereunder, such clause of the draft or any Agreement executed for Sale shall be deemed to be non-existent and in such case relevant terms and conditions set out herein as part of this Form and the relevant provisions of the Act and the rules and regulations made thereunder shall prevail over such clause and the Promoter shall bear the consequences thereof."

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

**No. F. 1 (229)RJ/RERA/202113595**

**Dated: 13/12/2022**

**Subject:** Submission of Hard copy of Application for Registration of Project.

In case the promoter fails to submit the hardcopy of application for registration of project, with complete set of documents, within 30 days from the date of issue of RC in accordance with the directions issued vide this Authority's order no. 1478 dated 27.08.2021 and order no. 2500 dated 07.10.2022, delay processing charges of 1,000/- per day (with a maximum cap of an amount twice the Registration Fee) are payable before or at the time of depositing of hardcopy. This direction is hereby modified as under:

In case the promoter fails to submit the hardcopy, with complete set of documents, in accordance with the directions issued by Authority's order no. 1478 dated 27.08.2021 read with order no. 2500 dated 07.10.2022, within 30 days from the date of issue of RC, delay processing charges of t 1,000/- per day (with a maximum capping of an amount equal to the Registration Fee) shall be payable before or at the time of depositing of hardcopy This order shall be deemed to be effective from 27.08.2021, with a condition that the cases in which the delay processing charges have already been deposited shall not be re-opened and no refund shall be made therein.

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

**No. MahaRERA/Secy /File No.27/ 74/ 2023**

**Dated: 10.01.2023**

**Subject:** In the matter of introduction of real estate agent training and Certification.

As Section 9 of the Act,, mandates every real estate agent to be registered with MahaRERA before facilitating the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment, unit or building as the case may be in a real estate project or part of it being sold by a promoter and accordingly, MahaRERA has around 38771 real estate agents registered across the State of Maharashtra.

And whereas, in the State of Maharashtra, there is need to make available an Institution for real estate agents to undertake formal training and certification course and thus, enable homebuyers allottees to get comprehensive professional advice and expertise inputs thereby assisting the home buyers / allottees to make an informed choice / decision in the real estate market.

And whereas, in order to bring about certain level of consistency in the practices of real estate agents, enhance knowledge and awareness of the regulatory and legal framework and practices, enforcement of code of conduct and with a view to ensure that real estate agents are professionally qualified to help / assist home buyers / allottees, MahaRERA proposes to introduce basic real estate agent training and certification course for real estate agents across the State of Maharashtra.

And whereas, Section 33 (3) of the Act empowers the Authority to take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.

And whereas, under Section 34 of the Act, one of the function of the Authority is to register and regulate real estate projects and real estate agents registered under the Act.

And whereas, MahaRERA has over the past 2 years, in consultation with associations of real estate agents, homebuyers, promoters and All India Institute of Local Self Governance (AIILSG), have developed the basic curriculum for real estate agent training and has empaneled training providers for imparting the training as per the convenience of the real estate agents: online, physical and in hybrid form with effect from first week of February 2023.

And whereas, MahaRERA has collaborated with Institute of Banking Personnel Selection (I B PS) for undertaking online examinations so that real estate agents who clear the examinations are provided with "Certificate of Competency".

In view of the above the following directions are issued:

- a) With effect from 01.05.2023, only those real estate agents who have a valid MahaRERA Real Estate Agent Certificate of Competency can apply for MahaRERA real estate agent registration / renewal of registration.
- b) The mandate mentioned in Clause (a) above shall apply to the following persons:
  - i. All individual real estate agents in case of individuals and authorized signatory (authorized for making application for MahaRERA real estate agent registration) in case of firms / companies I organizations (Other than Individuals).
  - ii. All employees / staff / officers by whatever designation called working in firms / companies / organizations of real estate agents, who interact with home buyers allottees for effecting transactions in real estate projects.

- c) Existing registered real estate agents shall obtain MahaRERA Real Estate Agent Certificate of Competency before 01.09.2023 and upload the same at their respective web page failing which action as deemed fit shall be initiated by the Authority.
- d) With effect from 01.09.2023 promoters of real estate project shall ensure that the names and addresses of the real estate agents if any to be given in compliance of Section 4 (2) (j) of the Act shall be of only such real estate agents who have MahaRERA Real Estate Agent Certificate of Competency.
- e) Guidelines detailing the process for real estate agents training and certification shall be issued shortly.

