

RERA TIMES

REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016

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A C H I E V E M E N T



I N S P I R A T I O N



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FROM THE EDITOR'S DESK...



Dear Readers,

This year marked our 77th Independence Day. Prime Minister Narendra Modi Ji projected India's development as a fully developed nation by 2047, coinciding with its 100 years of independence. Modi Ji emphasized this goal based on the nation's capabilities, resources, and the potential of its youth. He criticized three obstacles hindering progress: corruption, dynasty politics, and appeasement, vowing to combat them. He emphasized that present decisions hold the key to shaping India's trajectory for the next 1000 years. He highlighted the transformative potential of India's demography, democracy, and diversity in realizing national aspirations.

India has achieved a milestone which was never achieved by any nation in the world before. The successful landing of the Vikram lander of India's Chandrayaan-3 lunar mission on the south pole of the Moon is a remarkable achievement for India's space program. The mission was conducted with limited resources, yet it was able to gather invaluable data that will help drive our understanding of the Moon and our ability to utilize its resources. The success of Chandrayaan-3 is a triumph of Indian innovation, human capital, and capabilities that will take India even further. The mission has also showcased the capabilities of women scientists, who played a significant role in its success.

Apart from massive economic developments, India is also making progress in sports. Olympic gold medalist Neeraj Chopra has added another feather in his cap and the country's by becoming the first sports person from India to win a

World Championships gold medal in Budapest, Hungary. Also, R Praggnanandhaa, the Indian chess prodigy, has been making waves in the international chess scene with his impressive performances. He recently participated in the FIDE World Cup 2023, where he made it to the final round and played against the world's No. 1 chess player.

India is slowly slipping out of the sphere of dollar dominated international economy by initiating a kind of parallel economy – country to country direct trade linkages with local currencies. In this context, a major development took place recently when India and UAE inked a pact to trade with each other with local currencies like Rupee and Dirham.

The Indian real estate market is showing robust performance in the second quarter of 2023, with sales maintaining its momentum as new supply continues to pour in. Remarkably, even with the influx of new properties, prices in primary economic hotspots are skyrocketing. As we transition into the third quarter of 2023, it will be interesting to see if this period can outdo its preceding year's performance. The upcoming quarter is also marked by the festive season, which is a significant sentiment driver for the property market. However, the sustainability of the current sales will be put to the test amid the absence of any external incentives to boost demand or drive consumption across the board.

With Regards

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RERA TIMES

REAL ESTATE

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

(A Journal on Real Estate Bye Laws)

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Part-I

HIGH COURT JUDGEMENT

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

Order dated: 12 June, 2023

ACCRUAL REALITIES PVT LTD

NAZAR MOHAMMAD

ABDUL HASAN

----- PETITIONER

VERSUS

THE STATE OF MADHYA PRADESH

**THE INSPECTOR GENERAL DEPARTMENT OF STAMPS AND
REGISTRATION**

**THE CHAIRMAN THE REAL ESTATE REGULATORY AUTHORITY
OF MADHYA PRADESH**

----- RESPONDENT

For Petitioner(s): Adv Abhinav Dhanodkar

For Respondent(s): Adv Sudarshan Joshi.

Gist of case: In case of inadequate stamping, the authority should have referred the matter to the Registrar of Stamps, and remitted the case for re-evaluation while addressing the issue of stamp duty payment

The petitioners had filed the present petition as they were aggrieved by the order dated April 19, 2022, passed Real Estate Regulatory Authority (RERA). In this order, the application for registration was dismissed. At the time of filing the petition, the Appellate Tribunal was not operational. Therefore, the petitioners had directly approached the Court through the current petition.

Petitioner No.1 was a private limited company registered under the provisions of the Companies Act, 1956. It was engaged in the business of real estate development. Petitioners No.2 and 3, who were the landowners, had entered into a development agreement dated February 11, 2021, with petitioner No.1. Pursuant to this agreement, petitioner No.1 had obtained the necessary

permissions and No Objection Certificates (NOCs) from various departments to execute a joint venture agreement under the name "24 CARAT EXTN." After completing all the required formalities, petitioner No.1 had filed an application under Section 4 of the Real Estate (Regulation and Development) Act, 2016, seeking registration of the mentioned project.

Respondent No.3 had reviewed petitioner No.1's application and had rejected it, citing the reason that the agreement dated February 11, 2021, lacked proper stamping. According to respondent No.3, as per Article 6(1)(d) of the Indian Stamps Act, a stamp duty of Rs. 22,40,333/- was due. However, petitioner No.1 had only paid a stamp duty of Rs. 12,45,630/-. This led to the filing of the current petition before the Court.

Upon receiving notice, respondents No.1 and 2 had submitted a reply to this petition. They argued that if any authority found an instrument to be insufficiently stamped, the authority could impound it under the Indian Stamps Act. Respondents No.1 and 2 had supported the order issued by respondent No.3.

The Court had heard the arguments presented by the parties' legal representatives and had examined the available evidence.

The Court observed that if RERA had concluded that the mentioned agreement lacked proper stamping, it should have referred the document to the Registrar of Stamps for impounding, instead of outright dismissing the registration application. The learned counsel for the petitioners had contended that petitioner No.1 had correctly paid a stamp duty of Rs. 12,45,630/-. This point wasn't addressed by respondent No.3 during adjudication. Petitioner No.1 could have demonstrated the sufficiency of stamp duty payment if this matter had been raised.

Based on the aforementioned considerations, the Court had set aside the impugned order dated April 19, 2022. The case was sent back to respondent No.3 for reconsideration of the application. The question of stamp duty payment was to be determined after affording the petitioners an opportunity for a hearing. If respondent No.3 deemed it necessary, a report from the Registrar/Sub Registrar of Stamps could be requested.

PART-II

REPORTING OF CASE LAWS

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

APPELLANTS: Col R. Ganesan and Ors.

RESPONDENT: Army Welfare Housing Organization (A.W.H.O.)

**CORAM: Hon'ble Mr. Justice M. Duraiswamy, Chairperson
Mr. R. Padmanabhan, Judicial Member, Ms. Leena Nair, Administrative
Member**

ORDER DATE: 26.06.2023

Complainant Representative: Mr. R. Ramasubramaniam Raja

Respondent Representative: None

Gist of Case: Allottees of Phase-I have no right over the open space reserved for Phase-II, especially when all the assured amenities including Open space reservation were already provided in Phase-I for the exclusive use of the Allottees of Phase-I.

The Appeals mentioned above have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against a Common Order issued by the Tamil Nadu Real Estate Regulatory Authority (TNRERA) in cases numbered 451/2019, 106/2020, 226 of 2021, 153/2021, and 117/2020, all dated October 26, 2022.

The relevant facts of the case are as follows: The Army Welfare Housing Organization (AWHO), New Delhi, initiated a demand survey in April 2005 to assess the feasibility of a housing project in Coimbatore. Through a newspaper publication in 'Times of India' on April 6, 2005, the AWHO invited applications from retired/serving Army Personnel interested in purchasing dwelling units. The organization clarified that land acquisition would depend on the response from potential buyers, and the project planning would follow. The AWHO purchased 33.66 acres of land in Chinnavedampatti village, Coimbatore, during February to August 2008, intending to construct housing units. Initially, they planned 912 units but scaled down to 496 due to lower demand.

After obtaining building permissions, the AWHO constructed 400 dwelling units in Phase-I on 23.58 acres and reserved the remaining 10.08 acres for future development. The project faced delays, leading to written communication from AWHO explaining the situation to allottees and offering refunds. The allottees, however, remained in the project. Subsequently, the appellants contended that they had rights to the undeveloped 10.08 acres under Section 14(2) of the Real Estate (Regulation and Development) Act, 2016, and sought increased Undivided Share (UDS) of land in case the 10.08 acres were developed.

The Appellants filed complaints before TNRERA requesting the AWHO to execute sale deeds with increased UDS and sought various reliefs. TNRERA's common order on October 26, 2022, rejected the Appellants' contentions regarding the 10.08 acres earmarked for future development, leading to the filing of these appeals.

During the hearings, both parties presented their arguments. The Appellants claimed UDS rights over the entire 33.66 acres and argued against the AWHO's right to reserve 10.08 acres for future development. They cited Section 14(2) of the Act, which requires a promoter to obtain consent from 2/3rd of allottees before altering approved plans. The Appellants' position was that the 10.08 acres should remain open space forever. Additionally, the Appellants contended that by allotting UDS on the 10.08 acres, they would gain significantly more space.

The AWHO's defence was that they purchased the land using their own funds and had clear intentions from the outset to develop in phases. They highlighted that the technical brochure and site plan clearly designated the 10.08 acres as land for future development. They argued that they had provided all necessary amenities within the developed area and that the Appellants had no legal basis to claim the 10.08 acres as their own.

The TNRERA rejected the Appellants' claims and upheld the AWHO's right to reserve the 10.08 acres for future development. TNRERA emphasized that the Appellants were not the owners of the disputed open space and, therefore, Section 14(2) of the Act did not apply. The decision also pointed out that there was no Construction Agreement or Agreement for sale executed between the Appellants and the AWHO, weakening the Appellants' claims.

In conclusion, the TNRERA's decision was based on the fact that the AWHO had clear intentions to develop the land in phases, and the Appellants did not possess ownership rights to the disputed open space. The Appellants' claims under Section 14(2) of the Act were deemed inapplicable.

The court upheld the TNRERA's decision, stating that the AWHO's reserved land for future development was within their rights and dismissed the appeals.

APPELLANTS: 1) S.P. Arulappa

2) G. Prematatha

RESPONDENT: M/s A.N. Builders

CORAM: Hon'ble Mr. Justice M. Duraiswamy, Chairperson
Mr. R. Padmanabhan, Judicial Member

ORDER DATE: 31.07.2023

Complainant Representative: Mr. B.K. Sreenivasan

Respondent Representative: None

Gist of Case: The appellants are hereby permitted to install a separate CCTV surveillance system for their separate use at their own costs without affecting the privacy of the other allottees in the project.