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

**No. MahaRERA/Secy /File No.27/ 200/ 2023**

**Dated: 10.02.2023**

**Subject:** In the matter of de-registration of real estate projects or part of a real estate of project.

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.

Whereas, under Section 34 of the Act, one of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act.

And whereas, there are instances where promoters who have registered their real estate projects are unable to commence and complete the construction of the same or having commenced the construction are not in a position to complete the construction of the real estate project due to various reasons (illustrations not exhaustive) such as, lack of funds, projects economically not viable, litigations filed, inter se disputes / family disputes, change in planning, Government/ Planning Authority Notifications and accordingly are desirous of discontinuing the said real estate project. In such cases, keeping these real estate projects as a project registered with MahaRERA will serve no fruitful purpose, nor would the same be beneficial to any stakeholders.

In such cases, on receiving an application from promoters and on evaluating / scrutiny of the same, MahaRERA may allow for de-registration of such real estate projects. The procedure for the same shall be as follows:

**A. Firstly,**

**Pre-requisites for de-registration of a real estate project**

- i. Only those real estate projects which have zero allottees i.e. the real estate projects where there are no bookings shall be considered for de-registration.
- ii. Provided that, where part of a registered real estate project is sought to be de-registered then there should be zero allottees in that part of the real estate project.
- iii. Provided further that in real estate projects where there are bookings, application for de-registration shall be entertained subject to the rights

of such allottees being settled by the promoter and documents in that regard being submitted for verification along with the application for de-registration.

- iv. Provided also that when de-registration of part portion of a real estate affects the rights of rest of the allottees in the balance part of such real estate project then 2/ 3rd consent of such allottees need to be submitted along with the application for de-registration.

**B. Secondly,**

**Submission of application for de-registration of a real estate project:**

- i. The promoter shall submit an application to Secretary, MahaRERA, at secy@maharera.mahaonline.gov.in until an online procedure is established in the format as prescribed in Annexure-A along with Notarized Declaration-Cum-Undertaking in the format as prescribed in Annexure –B.
- ii. On receipt of such application, Secretary, MahaRERA, shall initiate action through the legal wing, MahaRERA and place the matter before the Authority for appropriate orders including scheduling a hearing if necessary.

**C. Thirdly,**

**Filing of complaints:**

- i. Any aggrieved person may file a complaint in the matter of deregistration of the real estate project.
- ii. Such complaints shall be heard after due notice to the promoter and decided by the Authority expeditiously.
- iii. The terms and conditions as may be imposed by the Authority in the order passed in the complaint shall be binding upon the promoter.

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**

**No. MahaRERA/Secy/File No. 27/202/2023**

**Dated: 13.02.2023**

**Subject:** Submission of half-yearly reports by MahaRERA registered real estate agents.

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, one of the key objectives of the Act, is to ensure sale of plot, apartment, unit or building, as the case may be, or sale of real estate project, in an efficient and transparent manner.

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, under Section 34 of the Act, one of the functions of the Authority is to register and regulate real estate projects and real estate agents registered under the Act.

And whereas, Section 9 of the Act, mandates every, real estate agent to be registered with MahaRERA before facilitating the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment, unit or building as the case may be in a real estate project or part of it being sold by a promoter.



And whereas, as per Section 4 (2) a) of the Act only those registered real estate agents whose names and addresses have been furnished by promoters in the application made for registration of a real estate project shall be entitled to facilitate the sale or purchase of or act on behalf of such promoter in the matter of sale or purchase of any plot, apartment, unit or building as the case may be in a real estate project or part of it being sold by a promoter.

And whereas, Section 10 (b) of the Act mandates every real estate agent registered under Section 9 of the Act to maintain and preserve such books of account, records and documents as may prescribed.

And whereas, Rule 11 (5) of the Rules further mandates every registered real estate agent upon being engaged by a promoter for a real estate project to maintain and preserve books of accounts, records and documents separately for each such real estate project.