The appellants, who are among the six allottees of a standalone residential project in Chennai, filed a complaint (C.No.131/2020) with TNRERA seeking specific directions against the respondent/promoter. The complaint outlined six reliefs (a) to (f), and after due consideration, TNRERA granted only three of these reliefs - (d), (e), and (f), while rejecting the other three - (a), (b), and (c).

Relief (a) pertained to the removal and relocation of an overhead water tank that was constructed over the headroom, requiring its reconstruction in a more suitable location. Relief (b) dealt with the demand for the IP address and password to access the CCTV surveillance system. Relief (c) sought the removal of an extra car park allocated on the driveway. The appellants appealed TNRERA's decision regarding the disallowed reliefs (a), (b), and (c).

However, in the course of the appeal proceedings, the appellants abandoned relief (a) related to the relocation of the overhead water tank

and relief (c) about the removal of the extra car park. The appellants' focus shifted solely to relief (b), requesting access to the IP address and password for the CCTV surveillance system. They also expressed their willingness to bear the expenses of installing a separate CCTV surveillance system, thus petitioning the Tribunal's permission for such an installation. The respondent was represented by counsel during the proceedings until April 21, 2023, but subsequently, they ceased participation.

During the argument on April 21, 2023, the respondent's counsel promised to provide the appellants with the necessary IP address and password for the existing CCTV surveillance system within two days. In the event of password changes by other residents, the respondent would facilitate sharing the new password with the appellants through communication with other flat owners. However, the respondent's counsel did not appear in subsequent proceedings.

On the same day, the appellants' counsel stated that if the respondent failed to provide the current password, the appellants should be permitted to install an independent CCTV system. They emphasized their readiness to cover the expenses of this installation. Taking all factors into account, the Tribunal found it just and appropriate to allow the appellants to install a separate CCTV surveillance system at their own expense. This decision was made without compromising the privacy of the other allottees in the project.

To ensure the privacy of the other allottees, the appellants were directed to install their separate CCTV system while safeguarding the privacy of others residing in the project. Consequently, the appeal was concluded, and the appellants were granted permission to set up their own CCTV surveillance system while upholding the privacy of their fellow allottees.

APPELLANTS: Vijay Shankar Venugopal

S.K.Balasubramanian

RESPONDENT: M/s.RGE Constructions and Development Pvt. Ltd & Niranjana Ramakrishnan

CORAM: Hon'ble Mr. Justice M. Duraiswamy, Chairperson
Mr. R. Padmanabhan, Judicial Member

ORDER DATE: 31.07.2023

Complainant Representative: Mr. R. Ramasubramaniam Raja

Respondent Representative: None

Gist of Case: In spite of expiry of seven years possession was not handed over to the allottee for no fault of them. Complaint filed seeking refund with interest and compensation. Single Member of TNRERA dismissed the complaint stating possession was already handed over and hence no refund can be claimed. Appeal preferred. Entire amount paid by the allottees ordered to be refunded with interest at 9%. Appeals allowed.

In the case under consideration, two separate appeals (A.No.18/2023 and A.No.19/2023) involve similar facts and issues, prompting a joint disposal. The appellants in these appeals are Vijay Shankar Venugopal and S.K. Balasubramanian. They had individually booked three-bedroom apartments in a residential project named 'Embassy Residency,' promoted by the 1st respondent. The construction agreement stipulated a possession period of three years; however, possession was not handed over to the appellants even after seven years.

The appellants claimed that the promoter had obtained a partial completion certificate from the CMDA on 13.04.2017 and invited them for inspection. Upon inspection, the appellants found that the construction was incomplete and of poor quality, rendering the apartments unsuitable for habitation. They raised concerns via numerous email exchanges from April 2017 to April 2019.

Seeking resolution, the appellants expressed their willingness to take possession "Under Protest" on 27.04.2019, which the respondents rejected. Frustrated, the appellants cancelled their bookings on account of poor construction quality and delayed possession, demanding a refund of the amounts paid, along with interest and compensation.

The respondents' reply to this cancellation was non-committal, and the appellants subsequently lodged complaints before the Adjudicating Officer, TNRERA, seeking refund, interest, and compensation. The Single Member of TNRERA initially heard these complaints but eventually dismissed them on the premise that the appellants had already taken possession in 2019, thus forfeiting their right to a refund. However, this conclusion was flawed as the appellants had never admitted to taking possession, and correspondence between the parties substantiated this fact.

The court noted the misinterpretation by the Single Member and recognized that the Real Estate (Regulation and Development) Act, 2016 aims to safeguard the interests of consumers in the real estate sector. The promoters failed to deliver possession within the stipulated time frame, justifying the appellants' decision to cancel their bookings. Therefore, they were entitled to a refund.

Regarding the quantum of refund, the appellants provided revised calculation statements in their favor, including interest calculations up to 31.01.2020. The respondents failed to dispute these calculations, and thus, the court upheld the appellants' claims for refund based on the provided calculations.

The court allowed both appeals and directed the respondents to pay Rs.1,14,32,198/- (inclusive of interest at 9% up to 31.01.2020) to Vijay Shankar Venugopal and Rs.1,18,97,357/- (inclusive of interest at 9% up to 31.01.2020) to S.K. Balasubramanian. Additionally, future interest at 9% from 01.02.2020 until the date of actual refund was mandated for both appellants.

ASSAM REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: M/s D.S. Realtors

RESPONDENT: Real Estate Regulatory Authority, Assam

CORAM: Hon'ble Mr. Justice (Retd.) Manojit Bhuyan, Chairperson ; Shri Onkarmal Kedia, Hon'ble Member (Administrative)

Order date: 31.07.2023

Complainant Representative : Adv. Gautam Rahul, D.M. Nath

Respondent representative: Authorized representative of Authority

Gist of Case: Failure to register a project after implementation of RERA Act is not justified and is hence, penalized.

The appellant has appealed against an order issued by the Real Estate Regulatory Authority, Assam (RERA), dated 03.03.2023, in Case No. RERA/ASSAM/Reg./Notice/2022/40. **The order imposed a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs) on the appellant for violating sub-section (1) of section 3 of the Real Estate (Regulation and Development) Act, 2016 (the Act).** The Act applies to new and ongoing real estate projects, requiring registration with

RERA, unless exempted. **The central issue is the interpretation of section 3 of the Act, which prohibits advertising, selling, or offering real estate without RERA registration.**

The appellant's project, 'Minakshi Enclave,' involved constructing 252 flats with investments from 106 buyers amounting to Rs. 14 crores. The project's permissions were obtained after the Act's enforcement (01.05.2017), and construction began on 03.04.2018. Despite these facts, the appellant failed to register 'Minakshi Enclave' with RERA as required by law.

The penal provision and consequences for non-registration of a real estate project under section 3 is provided in section 59 of the Act, which reads as follows :

“59. Punishment for non-registration under section 3.- (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend upto ten percent of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend upto three years or with fine which may extend upto a further ten percent of the estimated cost of the real estate project, or with both.”

The appellant's arguments, such as pending civil suits and office establishment timing, were rejected. The appeal court concluded that the project fell within the Act's scope, and the appellant's failure to register and the ensuing sales violated section 3. Thus, the appeal was dismissed, and the appellant was directed to deposit the remaining penalty within three weeks.

The Appellant has already paid Rs. 6,00,000 as directed by the Tribunal earlier. Now, the Tribunal instructs the Appellant to deposit the remaining Rs. 14,00,000 via Demand Draft to the "Secretary, Real Estate Regulatory

Authority, Assam" within three weeks. Failure to comply may lead RERA, Assam, to use measures under section 59(2) of the Act. Also, the Tribunal's Registry will transfer the initial Rs. 6,00,000 to RERA, Assam's authorized bank account.

In conclusion, the appeal involved the appellant's failure to register a real estate project, 'Minakshi Enclave,' under the Real Estate (Regulation and Development) Act, 2016, resulting in a substantial penalty imposed by RERA.

HARYANA REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: Subhojit Chatterjee

RESPONDENT: M/s Prompt Engineering Pvt. Ltd.

CORAM: Justice Rajan Gupta, Hon'ble Chairman and Shri Anil Kumar Gupta, Hon'ble Member

ORDER DATE: 11.08.2023

Appellant Representative: Adv. Vikrant Rana

Respondent Representative: Adv. Arti Aman Arora

Gist of Case: Court Nullifies Cryptic Order, Orders Fresh Decision

The appellant challenges the order dated 07.07.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (referred to as 'the Authority' hereinafter). The order issued by the Authority is as follows:

"Proceedings:

The unit allotment was made in favour of two parties, whereas only one party has filed this complaint. The complainant is also not present. The complaint is not maintainable due to the non-joining of the necessary party."

The learned counsel representing the appellant states that the Authority's order is cryptic and lacks detailed reasoning for dismissing the complaint. The appellant requests that the matter be sent back to the same Authority for a fresh decision.

A simple examination of the order reveals that it lacks detailed reasoning and is cryptic in nature. Consequently, the court grants the appeal, nullifies the

contested order, and sends the case back to the Authority for a fresh decision. The Authority is expected to finalize the proceedings promptly, no later than two months after granting both parties an opportunity to be heard.

Both parties are instructed to appear before the Haryana Real Estate Regulatory Authority, Gurugram, on 31.08.2023.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Punita Tatiya

RESPONDENT: Alokik Buildcon Pvt Ltd

CORAM: Hon'ble Shri Salvinder Singh Sohata, Member

ORDER DATE: 14.07.2023

Complainant Representative: Adv Ankit Juneja

Respondent Representative: Adv Saloni Nogja

Gist of Case: Even if the agreement to sale does not bear signature of land owner, still allottee is entitled for refund alongwith interest w.e.f. expected date of delivery in case of non- completion of project.

In the presented case, the complainant had booked a flat in the project "Mayur Dhvaj Grand" and paid a sum of Rs 16,04,925/- towards the total consideration of Rs 90,28,500/-. An agreement for sale was entered into on 19.10.2019 between the complainant and the respondent (promoter). However, the respondent later communicated via email on 16.06.2020, expressing the need to modify the agreement's terms and conditions due to the absence of the land owner's signature on the agreement.

As per clause 3 (v) (b) of the agreement, possession of the flat was expected to be delivered by 31.12.2020. The complainant alleged that there was a deliberate delay in possession delivery, non-completion of the project, and even accused the promoter of cheating. The complainant sought a refund of the deposited amount along with interest from the date of booking.

The promoter, in their reply, refuted the allegations, asserting that the complaint lacked merit. They contended that the agreement for sale was not signed by all parties, citing the land owner's deliberate avoidance in signing to deceive buyers. The promoter further claimed that the complainant had not adhered to the payment schedule, becoming a defaulter. They enumerated

various reasons for the project's non-completion, including land owner non-cooperation, promoter sickness, resource scarcity, supply chain disruptions, and the impact of the Covid-19 pandemic. They requested dismissal of the complaint and cooperation from the land owner for project completion, along with a demand for payment of outstanding dues from the complainant.

After hearing both parties extensively and examining the provided records, it was established that the agreement for sale executed on 19.10.2019 lacked the land owner's signature, rendering it invalid in legal terms. The promoter admitted that the land owner's signature was indeed missing. Therefore, the agreement was not properly executed according to statutory provisions.

Despite the complainant depositing Rs 16,04,925/- and a delivery possession date set for 31.12.2020, the project's progress was hampered, and it was deemed unlikely to be completed as per the approved plan. Extensions were provided for the validity of registration until 12.01.2022, but the project was categorized as lapsed due to non-completion.

In light of these circumstances, the complainant was not obligated to pay installments for an incomplete project beyond the timeline specified in the agreement or the extended completion date. The promoter, despite obtaining extensions, failed to complete the project. Therefore, it was acknowledged that the complainant was entitled to a refund of the deposited amount along with applicable interest under the relevant legal provisions.

The respondent argued that the land owner's non-cooperation had contributed to the project's stall. However, the authority stated that disputes between the land owner and promoter, or co-promoter, should be resolved through competent forums, and the authority lacked jurisdiction in such matters.

While the initial agreement for sale was deemed invalid due to lack of proper execution, it was acknowledged that the complainant had agreed to receive possession by 31.12.2020 and subsequently sought a refund due to non-completion. Therefore, interest was to be applied from the expected delivery date, i.e., 31.12.2020.

Considering that the project was not completed within the registered timeframe, no deductions against administrative charges were applicable.

Based on these findings, the authority directed the promoter to refund the deposited amount along with interest at a specified rate starting from 01.01.2021. The authority also granted the Registry the power to initiate recovery proceedings if the terms of the orders were not complied with.

COMPLAINANT: Arun Sharma

RESPONDENT: Auric Build Square Pvt Ltd

CORAM: Hon'ble Shri Shailendra Agarwal, Member

ORDER DATE: 14.07.2023

Complainant Representative: Adv Rishabh Khandelwal

Respondent Representative: Adv Mitesh Rathore and Adv Shruti Rai

Gist of Case: Where any stay is not granted by the higher/ appellate courts, mere filing of appeal (in the case of writ petition) would not operate as stay.

The brief facts of the case are that vide order dated 24.08.2021, certain directions were issued in the original case:

1. The promoter shall register the project as prescribed in statutes within 45 days of uploading the order on the website of the Authority.
2. The promoter shall pay the interest (excluding moratorium period 13.05.2020 to 31.03.2021) against the aforesaid deposit by the applicant on the rates applicable under Rule 17 of the Rules, with effect from the expected date of delivery of possession of the partially constructed villa/unit, till actual physical possession is handed over.
3. The promoter shall ensure to pay the accrued interest up to the 10th of every succeeding calendar month.
4. The promoter is at liberty to adjust the accrued interest (as mentioned in (ii) and (iii) above) against consideration/cost of the unit, if due any.

The decree holder filed an application for execution on 07.02.2022 and prayed to pay the interest up to the delivery of the allotted unit in the project "Auric Villas" (not registered project) but liable to be registered. An appeal was preferred before the Hon'ble REAT, which was dismissed vide order dated 13.10.2022.

The promoter preferred a Writ Petition bearing No. D.B. Civil Writ Petition No. 14696/2022 Auric Infraproject Vs Union of India and Ors. before the Rajasthan High Court. Both the parties agreed on the issue that a stay order against the order of the Authority dated 24.08.2021 is not granted in the matter. Learned Advocate on behalf of the promoter insisted that, in view of the pendency before the Hon'ble High Court, execution proceedings may not be concluded. However, the learned Advocate on behalf of the decree holder retorted that, in the absence of any stay order, the execution proceedings may not be stayed and prayed to ask the promoter to comply with the directions issued by the Authority.

The court had thoughtful consideration towards rival contentions of the parties. The Hon'ble Supreme Court, in a reasoned judgment in SLP No. 19038/2022, in the case of Sanjeev Kumar Singh Vs State of Bihar and Ors, vide order dated 24.01.2023, mandated that where any stay is not granted by the Higher/Appellate Courts, mere filing of appeal (in the case of a writ petition) would not operate as a stay, and the decree holder may not be refrained from getting the benefit of the decree or order during the pendency of the appeal/writ petition.

In view of any contrary decision by the Hon'ble High Court, the promoter is having the liberty to initiate restitution proceedings. Therefore, the court does not deem it appropriate to refrain the decree holder from getting the benefits of the order passed in his favor by the Authority during the pendency of litigation.

In the light of the aforesaid observations, the promoter is directed, as follows:

- 1. The project be registered with the Authority within 30 days. In case of failure to comply with regard to the registration of the project, the prosecution proceedings be initiated against the promoter under the statutory provisions for non-registration of the project.**
- 2. In case the interest payable to the decree holder against the deposit is not paid within 30 days, subsequent to the issuance of the recovery certificate, proceedings be initiated before the concerned District**

**Collector under the provisions of Section 40 of the RERA Act, 2016,
read with Section 256 of the Rajasthan Land Revenue Act, 1956.**

COMPLAINANT: Tanuja Singh

RESPONDENT: Arihant Dream Infra Projects Ltd

CORAM: Hon'ble Shri Salvinder Singh Sohata, Hon'ble Member

ORDER DATE: 18.07.2023

Complainant Representative: Adv Ram Prakash Kumawat

Respondent Representative: Adv Nitish Bagri and Adv Hari Om Vyas

Gist of Case: When the complainant has paid about 80% of the total sale consideration within nine days of booking, the judgement cited by promoter for not refunding the amount in case project is completed, is not applicable. Complainant is entitled for full refund.

The case under consideration revolves around a project named 'Arihant Legacy' located on Tonk Road, Jaipur, registered with the relevant authority under registration number RAJ/P/20171297.

The complainant's representative states that the complainant booked a flat (No. A-610) in the mentioned project, and an allotment letter cum agreement to sell was executed between the complainant and the respondent on March 12, 2016. The total sale amount was Rs. 38.49 lakh, and as per the agreement's clause 8, the possession was to be handed over by December 2017 or June 2018, including a grace period of six months.

The complainant asserts that she had chosen a construction linked payment plan as outlined in clause 2 of the agreement. However, the respondent prematurely withdrew the entire home loan amount of Rs. 30.75 lakh (more than 75% of the total sale consideration) within nine days of the booking, contrary to the payment schedule agreed upon. Furthermore, a representative from the respondent approached her, prompting her to obtain a housing loan, which was quickly sanctioned and withdrawn in one go, against the agreed installment-based payment plan.

Consequently, the complainant had to pay interest on the entire loan amount from the beginning, instead of paying in stages. Additionally, she paid Rs. 1.50 lakh as a booking amount and Rs. 5.00 lakh following the home loan, totaling Rs. 37.25 lakh, which exceeds 95% of the total sale consideration. Despite

these payments, the respondent failed to secure a completion certificate for the project. The complainant cited section 18(1) of the Real Estate (Regulation and Development) Act, 2016 and relevant court judgments, seeking a refund of the amount along with interest.

Adv Nitish Bagri, representing the respondent, acknowledged the agreement for sale and the payment of Rs. 37.25 lakh by the complainant. The respondent attributed project delays to various spells of COVID-19, considering it a force majeure condition. They asserted that despite the pandemic, they completed the project and issued a possession offer to the complainant on December 24, 2021. However, the complainant failed to clear outstanding dues even after receiving the possession offer. The respondent sent demand letters for instalments due on multiple occasions but received no response. They argued that refund requests at a later stage could undermine the purpose of the enacted regulations.

After hearing arguments and examining submitted documents, the authority noted that both parties agreed on the completion date of December 2017 or June 2018 and the total sale amount. The respondent offered reasons for delayed or unpaid instalments, but these reasons did not appear justified based on the authority's consistent stance.

The authority questioned why the respondent withdrew over 75% of the sale consideration via a loan even though the payment plan required staged payments. The authority found the respondent's actions to be in violation of the agreement, suggesting a malicious intent. The complainant had been paying interest on the entire loan amount for seven years instead of just the withdrawn amount, undermining her trust.

The respondent argued that some judgments by the authority supported their stance, but the authority deemed these cases different due to non-payment of installments. In contrast, the complainant had paid about 80% of the total sale consideration within nine days of booking. The authority referred to the "M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors." judgment by the Hon'ble Supreme Court, which emphasized the unconditional right of an allottee to seek a refund if possession was not given as agreed upon. The Supreme Court ruling supported refund with interest if possession was delayed, irrespective of unforeseen events.

Given the complainant's substantial payment within a short period and the Supreme Court's ruling, the authority deemed the complainant's request legitimate. They directed the respondent to refund the entire Rs. 37.25 lakh along with interest calculated at the State Bank of India's highest Marginal Cost of Funds Based Lending Rate (MCLR) plus 2% (9.95% in this case), with a deadline of 45 days from the judgment's date. Failure to comply would result in action under relevant sections and rules.

In conclusion, the authority found in favor of the complainant due to the respondent's actions violating the agreement and the Supreme Court's ruling. They directed the respondent to refund the complainant's payment along with interest, highlighting the importance of adhering to agreed-upon terms in real estate transactions.