And whereas, Rule 16 of the Rules prescribes every registered real estate agents to maintain and preserve such books of accounts, records and documents as may be required in accordance with the provisions of the Income Tax Act, 1961 or the Companies Act, 2013 or under any other law applicable for the time being in force or rules and regulations framed thereunder and to produce such records for inspection if so needed for grant or renewal of the registration.

And whereas, the Government of India has prescribed guidelines for reporting entities (real estate agents) under the Prevention of Money Laundering Act, 2002 and the Prevention of Money Laundering (Maintenance of Records) Rules 2005.

And whereas, under the above-referred guideless every real estate agents whose annual turnover is Rupees 20 (Twenty) Lakhs and above is required to appoint a Principal Officer and a Designated Director and intimate their names, designation, telephone number, email address including any changes in such appointments to the Real Estate Regulatory Authority governing the real estate agents.

And whereas, the provisions of the Act, the Rules and Regulations made thereunder focuses on disclosure of information and accordingly, MahaRERA has always endeavored to bring transparency ensuring that maximum information is available for public viewing, thereby empowering homebuyers/ allottees to make informed choice/ decisions.

In view of the above, the following directions are issued: -

- i. MahaRERA registered real estate agent shall upload on their respective web page half-yearly progress report in the Format as prescribed in Form - 6 annexed hereto as Annexure 'A'.
- ii. The half yearly progress report shall be uploaded by every registered real estate agent on their respective web page as per financial calendar half year period which shall be (a) April to September and (b) October to March.
- iii. MahaRERA registered real estate agent shall upload on their respective web page the half yearly progress report for the financial calendar half year period "April to September" on or before 20th October and for the financial calendar half year period "October to March" on or before 20th of April.
- iv. In the event the half yearly progress report in the manner and as per the timelines mentioned above is not submitted, action as deemed fit shall be initiated by the Authority.
- v. The half yearly progress reports except the portion marked le in Form 6 shall be made available for public viewing to enable greater transparency and citizen empowerment.
- vi. This order shall come into force with effect from 01.04.2023 and in view thereof the first half yearly progress report for the period April 2023 to September 2023 shall be uploaded by every registered real estate agent on their respective web page on or before 20.10.2023.

## **ANNEXURE 'A'**

### **FORM 6**

#### **On the Letterhead of the real estate agent**

#### **DISCLOSURE OF REAL ESTATE TRANSACTIONS FACILITATED AND OTHER PARTICULARS**

(MahaRERA registered real estate agent shall submit these details on half yearly basis, which shall be in public view except the portion marked ‘\*’)

Date:

Name:

---

MahaRERA Registration No:

\_\_\_\_\_

MahaRERA Real Estate Agent Certificate of Competency No. \_\_\_\_\_

Information for the period commencing from dd/mm/yy to dd/mm/yy

**Table A: Real estate projects where real estate agents are designated by promoter to act as real estate agent under Section 4(2)(j) of the Act**

S No	Name of the Project	MahaRERA Project Registration Number
1.		
2.		
3.		
4.		

**Table B: Details of plots, apartments, units or buildings where booking/sale was facilitated by the real estate agent during the reporting period**

S No	Name of the Project	MahaRERA Project Registration Number	Whether plot/ shop/ apartment / others	Residential or commercial or others	Unit number in the Project	Date of transaction	Amount of Agent Fees levied for this transaction*
1							
2							
3							
4							
5							

**Table C: Applicable for real estate agents, whose annual turnover is Rs. 20 (Twenty) lakhs and above, the following data also needs to be provided\*:**

	Name	Date of appointment	Mobile Number	Email Address	Contact Address
Principal Officer					
Designated Director					

## **PART-V**

### **RERA NEWS**

#### **THE ECONOMIC TIMES**

**Dated: 16.06.2022**

#### **Haryana RERA orders forensic audit of Mahira Group's five affordable housing projects**

The Haryana Real Estate Regulatory Authority (H-Rera) has ordered forensic audit of all five affordable housing projects by developer Mahira Group in. The move comes after reports on alleged gross irregularities by the developer in procuring licenses for these projects.