COMPLAINANT: Komal Tyagi & Ors

RESPONDENT: Avalon Royal Park, Bhiwadi, Alwar

CORAM: Hon'ble Shri Salvinder Singh Sohata, Hon'ble Member

ORDER DATE: 21.07.2023

Complainant Representative: Adv Mohit Khandelwal

Respondent Representative: Adv Rubal Tholia

Gist of Case: When Moratorium by NCLT is applicable to a particular project and not towards the promoter company, all the files related to complainants be reinstituted.

The cases revolve around the project "Royal Park" where complainants booked flats. NCLT Bench-III, New Delhi issued a moratorium on 03.06.2022 for the project. The promoter appealed, and NCLAT granted a stay on 13.06.2022. The Authority issued an order on 08.08.2022 interpreting the moratorium's applicability to the entire promoter company. All litigation before the Authority was stayed. An opportunity for litigants to approach the Authority after NCLT proceedings or moratorium lift was provided. A subsequent order on 26.08.2022 continued the stay.

Complainant Komal Tyagi sought modification of the 08.08.2022 order based on the NCLAT's observation. The Authority, on 12.12.2022, maintained its order. The complainants approached NCLAT citing the Authority's observation. The NCLAT clarified the scope of its stay order in relation to the NCLT's order. An application on 26.06.2023 and 20.06.2023 was made by

complainants based on NCLT's modified order on 13.02.2023. The NCLT's order stayed the NCLT's 03.06.2022 order regarding IA Nos. 5701/2021, 5702/2021, 5703/2021, and 5704/2021 in Comp. App. (AT) (Ins.) No. 676 of 2022.

The NCLAT's subsequent order omitted reference to specific IAs. The complainants argue the modified order made the stay absolute. The complainants emphasized that the stay prevents CIRP proceedings for the Royal Park project. The complainants asked for execution of the 08.08.2022 and 12.12.2022 orders.

Regarding the NCLT's 14.06.2023 order for Avalon Rose Wood project, it clarified that moratorium applies only to that project. The NCLT's 10.06.2022 order emphasized CIRP's limited scope to Avalon Rose Wood. The Authority acknowledged these orders, stating the moratorium only applies to specific projects, not the entire promoter company.

The Authority rejected the promoter's contentions that the moratorium applies to the entire promoter company. It emphasized that the moratorium is project-specific, citing NCLT orders. It concluded that Avalon Regal Court doesn't need moratorium.

Regarding non-compliance, the Authority mentioned prior orders against the promoter to comply with directions. It decided to initiate recovery proceedings before the District Collector.

In conclusion, the Authority modified its previous orders, reinstating complaints/execution files for Avalon Royal Park and Avalon Regal Court. Litigation concerning Avalon Rose Wood stayed. Recovery proceedings were initiated before the District Collector based on non-compliance. The Authority clarified the moratorium's project-specific scope based on NCLT orders.

COMPLAINANT: Sarla Arora

RESPONDENT: Ashish Infraprojects LLP

CORAM: Hon'ble Shri Shailendra Agarwal, Member

ORDER DATE: 25.07.2023

Complainant Representative: Complainant in person

Respondent Representative: Adv Samkit Jain

Gist of Case: Promoter cannot take benefit of technical glitches that complainant is no more an allottee and only allottee can come before Authority.

The aforementioned case was brought to the Authority by the complainant Sarla Arora against the respondent Ashish Infra Project LLP in respect of a project “Amor” under the Chief Minister’s Jan Awas Yojana launched and promoted by the respondent.

She stated that she had booked a flat in the aforementioned project on 10.01.2018 and paid an amount of Rs.1.79 lakh in two instalments of Rs.89,500 each. She further stated that a representative of the respondent approached her for booking of the aforesaid flat assuring her that the amount for the remaining 90 percent of the cost of the flat would be financed by the bank in which they would assist her for obtaining the loan. A representative of the respondent later informed her that the loan would not be available on account of her age and, therefore, she should get her booking cancelled.

On his advice, she cancelled the booking on 10.06.2018 and requested a refund of the amount deposited by her. Three years after her request, the complainant was given a cheque dated 15.02.2021 for an amount of Rs.1,61,000 with the request that the cheque should not be deposited for some time as they did not have any balance in their bank account. One year later, on 15.02.2022, another cheque for the same amount was given to her which also bounced when she deposited the cheque in the bank. Five years have passed since she cancelled her booking on the advice of the respondent himself as they could not organize a bank loan for her, but she has not been refunded any money deposited by her.

The respondent, Ashish Infra Project LLP, was represented by advocate Samkit Jain who admitted that Sarla Arora, the complainant, had deposited Rs.1,79,000 as a booking amount but denied that any promise for a loan was made to her. **He further stated that as per the terms and conditions of the booking, if she requests for cancellation of her booking after the lottery, her amount would be refunded after deducting 10 percent of the amount as administrative charges. Invoking section 2(d) of the Real Estate (Regulation and Development) Act, 2016, he stated that Sarla Arora, the complainant, is not even an allottee in terms of that definition and,**

therefore, is not authorized to file the present complaint before the Authority, and accordingly, the complaint should be dismissed. He also cited a judgment delivered by the Authority whereby section 11(5) of the Act has been invoked to allow the promoter to cancel the allotment.

The Authority heard the arguments of both the parties and went through the entire record. The fact that the booking was taken by the respondent, Ashish Infra Project LLP, is admitted. It is also admitted that an amount of Rs.1.79 lakh was deposited by Sarla Arora, the complainant, as is proved by the receipts produced by her. **Even if it is granted that the respondent did not promise the complainant to organize a housing loan for her, the respondent in their reply has accepted that the booking amount could be returned to Sarla Arora, the complainant, after deduction of 10 percent administrative charges, and the respondent was entitled to cancel the unit after receiving the request of cancellation from Sarla Arora, the complainant. A cheque was given after 3 years, deducting 10 percent charges, and another cheque was given after 4 years, which had bounced.**

Now the respondent has come with an argument that Sarla Arora, the complainant, is no longer an allottee, and only an allottee could give to the Authority to seek her refund. **Citing a judgment from the coordinate bench of the Court, the respondent's claim that the entire booking amount was liable to be forfeited by the respondent because the complainant cancelled the unit on her own accord is not acceptable because (i) if the respondent was convinced of this argument, then why did the respondent give a cheque for Rs.1,69,100 on 15.02.2021 and then again on 15.02.2022, the latter of which bounced because of inadequate balance. There is a documentary proof to this effect, and the respondent was not able to answer and (ii) by their own admission in the reply submitted by the respondent, they have admitted that Sarla Arora, the complainant, was entitled to cancel her booking, and she would be refunded the booking amount after deducting 10 percent administrative charges.**

The Authority is convinced that the respondent, Ashish Infra Project LLP, has used the money paid by Sarla Arora, the complainant, five years ago, and even though she had submitted her request for cancellation five years ago, the amount paid by her as a booking amount has not been paid back to her till date. It is unfortunate that the respondent is taking the support of technical crutches by stating that Sarla Arora, the complainant, is no longer an allottee, and only

an allottee can come before the Authority to seek a refund. In view of the fact that the respondent has given two cheques to Sarla Arora, the complainant, both of which could not be encashed, it proves that the respondent was convinced at one point in time about their liability to Sarla Arora, the complainant. In fact, if Sarla Arora, the complainant, had been legally savvy, she would have prosecuted the respondent under the Negotiable Instrument Act when the cheques given by them were bounced. Under the circumstances, the Authority is convinced that the claim of Sarla Arora, the complainant, is genuine.

Accordingly, the Authority directs that the respondent, Ashish Infra Project LLP, pays the entire amount of Rs.1.79 lakh within 45 days from the date of this order and submits a report to the Authority within 15 days thereafter. No interest is being allowed as there was no agreement for sale, but no administrative charges are also allowed to be deducted by the respondent as the respondent has intentionally used the amount paid by Sarla Arora, the complainant, for a period of five years.

If the respondent fails to pay the aforementioned sum as directed above forty-five days, Sarla Arora, the complainant, is at liberty to recover the aforementioned sum from the respondent and their assets by executing this decree in accordance with section 40(1) of the Act and the Rules made thereunder. The matter stands disposed of in terms of the above directions.

Complainant: Varun Sharda

Respondent: Suncity Projects Pvt. Ltd

CORAM: Hon'ble Shri R.S. Kulhari, Adjudicating officer

Order date: 22.08.2023

Complainant Representative : Adv. Vipul Sharda,

Respondent representative: Mr. Aditya Bohra and Ms. Ishita Rawat

Gist of Case: The sudden withdrawal of facilities without notice contradicted the principles of fairness, causing the complainant undue suffering, inconvenience, and mental distress, which is duly recognized.

The complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act), seeking compensation based on various grounds. The complainant purchased a flat in a project named "Jewels of India" from the respondent. The complainant alleged that the promised amenities, including a modular kitchen, were not provided upon possession of

the flat. The respondent removed existing fittings and failed to reinstall them. Disputes arose over maintenance agreements and electricity connections, with the respondent restricting access to facilities like lifts.

The complainant approached the RERA Authority, which issued an order allowing the complainant access to the flat and facilities. Subsequently, the complainant filed the present complaint seeking compensation. The respondent argued that the complainant didn't fulfill maintenance agreements or pay charges.

The issues include the provision of promised amenities and the withdrawal of essential services. The complainant contends that the modular kitchen and amenities were not provided, leading to inconvenience. The respondent argued that facilities were withdrawn due to non-payment of maintenance charges.

The Authority examines the evidence presented. It notes that the complainant signed a possession letter without raising concerns about the modular kitchen's absence. The respondent provided evidence of the modular kitchen installation. The withdrawal of facilities, including electricity and lift access, was abrupt and without formal notice or demand for maintenance charges.

The AO cites the RERA Act's provisions regarding the promoter's responsibilities to provide and maintain services. It states that the facilities' withdrawal without notice was unjustified and against the principles of natural justice. The complainant's suffering, inconvenience, and mental agony due to the facility withdrawal are acknowledged.

Compensation is awarded: Rs. 3,00,000 for financial loss (non-utilization of the flat), Rs. 80,000 for mental agony, and Rs. 20,000 as litigation costs. The respondent is directed to pay a total of Rs. 4,00,000 to the complainant within 45 days.

The AO dismisses the preliminary objection about necessary parties, stating the landowner isn't relevant to this dispute. The complaint was filed by one joint vendee, and no objection was raised regarding this matter.

In conclusion, the AO finds in favor of the complainant due to the withdrawal of essential services, inadequate notice, and failure to fulfill maintenance obligations by the promoter. Compensation is granted for financial loss, mental agony, and litigation costs. The respondent is ordered to pay the specified compensation to the complainant within the stipulated timeframe.

UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Suo Moto

RESPONDENT: M/s Ajnara Realtech Pvt. Ltd.

CORAM: Sameer Ranjan Singh, Secretary In Charge

ORDER DATE: 30.06.2023

Gist of Case: Action plan submitted by promoter to complete the project u/s 80 of Act & which was scrutinized by the Authority's Project Management Division.

The project 'Le Garden Phase- 3, Tower KLM & N' (Reg No. UPRERAPRJ3852) is a residential development by M/s Ajnara Realtech Pvt. Ltd. in Sector Techzone-IV, Greater Noida. It consists of 4 towers with a total of 585 units. Originally scheduled for completion on 31st December 2020, the project faced delays and received extensions due to the RERA Act and the COVID-19 pandemic.

However, the project's progress was only about 35% despite the extended timeline, and the completion date of 29th June 2022 had already passed. The remedy for the unfinished work after registration expiration lies under Section 8 of the RERA Act.

The Promoter and the association of allottees, "Lee Garden Ph 3 Welfare Society," expressed a collective desire to complete the project under RERA Act provisions. They sought guidance and directives from the Authority for proceeding in this matter.

Given that the permissible extensions under Section 6 of the RERA Act and previous orders were insufficient, the only feasible way to ensure project completion was under Section 8 of the Act. This section empowers

the Authority to take appropriate measures, including collaborating with the government or the allottees' association, to complete the remaining development work.

To proceed with the completion, the Promoter was instructed to submit a completion plan with majority allottee consent through their association. The "Lee Garden Ph 3 Welfare Society" formed by the allottees was registered under the Societies Registration Act, and they approached the Authority to aid project completion for the benefit of the unit owners.

Several meetings occurred between the Promoter, the Association, and the Authority's Project Management Division. In one meeting of the Project Advisory and Monitoring Committee, a consensus was reached between the Promoter and the Association. They proposed completing the development work under Section 8 of the RERA Act, supervised by the Authority. Written consent from over 50% of allottees supported this proposal.

The Promoter's proposal was scrutinized by the Authority's Project Management Division. Notable points in the proposal included the estimated construction costs, outstanding loans, estimated inflow and outflow of funds, and the timeline for tower completion.

The proposed plan involved completing Tower K by June 2024, Tower L by August 2024, Tower M by June 2024, and Tower N by May 2025, requiring 24 months from the Section 8 order date.

Acknowledging the financial intricacies, the Authority approved the Promoter's proposal, considering its consent from the Association and the alignment of interests with allottees. The Authority's decision aimed to safeguard the allottees' interests while facilitating project completion.

The authorization was subject to certain conditions, including:

- i. The Association submitting a resolution within 30 days, authorizing the Promoter to undertake the project's remaining work.
- ii. Adherence to the construction milestones and completion of the work within 24 months.
- iii. Opening a separate project account in a bank to handle all financial transactions related to the project.

- iv. Upfront deposits by the Promoter into this account before collecting balance receivables from allottees.
- v. The Authority reviewing compliance with the Promoter's proposed capital infusion.
- vi. Appointment of a Construction Consultant for concurrent audits.
- vii. Monitoring of proposed sale prices and auditing by the Construction Consultant.
- viii. Establishment of a Project Advisory and Monitoring Committee for regular project oversight.
- ix. Authority's review of project progress every three months.

The Authority's decision was in line with the mandate to facilitate project completion and protect allottee interests. The project's status would be moved to a special category on the Authority's website, signifying its rehabilitation under Section 8 of the RERA Act.

To resolve disputes, an amicable process through the Project Advisory and Monitoring Committee was established. The Promoter would also approach relevant authorities for necessary permissions and approvals.

The Authority's decision was binding for the Association, Promoter, allottees, and all involved in the project. It aimed to ensure that the project's completion would prioritize the interests of the allottees and follow the specified terms and conditions.

The Authority anticipated that no allottees would withdraw from the project during development. If any did under exceptional circumstances, refunding would be done through alternate sources. Additionally, the enforcement of any orders on allottee complaints would be on hold until project completion.

Ultimately, the Promoter would apply for an occupancy certificate upon project completion, offering possession to the allottees. This decision was issued with the Authority's approval to fulfil its duty under the RERA Act and protect the interests of all stakeholders involved in the project.

COMPLAINANT: Suo Moto

RESPONDENT: M/s Antriksh Realtech Pvt. Ltd.

CORAM: Sameer Ranjan Singh, Secretary In Charge

ORDER DATE: 04.07.2023

Gist of Case:A Project Advisory & Monitoring Committee was established which took steps to complete the project in collaboration with the association of allottees and the original promoter.

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) issued a judgement and order on 11-06-2022 to revoke the registration of the projects named "Antriksh Sanskriti Phase 2" (Reg no. UPRERAPRJ10928) and "Antriksh Sanskriti Phase 3" (Reg no. UPRERAPRJ11055) promoted by M/s Antriksh Realtech Pvt. Ltd.

The revocation was based on several grounds, including the promoter not honouring the terms of agreements with allottees, poor progress of work, failure to obtain a revised map from the Ghaziabad Development Authority, violation of RERA Act provisions, failure to provide required documentation, and more. The registration of another project, "Antriksh Sanskriti Phase" (Reg no. UPRERAPRJ10818), had lapsed on 23-04-2019, and the promoter did not seek an extension.

After the statutory period for filing appeals under the RERA Act passed, a public notice was issued in newspapers on 04-09-2022, inviting proposals from the Association of Allottees of the project to complete the remaining construction work. **A Project Advisory & Monitoring Committee was established, chaired by Sh. T. Venkatesh, Hon'ble Member of U.P. RERA, to suggest ways to complete projects whose registration had been revoked or lapsed.**

The Antriksh Sanskrit Welfare Association (The Association), a registered society with around 350 members, submitted a proposal on 12-05-2023 to undertake the remaining development and construction work for the revival of "Antriksh Sanskriti." The proposal was evaluated by the Project Advisory & Monitoring Committee, which recommended collaboration between The Association and M/s Antriksh Realtech Pvt. Ltd. to complete the project, considering the challenges involved.

The Project Management Division of the Authority provided a report highlighting various aspects of the project. The collaboration agreement between the promoter and the landowner was detailed, including the distribution of constructible area. The original map of the project was

sanctioned by the Ghaziabad Development Authority in 2015, but complications arose due to disputes over dues. The Samiti and the promoter also sought to purchase additional Floor Area Ratio (FAR) to include more towers.

The report specified the timelines and estimated costs for completing different phases of the project. The developer proposed infusing funds to cover GDA dues and construction expenses. The Association's revised proposal, which included the participation of M/s Antriksh Realtech Pvt. Ltd., was presented for approval.

The Authority discussed the proposal and arrangements, considering the Association's consent and the Samiti's agreement. The Association intended to re-appoint M/s Antriksh Realtech Pvt. Ltd. to complete the project, as no other developers were interested due to litigation complexities. The Authority determined that the case was unique and authorized the joint efforts of The Association and the developer to complete the project under Section 8 of the RERA Act, as this proposal included the consent of the majority of allottees and met legal requirements.

The Authority set forth various terms and conditions for the collaboration, including submission of required documents, establishment of a separate project account, adherence to a construction plan, involvement of the Project Advisory & Monitoring Committee, issuance of completion certificates, handling of disputes, and more. The Authority emphasized the importance of complying with these terms and ensuring the project's completion within specified timelines.

This decision was made in alignment with the directive guidelines issued by the government on 26-06-2020, which aimed to facilitate project rehabilitation and completion for the benefit of allottees. The Authority emphasized that the collaboration's authorization under Section 8 of the RERA Act did not conflict with its intent, as the majority of allottees consented to this arrangement, and the involvement of the original promoter was deemed necessary due to the project's unique circumstances.

HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Sushil Kumar Choudhary

RESPONDENT: BTM Real Estate Developers Pvt Ltd and Ors

CORAM: Hon'ble Chairperson and Member

ORDER DATE: 08.08.2023

Complainant Representative: Ms Mandeep Singh Saini

Respondent Representative: Sh Anish Gautam

Gist of Case: Complaint was dismissed by the Authority due to his failure to provide substantial evidence for a cash payment and lack of documentation for his claim regarding possession of Flat no. A 102. The Authority highlighted the absence of convincing proof and raised concerns about the substantial cash transaction's undocumented nature.

The complaint in question has been filed by Mr. Sushil Kumar Choudhary against BTM Real Estate Developer. Mr. Choudhary purchased apartment no. A 102 in Block A of the BTM apartments located at NH 22 Barog bye pass Kumarhatti, Solan, H.P. in 2014. The allotment cum possession letter dated 07.07.2014 confirmed his payment of Rs 17 Lakhs in cash to the developer, and he was given possession of the apartment. Mr. Choudhary also acquired another flat, Flat no. 311, in the same project. However, he encountered issues when the developer demanded additional money for the balance of Flat no. 311 and disconnected utility services. This led Mr. Choudhary to file a consumer complaint against the developer for Flat no. 311.

Later, Mr. Choudhary discovered that his Flat no. A 102 had been resold to a third party without his knowledge or consent. In May 2022, he sent a legal notice to the developer regarding this matter. In response, the developer alleged that Mr. Choudhary had retained property documents as security against financing, and a compromise had been reached between them in 2021. The developer also accused Mr. Choudhary of misusing property documents and a cheque, leading to a police case against him. The developer contended that Mr. Choudhary was not a bona fide purchaser and sought the dismissal of the complaint.