The department of town and country planning (DTCP) blacklisted the company. According to a DTCP order, the developer fabricated bank guarantees and forged signatures of bank officials on the documents submitted to the department for procuring the licenses of its affordable housing projects.

#### **FINANCIAL EXPRESS**

**Dated: 30.09.2022**

#### **Rate hike to have limited impact on housing sales: Developers**

In a bid to rein in inflation, maintain global interest rates parity and ensure the stability of the currency, the RBI in its MPC meet on Friday i.e 30<sup>th</sup> September decided to increase the repo rate by 50 bps for the fourth consecutive time to 5.90%.

Although the increase in the repo rate was along the expected lines, industry experts and developers feel the rate hike does not augur well for the real estate sector, especially the residential segment, as it will result in increased mortgage rates. Taking a cue from the previous transmission, home loan interest rates are likely to go up in the range of 25-30 bps, although the interest rate after this hike would be still below what the homebuyers had to pay 8 to 9 years back – more than 10%.

**THE ECONOMIC TIMES****Dated: 01.12.2022****Builders in Noida, Gr Noida seek one-time settlement scheme for land dues, fearing bankruptcy**

Representatives of realtors' bodies CREDAI and NAREDCO met Ritu Maheshwari, the CEO of Noida and Greater Noida development authorities and demanded a one-time settlement scheme to clear their land dues citing liquidity crunch. Last month, the Supreme Court recalled its order of June 10, 2020, which had capped the rate of interest at 8 per cent on the dues for land given on lease to different builders. The apex court order is a setback for builders of Noida and Greater Noida in Uttar Pradesh (UP).

"In a meeting with the CEO of Noida and Greater Noida Authorities Ritu Maheshwari yesterday, real estate developers from NAREDCO and CREDAI urged the Authorities to bring in One Time Settlement (OTS) Scheme similar to the one adopted by the Haryana Government, to tide over the situation arising from the recent order of the Supreme Court," the association said in a statement.

After the recall of the Supreme Court orders, the land payment liability on developers has increased manifold. The developers have started getting demand letters of huge amounts due to calculating interest compounded every six months, from the authorities, it added.

**THE ECONOMIC TIMES****Dated: 28.12.2022****Housing sales increase by 50%, launches grow by 101% YoY**

Residential real estate sales in India have breached 2021 levels by far, witnessing a 50 per cent YoY growth. New launches further strengthened during 2022 and registered a growth of 101% YoY with a total of 4,31,510 new homes launched during the calendar year 2022, said the latest report by PropTiger.com, the country's leading online real estate brokerage company.

A large chunk (26 percent) of the sales were concentrated in INR 45-75 lakh price range. Notably, the share of units in the more than INR 1 crore price bracket has been growing continuously. This price bracket took a share of 22 per cent in 2022, the highest in a decade. In 2022, 21 percent of the units sold were ready to move in

while the remaining 79 per cent were under construction.

While the hike in property prices and interest rates have slowly begun to outweigh positive homebuyer sentiment to an extent and are expected to have a short-term impact, the overall consumer outlook continues to remain positive.

## **THE ECONOMIC TIMES**

**Dated: 10.01.2023**

### **Developers urge government to review construction ban, exempt RERA projects**

Real estate developers have urged the central government to consider RERA registered projects as public interest ventures and allow work to continue even when pollution levels increase.

A delegation of developers met with the Minister of Environment, Forest and Climate Change, Bhupender Yadav, and argued that construction and demolition activities have already been banned for 29 days this winter. They highlighted that construction activity once stopped, it takes more than 15 to 30 days to resume full-fledged operations, and hence construction is banned for just two and a half months.

Developers also pointed out that the first impact of this ban directly hit labourers working on construction sites and it leads to a huge loss to real estate companies, labourers, vendors, ancillary industries, and government revenue. They urged the minister to allow activities that do not cause pollution and also to declare in advance that during this part of the year, no construction will be allowed in the National Capital Region (NCR) to avoid negative impact on sectors and government revenue. The industry body said that the vendors and ancillary industries which are selling construction materials such as steel, paint, plywood, and cement cannot sell during the ban, and this leads to loss of GST for the government.