In his rejoinder, Mr. Choudhary clarified that the compromise note mentioned by the developer, Annexure R-1, did not pertain to Flat no. A 102 but referred to other properties. He also mentioned filing a police complaint against the

developer and a complaint with the District Consumer Dispute Redressal Commission regarding Flat no. 311.

During the proceedings, both parties presented arguments. Mr. Choudhary's counsel emphasized that he had purchased multiple flats for investment and had made a cash payment of Rs 17 Lakhs for Flat no. A 102, with the allotment letter as evidence. The developer's counsel argued that a compromise had been reached, and Mr. Choudhary had already been given compensation in the form of another property.

The Authority examined the evidence and arguments presented. It considered whether Mr. Choudhary was entitled to a refund of Rs 17 Lakhs with interest. The allotment letter confirmed his cash payment, but the lack of further supporting documentation raised suspicions about the legality of the transaction. Mr. Choudhary did not provide evidence of the payment being recorded in his accounts or income tax statements.

The Authority pointed out that the burden of proof rested on Mr. Choudhary to substantiate his claim, as per the Indian Evidence Act. He failed to provide bank statements or account records to corroborate the cash transaction. Additionally, no loan document was presented to support the developer's contention that the payment was made as a loan against security. Therefore, the Authority found both parties lacking in presenting compelling evidence.

Ultimately, the Authority dismissed Mr. Choudhary's complaint due to the absence of sufficient and conclusive evidence to support his claim of the cash payment and the lack of documentation establishing his possession of Flat no. A 102. **The Authority emphasized that a transaction involving such a substantial cash amount without proper documentation raised doubts. Consequently, Mr. Choudhary's case was dismissed for want of adequate evidence.**

GOA REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Mr Ramesh Pujari

RESPONDENT: Aman Builders and Developers

CORAM: Vijaya D. Pol, Hon'ble Member

ORDER DATE: 25.07.2023

Gist of Case: The complainant's request for possession is deemed moot due to the possession letter, while the complainant is granted the right to have the sale deed executed in their favor as per the RERA Act.

The order pertains to a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (referred to as the RERA Act). The complainant seeks the intervention of the Authority to direct the promoter to issue a possession certificate and transfer the title of a specific flat in accordance with Section 17 of the RERA Act.

The complainant's case revolves around an agreement for sale cum construction executed and registered on November 5, 2015. The agreement stipulated that the respondent (promoter) would sell a flat (Flat No. 404) to the complainant in a building named 'Arran's Carlos Paraiso' in Vasco, Goa. **The agreement established a deadline of 24 months for delivering the flat, starting from the agreement's signing date. However, the respondent failed to complete the sale deed and allegedly violated Section 17 of the RERA Act. The complainant's primary prayer is for the Authority to enforce possession and title transfer.**

The respondent's reply states that the agreement included conditions for completing the construction of Flat No. 404 within 24 months, subject to the allottee (complainant) making full payments and considering unforeseeable circumstances. The respondent claims that the complainant's failure to make payments led to construction delays. As of November 1, 2017, the complainant allegedly owed an outstanding amount of Rs 8,19,000. The respondent acknowledges the dates of receiving completion and occupancy certificates but disputes the dates of electricity and water connections. The respondent denies sub-standard work quality and argues that the complainant engaged in unauthorized construction, leading to legal issues.

The respondent asserts a willingness to execute the title deed in favor of the complainant but suggests that the costs related to the deed's execution should be borne by the complainant.

During the proceedings, oral arguments were presented by both parties' advocates.

The determination points and findings are summarized as follows:

1. Whether the complainant is entitled to possession of the flat: The possession of the flat was handed over to the complainant by the respondent, as evidenced by a possession letter dated July 29, 2021. Consequently, the issue of possession raised by the complainant has become moot, and the finding is negative.

2. Whether the complainant is entitled to the execution of a sale deed for the flat: The RERA Act imposes obligations on the promoter until the conveyance of apartments, plots, or buildings to the allottees. Section 11(4)(f) and Section 17 of the RERA Act emphasize the promoter's responsibility to execute a registered conveyance deed in favor of the allottee. The respondent's willingness to perform this duty is acknowledged. Thus, the complainant is entitled to have the sale deed executed in their favor. The finding is affirmative.

In conclusion, the order directs the respondent to comply with Section 17 of the RERA Act within two months of the order's issuance. This compliance entails executing a registered conveyance deed for the mentioned flat and transferring the undivided proportionate title in the common areas to the allotted society. The complainant is required to bear the costs of executing and registering the sale deed. Additionally, the complainant is directed to participate in forming an association or society of the allottees, as per Section 19(9) of the RERA Act.

The respondent has the option to seek an extension of time for compliance under genuine circumstances. Failure to comply with the order could result in penalties and execution proceedings initiated by the Authority.

BIHAR REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Ram Vinay Sinha

RESPONDENT: M/s Sangita Housing Devt. Pvt. Ltd.

CORAM: S.D. Jha, Hon'ble Member

ORDER DATE: 24.08.2023

Complainant Representative: None

Respondent Representative: Adv. Krishna Kumar Singh

Gist of Case: Complaint is not maintainable if it predates the date of RERA Act implementation.

The hearing took place in the absence of the complainant, with Mr. Krishna Kumar Singh, Advocate, representing the respondent. The complainant's contention is that they purchased Flat no.01 in "Laxmi Apartment", Mainpura, Patna, on November 25, 2015, from Dr. (Mrs.) Shanti Singh, who had acquired it from the respondent-builder on June 30, 2007.

The complainant alleges several issues: the respondent has locked the common stairwell door with a grill, taken over the roof area, constructed illegally on common space, established an unauthorized salon in the common area, and seized the complainant's parking space. The complainant seeks remedies, including releasing common spaces, removing illegal constructions, eliminating the grill gate, and returning the parking space.

The respondent's lawyer argues that the case is not viable since the complainant is neither the allottee nor the owner of Flat no.01. Dr. Shanti Singh initially purchased the flat in 2007 from the respondent through an Absolute Sale Deed, which has not been presented as evidence. Later, she sold it to Mrs. Shobha Singh, the complainant's wife, in a Sale Deed dated November 25, 2015. The respondent claims that the Real Estate (Regulation and Development) Act (RERA) came into effect on March 25, 2016, while the apartment project was completed in 1991-92, and possession was granted to Dr. Shanti Singh in 2007. Therefore, the respondent contends that the RERA Act cannot be applied retroactively, and the terms of the complainant's Sale Deed cannot override those of Dr. Shanti Singh's earlier Sale Deed from 2007.

Upon reviewing the case, it is established that Laxmi Apartment was constructed and completed in 1991-92. Flat no.01 on the ground floor was first allotted and sold to Dr. (Mrs.) Shanti Singh via an Absolute Sale Deed dated June 30, 2007, by the respondent-builder. Later, Dr. (Mrs.) Shanti Singh sold this flat to Mrs. Shobha Singh (complainant's wife) through a Sale Deed dated November 25, 2015. As a result, the complainant invoked the RERA Act in 2022, which is beyond the reasonable timeframe for applying the Act. It is noted that the complainant was previously instructed to submit a rejoinder to the respondent's written submissions, but no response was provided, and the complainant was also absent during the hearing.

In light of these facts, it is apparent that the construction of Laxmi Apartment predates the implementation of the RERA Act in 2016. The execution of the registered Sale Deeds for both the initial allottee (Dr. Shanti Singh) and the complainant's wife (Mrs. Shobha Singh) also occurred before the Act's implementation. The complainant does not contest these facts. **Furthermore, Section 14(3) of the RERA Act prevents an allottee from making claims against the promoter beyond five years from the date of possession. In this case, the complainant filed a claim with the Authority more than five years after the execution of the Sale Deed in favor of his wife.**

Given these circumstances and the reasons discussed, the Bench concludes that the case is not maintainable. Consequently, the complaint is dismissed due to lack of maintainability. The case is disposed of with these observations.

WEST BENGAL REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Bapi Das

RESPONDENT: Abhishek Tewari and Sujit Chakraborty

CORAM: Sandipan Mukherjee, Chairman

Bholanath Das, Member

Tapas Mukhopadhyay, Member

ORDER DATE: 10.07.2023

Gist of Case: Refund granted due to delay in handing over possession of unit to the complainant.

The online hearing in the mentioned case took place with the complainant present, but the respondent was absent despite being notified through speed post and email. The record of the hearing notice delivery to the respondent was maintained. The respondent didn't submit a written response as per the previous order and was absent on the last hearing date as well as the current one. The authority believes that the respondent had ample time to participate but failed to do so, leading to a decision for an ex-parte hearing based on Section 29(4) of the Real Estate (Regulation and Development) Act, 2016.

During the hearing, it came to the authority's attention that the complainant had previously filed a complaint (COM000382) with the now-defunct WBHIRA Authority. However, the Supreme Court's order dated May 12, 2023, directed that orders and complaints from the erstwhile WBHIRA Authority be

transferred and handled by the authority under the Central Act (RERA). As a result, the complaint number COM000382 was transferred to the current authority, which led to its dismissal as it had not been addressed by the previous authority.

The current complaint, numbered WBRERA/COM000101, pertains to the complainant's booking of a low-budget apartment in the 'IRA Paradise Apartment' project. The apartment was to be purchased from the developer firm 'M/s Kolkata Home Search'. **The complainant paid a sum of Rs. 2,20,000/- to the respondent for the apartment, with a scheduled handover date of March 2020. However, due to construction delays, the complainant submitted a cancellation letter and received a partial refund of Rs. 35,000/- . A cheque of Rs. 2, 30,000/- was provided but bounced due to signature mismatch.**

The complainant sought a refund of the principal amount of Rs. 1, 85,000/-, interest, and compensation as per the RERA Act and Rules. A notarized affidavit containing the complainant's submission was submitted in accordance with the authority's previous order.

Upon hearing the complainant and examining the notarized affidavit and related documents, the authority found that the respondent had failed to deliver possession of the apartment as agreed. **Consequently, the respondent was ordered to refund the principal amount of Rs. 1,85,000/- along with interest at the rate of SBI Prime Lending Rate + 20% per annum, starting from the dates of payment made by the complainant until the realization date. The refund was to be completed through a bank transfer within 45 days from the receipt of the authority's order via email.**

The complainant was instructed to share his bank account details for the refund within three days from the receipt of the order. If the respondent fails to comply with the order within the specified time, the complainant has the right to file an Execution Application with the authority. The order was to be shared with both parties through speed post and email.

As a result of these directives, the case was considered closed and disposed of by the authority.

PART-III

NOTIFICATION & CIRCULARS

WEST BENGAL REAL ESTATE REGULATORY AUTHORITY

No.807-RERA/L-01/2023

Dated: 27.06.2023

Whereas sub-section (1) of section 3 of the Real Estate (Regulation and development) Act, 2016 (hereinafter referred to as the said Act) provides that'-
"No promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.";

AND WHEREAS section 59 of the said Act provides that, -(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority;

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend upto three years or with fine which may extend up to a further ten percent, of the estimated cost of the real estate project, or with both";

NOW THEREFORE, in exercise of the powers conferred under section 3 read with section 37 of the said Act, it is hereby ordered that all the Promoters/Developers shall comply provisions contained in section 3 of the said Act strictly 'failing which, punitive actions shall be taken as per section 59 of the said Act.

This Notification shall come into effect immediately.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No. F1(31)RJ/RERA/2019/D-2181

Dated: 14.07.2023

Subject: Submission of service drawings for registration of projects

Vide Order No F1(31)RE/RER A12019/593 dated 16 03 2022, for registration of any real estate project other than plotted development, the Authority has made mandatory provision for promoters to upload duly sealed and signed structure drawings of a qualified Civil Engineer as part of the online application.

Now, in continuation of the same, the Authority directs the promoters to upload the following mandatory service drawings, duly sealed and signed by a qualified engineer, as part of the online application, for registration of a real estate project with effect from 1st August 2023.

For registration of a project under Plotted Development category:

1. Rain Water Harvesting/ Recharging;
2. Sanitation(Storm Water Drainage, Sewerage, STP, Solid Water Disposal etc);
3. Electrification(Transformer, Solar Energy etc)

For registration of a project other than Plotted Development category:

1. Water Supply
2. Rain Water Harvesting/ Recharging;
3. Sanitation (Storm Water Drainage, Sewerage, STP, Solid Water Disposal etc);
4. Electrification (Transformer, Solar Energy etc)
5. Services drawings (SLD/ Distribution details after LT panel, Earthing layout, External Lighting plan/ Layout ,TV& Telephone Riser Diagram,

Lighting arrester location & Pit location, coordination drawings, fire detection & alarm system layout of all floor)

6. Architectural drawings:- (for all floors, Stilt Floor Working, Typical floor working plan, Terrace Floor, 3-D views if any, Elevation & Section details, Staircase/ Balcony railing details, Kitchen cabinet details, Finishing, painting, dado, external facade, door & window details if any)
7. Firefighting (Firefighting BOQ& specification, External yard hydrant layout, Pump room layout)
8. Common Plumbing (plumbing specification, water schematic drawing, Internal water supply & drainage External water supply & drainage, Terrace ring main & rain water locations & UG water details Basement drainage & water supply, External sewage layout. Pump room layout)
9. Electrical (showing Internal Lighting Layout all floor including T.V Telephone , Main LT panel & Ail other panels Layouts & G.A., Cable tray Drawings with section of all floor, Main SLD with Cable size)

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/ Secy/ 1014/2023

Dated: 17.07.2023

Government of Maharashtra vide Government Resolution, dated 23.02.2023 referred at Sr. No. I above, has directed the respective Planning / Competent Authority in the State of Maharashtra to ensure that their websites are integrated with the website of MahaRERA in a time bound manner. Pending such integration, the above-referred Government Resolution, further directs the respective Planning / Competent Authority to attach and forward at the division wise emails set apart by MahaRERA, the Commencement Certificates / Occupation Certificate issued in respect of real estate projects, immediately upon issuance of the same, so as to enable MahaRERA to compare and verify for the purpose of ascertaining the authenticity and genuineness of the Commencement Certificates / Occupation Certificate submitted by promoters along with their application for registration of their real estate projects / correction appreciation / form - 4 & other.

The above-referred Government Resolution was issued to avoid promoters obtaining registration from MahaRERA of their real estate project on the basis of submission of fake / fraudulent Commencement Certificates as noticed in some cases pertaining to Kalyan Dombivli Municipal Corporation.

Pursuant to the Government Resolution, MahaRERA has issued MahaRERA Order referred at Sr. No. 2 above. By this Order, the cutoff date to commence verification of the Commencement Certificates / Occupation Certificate has been fixed with effect from 19.06.2023. Though the above-referred MahaRERA Order has been put up on the website on 15.05.2023, tilt date every Planning / Competent Authority are not complying with the directions issued in the above-referred Government Resolution.

In this regard it is requested that an intimation be sent to all concerned officers of the Planning / Competent Authority directing them to comply with the directions issued in the Government Resolutions as well as calling upon them to have a separate designated email id for the purpose of attaching and forwarding the Commencement Certificate / Occupation Certificate under intimation to MahaRERA. Further follow up action with these officers shall be taken up by MahaRERA. If a dedicated email is made and communicated to MahaRERA than all other emails being written to the email set apart by MahaRERA for the purpose of receiving the Commencement Certificates / Occupation Certificate could be blocked. This action will enable receipt by MahaRERA of only the emails and the attached Commencement Certificates from the designated emails of the respective Planning / Competent Authority, thus avoiding non-reliable emails.

The copy of MahaRERA Order referred at Sr. No. 2 above is enclosed herewith for your ready reference. The Government Resolution referred above as well as the list of emails set apart by MahaRERA for receipt of Commencement Certificates / Occupation Certificate for verification are attached to the said Order as Annexure 'A' and 'B' respectively.

It is to be further informed that the MahaRERA order 32/2022 as referred 3) above shall be strictly implemented with effect from 1st August 2023.

Therefore, all members of the respective SROs shall be informed and aware about the penalty provisions specifically 50 as to ensure diligent submission of the applications by the promoters with due care and complete in all respect including uploading legible documents in the respective tabs only.

This may please be treated as MOST URGENT as the applications submitted for registration of real estate projects cannot be cleared unless the Commencement Certificates / Occupation Certificate are verified for its authenticity/genuineness as per the directions issued under the Government Resolution for registration of project with MahaRERA, other purpose.

KARNATAKA REAL ESTATE REGULATORY AUTHORITY

No: RERA\Accounts\02\C.R\2019-20

Dated: 19.07.2023

Subject: Mandatory deposit of money into the RERA project designated bank account borrowed by the promoter by mortgage of the project land and utilisation for the same project development purposes.

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, the Government of Karnataka vide its Notification has established the Karnataka Real Estate Regulatory Authority, hereinafter referred to "Karnataka RERA or as "the Authority"

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

And whereas, the provisions of the Act, aim at bringing greater transparency, responsibility, accountability through disclosure of information on regular basis. Maintenance of separate bank account separately for each project for the purpose of deposit of money collected for the purpose of the project covering the cost of the land and construction.

Karnataka RERA has always worked towards bringing greater transparency, responsibility, accountability by issuing the various circular, notification which

includes circular No 3/2019 dated 6th Nov 2019 with respect to deposit of landowners 70% collection to designated account and further the RERA Bank Account Directions 2020 dated 7th Jan 2020 in order to comply with provisions of section 4(2)(1)(D) of the Act.

This authority has notified Form 4 (Chartered Accountants Certificate) and Form 7 (Audit of accounts of the project) report by a chartered accountant annually. On verification of some of these forms, it is observed that many promoters of the real estate project are borrowing money from the financial institutions/banks / others etc by mortgaging the project land and also the apartments / units in the project.

Further, it is observed in few instances, that the money borrowed by mortgaging the project land and units in the project are not utilized for the purpose of the project. It is evident from the details provided by the promoter and the certificates that total amount realized from the allottees plus the total money borrowed by mortgaging the project land is not fully utilized for the purpose of land and construction.

The authority has felt it necessary to issue these directions in the interest of the promoters, project, allottees, lenders etc.,

- a. That the promoter of the project shall deposit the entire amount borrowed for the purpose of the project into the designated account of the project and the money so deposited shall be utilized and withdrawn only for the purpose of the development of the respective project.
- b. In case the promoter borrows the money for the project and registered the project phase wise as per explanation to section 3(2) of the Act, the promoter shall bifurcate and apportion the amount towards various phases and report the same during the quarterly updates along with the Bank Statement or Chartered Accountants Certificate by way of Annexure.

- c. The lenders/bankers/financial institutions shall also ensure to disburse such loans only to the designated RERA account of the project. Such designated RERA account details are published and available in the K-RERA website for each registered RERA projects.
- d. The chartered accountant based on the books of accounts maintained and while issuing the certificates shall also report whether the amount borrowed for the purpose of the project has been deposited into the designated RERA account or not.

In case of the existing projects, where in the promoters have borrowed money for the purpose of the project and not utilized any portion of such money to the respective project shall deposit the unutilized portion of money into the designated RERA account within 3 months from the date of this notification.