## **THE TIMES OF INDIA**

**Dated: 07.02.2023**

### **RERA to conduct workshop for homebuyers' awareness**

The Real Estate Regulatory Authority (RERA), Bihar, has planned to organise a

workshop on the rights and duties of homebuyers. An open session will also be held where buyers can ask questions about the subject.

People who plan to buy a flat in any real estate project with more than eight flats, or plots with an area of more than 500 square metres are eligible to participate in the workshop. “People have already started registering for the workshop. We will announce its date once the registrations are over. We plan to hold the workshop with approximately 100 participants,” a RERA official said, and added, “Participants will be informed about their rights as homeowners and duties as allottees. They can also ask questions related to the RERA Act on the occasion,” he said.

Allottees who have taken possession of their flats or plots or whose deed of conveyance has been registered after March 1, 2018 can also participate.

## **THE TIMES OF INDIA**

**Dated: 13.02.2023**

### **MahaRERA's man in-charge who plays fair and square to protect homebuyers**

Veteran bureaucrat Ajoy Mehta has emerged as a game-changer after he took over the reins of the Maharashtra Real Estate Regulatory Authority (MahaRERA) set up for ensuring complete transparency in all transactions between buyers and developers, and protecting the interest of homebuyers.

A former chief secretary, when Mehta took charge of MahaRERA, he found that rules weren't implemented, and as a result, the authority was unable to do justice to poor homebuyers. As per MahaRERA rules, it is mandatory for the developer to update the present status of his projects on a quarterly basis so that homebuyers get specific information on their project.

Mehta made it mandatory for all developers and builders to file quarterly returns and submit information in seven forms, but it was ignored. Mehta found that while projects worth Rs 90,000 crore are registered with MahaRERA, specific information on lapsed projects were not collected. A special drive was also undertaken to find out the number of persons who have paid the cost to the builders, but not given possession. All such customers were identified, notices were sent to erring builders, and it is expected that in the days to come, the customers may get back around Rs 700 crore.



**THE TIMES OF INDIA****Dated: 18.02.2023****13 developers fined Rs 1.4 crore for violating Uttar Pradesh-Rera orders, delays**

The Uttar Pradesh Real Estate Regulatory Authority (UP-Rera) has imposed a collective fine of Rs 1.39 crore on 13 developers who have either delayed giving possession to homebuyers or violated its refund/other orders, using its powers under section 38/63 of the Rera Act empowering it to penalize non-compliant promoters with up to 5% of the project cost. “The UP-Rera has also directed erring promoters to submit a compliance report with its orders and deposit the penalty within 30 days, failing which the Authority will recover the cost from the arrears of land revenue,” added the official.

The order comes in the backdrop of UP Rera’s 115th meeting that took place recently. “The UP-Rera is making gradual progress in resolving legacy issues, and it cannot happen without cracking the whip on repeat offenders. It is in this direction that we have imposed a penalty on 13 developers, and such action will continue. It should also serve as a warning that the UP-Rera will not remain a mute spectator to the wrongdoings of developers” said Rajive Kumar, chairman of UP-Rera.

**FINANCIAL EXPRESS****Dated: 28.02.2023****Reliance Industries enters commercial real estate business.**

Reliance Industries Ltd is foraying into the commercial real estate sector and has incorporated a new unit called Reliance SOU Ltd, the company said in stock exchange filings. “The Company has incorporated a wholly owned subsidiary named ‘Reliance SOU Limited’ (‘RSOUL’) to carry on, inter alia, the business of development of properties for commercial use and invested Rs. 1,00,000 in the equity shares of RSOUL,” RIL said in the filing. With this move, RIL will now compete with the biggies like Adani Properties, Tata Realty & Infrastructure, Shapoorji Pallonji & Co, among others in the commercial real estate sector.

Before this, Reliance had earlier shown interest in real estate in 2019 when it had acquired a 65 per cent stake in a real estate project in Bandra Kurla Complex in Mumbai for Rs 1,105 crore. And a month after this move, had set up Reliance

Navi Mumbai Infra Development for real estate development. Reliance had invested Rs 5 lakh as initial capital in the entity.

It also has a very active real estate division that takes up development projects such as the Jio World Centre and Jio World Garden at Bandra Kurla.