The authority may call for any information or documents from the promoters by issuing a notice in order to enforce this notification.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**No. F4(1)RJ/RERA/2017/PART/2240****Dated: 28.07.2023**

Rajasthan RERA

राजस्थान रीयल एस्टेट रेग्युलेटरी ऑथोरिटी

द्वितीय एवं तृतीय तल, आरएसआईसी बिल्डिंग, उद्योग भवन,

तिलक मार्ग, सी-स्कीम, जयपुर - 302005

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

क्रमांक : एफ.4(1)आरजे/रेरा/2017/पार्ट/2240

दिनांक : 28-07-2023

आदेश

दी रीयल एस्टेट (रेग्युलेशन एण्ड डवलपमेंट) एक्ट, 2016, की धारा 37 एवं दी राजस्थान रीयल एस्टेट रेग्युलेटरी ऑथोरिटी रेग्युलेशन, 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 आदेश क्रमांक 5900 के बिन्दु संख्या 1 के संशोधन में यह निर्धारित किया जाता है कि प्लॉटेड डवलपमेंट(Plotted Development) प्रोजेक्ट्स के पंजीकरण पर, पंजीकरण शुल्क(Registration Fee) के अतिरिक्त, भूखण्ड के क्षेत्रफल पर रु. 5/- प्रति वर्गमीटर की दर से देय स्टैण्डर्ड फीस (Standard Fee) को प्लॉट के भूमि उपयोग(Land use) के आधार पर निम्न प्रकार से देय होगी:-

क्र. सं.	भूमि उपयोग	पंजीकरण शुल्क	स्टैण्डर्ड फीस
1	आवासीय योजनार्थ (Residential, Institutional and Govt. Reserved Areas)	5/- प्रति वर्गमीटर	5/- प्रति वर्गमीटर
2	आवासीय योजनार्थ के अतिरिक्त (Other than Residential, i.e., Commercial, Industrial & Mixed use)	5/- प्रति वर्गमीटर	10/- प्रति वर्गमीटर

यह आदेश दिनांक 01.08.2023 से ऑनलाईन प्राप्त होने वाले आवेदनों पर लागू होगा; दिनांक 31.07.2023 तक प्राप्त हो चुके/होने वाले आवेदनों पर लागू नहीं होगा।

यह आदेश अध्यक्ष महोदय के अनुमोदन से जारी किया जाता है।

(रमेश चन्द्र शर्मा)
रजिस्ट्रार

PART-IV

RERA NEWS

THE FREE PRESS JOURNAL

Dated: 01.07.2023

Mumbai: Consumer Body Wants Housing Project De-registration on Hold

The Mumbai Grahak Panchayat (MGP), a consumer rights association, has communicated with the Maharashtra Real Estate Regulatory Authority (MahaRERA), urging it to obtain a legal opinion from the Attorney General of India regarding the de-registration of 107 real estate projects. MGP contends that MahaRERA lacks the authority to permit the removal of projects and suggests suspending the process. MGP's stance is that the RERA Act doesn't grant MahaRERA the power to de-register projects, despite it having authority to revoke registrations for promoter defaults.

MahaRERA had acknowledged this absence of power in a previous order but proceeded to exercise de-registration powers, which MGP views as inconsistent with the RERA Act's provisions. MGP opposes the de-registration of the 107 projects due to the potential evasion of the mandated 5% penalty on project cost for defaulting promoters. MGP's chairman, Shirish Deshpande, seeks referral of the matter to the Attorney General of India for a legal opinion and requests a halt on considering de-registration applications until then.

MONEY CONTROL

Dated: 15.07.2023

Completion certificate issued by architect not valid: KRERA

The Karnataka Real Estate Regulatory Authority (KRERA) ruled that a project's completion hinges on a completion certificate from the competent authority, dismissing the validity of architect-issued certificates. This decision affects past projects too. The Urbana Serene senior living project by Ozone Group in Bengaluru faced this ruling after obtaining an architect's completion

certificate before the Real Estate Act was enacted. Despite developer objections, KRERA deemed the project ongoing due to inadequacies reported during a site inspection. Homebuyers complained of incomplete amenities, and KRERA's order required project registration under KRERA within two weeks due to incomplete forms on the certificate.

MONEY CONTROL

Dated: 15.07.2023

Karnataka RERA holds landowner, developer responsible for not executing sale deed

The Karnataka Real Estate Regulatory Authority (KRERA) has held a developer and landowner accountable for failing to execute a sale deed with a homebuyer in a Bengaluru-based project. The homebuyer, Balakrishna Vegi, entered an agreement in September 2011, paying Rs 32 lakh to the developer, Yogananda Reddy, and Rs 4 lakh to the landowner, Bharat A. The sale deed was to be executed by December 2019, but the developer went missing after receiving the funds. The landowner later demanded Rs 10 lakh to complete the sale deed. KRERA ordered the developer and landowner to fulfill the deed within 30 days. Advocates emphasized that absconding developers breach trust and may commit fraud, advising homebuyers to approach the police and file complaints. For unfinished projects, homebuyers can involve KRERA to form an allottees' association to complete developments.

MONEY CONTROL

Dated: 17.07.2023

RERA orders Ozone Urbana to register seniors' home project in Karnataka

The Karnataka Real Estate Regulatory Authority (K-RERA) has instructed Bengaluru-based builder Ozone Urbana Infra Developers to promptly register their senior citizen residential project, 'Serene Urbana,' located in Kannamangala village, Devanahallitaluk. The project is incomplete and allegedly lacks essential safety features. The RERA order, dated July 6 and signed by chairman H C Kishore Chandra, directed the project's registration under RERA's Section 3 within two weeks. The order resulted from a complaint filed by the Serene Urbana Apartment Owners Welfare

Association against the developer and four other entities. The complaint alleged that the developers collected substantial amounts from buyers without fulfilling the agreement of sale. The project faced issues like absence of fire safety clearance, improper safety clearances for elevators and electrical installations, and the sale of common property to another entity. The developer argued completion prior to RERA's implementation, but the order confirmed the project's incompleteness by July 31, 2017. Home buyers' associations sought MP Tejasvi Surya's intervention for effective K-RERA implementation and the transfer of common areas to associations. The MP promised action.

MONEY CONTROL

Dated: 25.07.2023

Homebuyers cannot claim interest after signing cancellation deed, receiving refund: Karnataka RERA

The Karnataka Real Estate Regulatory Authority (KRERA) has ruled that homebuyers cannot claim interest on delayed refund amounts after signing a deed of cancellation. KRERA based its decision on the deed of cancellation, which stipulated that the refund amount to the homebuyer was a final settlement between the parties. Under the powers granted by Section 31 of the RERA Act, the regulator dismissed the complaint on July 24, 2023. According to the deed of cancellation, both parties agreed that all rights, liabilities, and interests regarding the property were settled, with the developer refunding the principal amount as a conclusive resolution. The regulator cited the doctrine of estoppel, which prevents a person from contradicting a past action or statement, in rejecting the claim for delayed interest.

The case revolves around a homebuyer named Ayush Sinha, who purchased a property for Rs 1.55 crore in the Godrej Reflection Phase 1 project in Bengaluru in 2019. The project faced delays and was ultimately affected by the cancellation of environmental clearance due to regulatory violations. In response, Sinha chose a complete refund and executed a deed of cancellation in August 2021. Although the project's progress was halted and the case is currently being considered by the Supreme Court, KRERA noted that Sinha was offered alternatives such as remaining invested, transferring to another

project, or receiving a refund. Sinha's complaint at KRERA pertained to the developer's lack of response to requests for interest on the delayed refund.

MONEY CONTROL

Dated: 26.07.2023

Maharashtra open to changes to strengthen RERA Act, homebuyers interests: Deputy CM Fadnavis

The Maharashtra government is open to enhancing the Real Estate Regulatory Act (RERA) of 2016 to protect buyers' interests, potentially by strengthening mechanisms to recover dues from developers for project delays. Deputy Chief Minister Devendra Fadnavis stated that the government is willing to consider amendments or suggestions from the Maharashtra Real Estate Regulatory Authority (MahaRERA), led by Ajoy Mehta. Fadnavis conveyed that if necessary, matters would be raised with the Central government.

He addressed questions from legislator Sachin Ahir regarding RERA amendments, highlighting discussions within the Central Advisory Council (CAC) attended by regulatory heads. These conversations centered on RERA implementation challenges and required improvements. Recovery warrants, issued when developers fail to compensate buyers for project delays, are under scrutiny for refinement. The CAC is devising strategies to empower RERA for effective warrant execution, aiming to submit a proposal to the Central government for amendments to bolster RERA's efficacy.

INDIAN EXPRESS

Dated: 05.08.2023

Tamil Nadu flat registration cost may rise two-fold

The cost of apartments in Tamil Nadu is set to rise significantly as the state government implements a flat 9% registration fee on the entire flat cost, replacing the previous system of charging separate fees for sale deeds (9%) and construction agreements (4%). Previously, a homebuyer had to pay both charges based on the undivided land share and the construction agreement. With the new policy, a buyer would now pay a 9% fee on the total flat cost. This decision aims to curb misuse and ensure accurate registration charges.

The move may impact homebuyers and the government more than developers. Critics argue that this change could decrease registration revenue, potentially leading to booking cancellations and negatively affecting the housing industry. There's also concern about its impact on those who have already purchased but not yet registered flats.

The Economic Times

Dated: 05.08.2023

Delhi RERA directs builders to open allottee grievance cell

The Delhi Real Estate Regulatory Authority (DRERA) has directed real estate promoters and builders of the national capital to "appoint an 'Allottee Grievance Cell' for each project with a dedicated telephone number to redress grievances of allottees".

It has further ordered them to display their names, addresses, RERA registration number of the projects, and details of the Allottee Grievance Officer and Allottee Grievance Cell with telephone numbers prominently at the construction site of each project.

The three-member authority, consisting of Anand Kumar, Ajay Kuhar and Devesh Singh, has directed all the builders to report compliance with the order by September 30, 2023.

"Any failure to do so will be viewed as a contravention of the Act which can invite penalty under Section 61 of the Act," the order said.

Under Section 61 of the Real Estate (Regulation and Development) Act, 2016, if a promoter of a real estate firm defaults with the provisions of the Acts, rules or regulations, it invites a penalty, the maximum of which is up to 5 per cent of the estimated cost of a real estate project.

The Economic Times

Dated: 18.08.2023

SC issues notices to states which are yet to establish RERA

The Supreme Court (SC) has recently issued notices to the chief secretaries of Nagaland, Sikkim, Meghalaya and Union Territory of Ladakh to give their responses on the lack of establishment of the Real Estate Regulatory Authority (Rera) in their states. A bench of Justices Sanjiv Khanna and SVN Bhatti also asked the chief secretaries of Arunachal Pradesh, Meghalaya, Mizoram, Sikkim and West Bengal and the Union Territory of Jammu and Kashmir to file their response on the current situation as these states have only passed the interim orders to notify the Rera.