



RERA TIMES

Real Estate

(Regulation and Development) Act, 2016

(A Journal on Real Estate Bye Laws)

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Wishing you very happy New Year 2022

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RERA TIMES

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

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FROM THE EDITOR'S DESK.....



Dear Readers,

Omicron, a new Covid variant is a reason for concern worldwide. It is spreading more quickly than other variants. Based on the information available, WHO believes it is likely that Omicron will outpace the Delta variant where there is COVID-19 transmission in the community. Several restrictions has been in place once again to curb the spread of the virus. We can just hope that it does not bring serious economic disruptions worldwide in upcoming months.

Late last year, Prime Minister Narendra Modi's government introduced three laws meant to open up agriculture markets to companies and attract private investment, triggering India's longest-running protest by farmers who said the reforms would allow corporations to exploit them. With an eye on a critical election in populous Uttar Pradesh state early next year, Prime Minister agreed to rescind the laws in November, hoping to smooth relations with the powerful farm lobby which sustains nearly half the country's 1.3 billion people and accounts for about 15% of the \$2.7 trillion economy. India's repeal of agriculture laws aimed at deregulating produce markets will starve its vast farm sector of much-needed private investment and saddle the government with budget-sapping subsidies for years.

The Goods and Services Tax (GST) regime will see a number of changes from January 1, 2022. There will be some procedural changes as well, which will impact e-commerce players and food delivery aggregators. Some of these changes include a higher GST rate for apparel, textiles and footwear and online restaurant aggregators such as Swiggy and Zomato will also be liable to pay GST on the services provided through them.

There has been a lot of talk about cryptocurrency in the recent past. The RBI, time and again, has highlighted the deeper macroeconomic concerns posed by the unregulated private cryptocurrency market in India. As per report of RBI, they are also prone to frauds and to extreme price volatility, given their highly speculative nature. Longer-term concerns relate to capital flow management, financial and macro-economic stability,

monetary policy transmission and currency substitution. The Indian government is in the process of framing a national law to regulate the cryptocurrency market.

The real estate sector registered a phenomenal performance in 2021—a year that was marred by the pandemic. The rising awareness on health, sustainability, future security and stable investments led to a surge in housing demand. The residential sector was quick to adopt technology solutions to sustain business operations and was better prepared this time to stand the pandemic shocks. Experts say that while it is too early to predict what the implications of the yet-evolving omicron variant could be, the impact on the real estate sector will depend on the severity of the situation and whether a blanket lockdown is eventually imposed or a calibrated one.

In 2022, Grade A and organised developers will continue to dominate and capture more market share from smaller and unorganized players. The mid-end and high-end housing segments will continue to drive a majority of the demand. The growing flow of FDI in Indian real estate is encouraging increased transparency. Developers, in order to attract funding, have revamped their accounting and management systems to meet due diligence standards. Indian real estate is expected to attract a substantial amount of FDI in the next two years with US\$ 8 billion capital infusion by FY22.

Previous year was the year of love and lost. Some you've found and some you've lost. May this New Year be the year of only love and gain for you, I wish all the readers a very! Happy New Year 2022!

With Regards
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PART-I
SUPREME COURT JUDGEMENT

CIVIL APPEAL NO(S). 6745- 6749OF 2021

Order Date: 11/11/2021

M/s. NEWTECH PROMOTERS ANDDEVELOPERS PVT. LTD.
.....APPELLANT(S)

VERSUS

STATE OF UP & ORS. ETC.
.....RESPONDENT(S)

Gist of Case: Single member bench order valid. Power of refund is with authority along with interest. Power to grant compensation vests with adjudicating officer. Condition of pre-deposit to file an appeal is mandatory.

The present batch of appeals are filed at the instance of promoter/real estate developer assailing the common issues and certain provisions of The Real Estate(Regulation and Development) Act, 2016(hereinafter being referred to as “the Act”), The Uttar Pradesh Real Estate(Regulation and Development) Rules, 2016 (hereinafter referred to as “the Rules”) and the functioning of the Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as “the Authority”), although being decided by separate orders by the High Court of Allahabad, since the self-same questions are involved with the consent are being decided by the present judgment.

The respondents herein are the allottees/home buyers who have made their substantial investment from their hard earned savings under the belief that the promotor/real estate developer will hand over possession of the unit in terms of home buyer’s agreement but their bonafide belief stood shaken when the promotors failed to hand over possession of a unit/plot/building in terms of the agreement and complaints were instituted by the home buyers for refund of the investment made along with interest under Section 31 of the Act.

The impugned orders came to be passed by the single member of the authority on the complaint instituted at the instance of the home buyers/allottees after hearing the parties with the direction to refund the principal amount along with interest(MCLR + 1%) as prescribed by the State Government under the Act. In the ordinary course of business, the order passed by the authority is appealable under Section 43(5) of the Act provided the statutory compliance of pre-deposit being made under proviso to Section

43(5) before the Appellate Tribunal but the promoter/real estate developers approached the High Court by filing a writ petition under Articles 226 and 227 of the Constitution questioning the order passed by the authority holding it to be without jurisdiction as it has been passed by a single member of the authority who according to the appellants holds no jurisdiction to pass such orders of refund of the amount as contemplated under Section 18 of the Act and have also challenged the condition of pre-deposit as envisaged under proviso to Section 43(5) of the Act for filing of a statutory appeal and raised certain ancillary questions for consideration in writ jurisdiction of the High Court of Allahabad. Being aggrieved by the orders passed by the High Court dismissing their writ petitions, the present batch of appeals have been preferred at the instance of the promoters/real estate developers.

After having heard learned counsel for the parties at length, the following questions emerges for consideration in the present batch of appeals which are as under:-

1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?
2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?
3. Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?
4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?
5. Whether the authority has power to issue recovery certificate for recovery of the principal amount under Section 40(1) of the Act?

Question 1:- Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

The term “ongoing project” has not been so defined under the Act while the expression “real estate project” is defined under Section 2(zn) of the Act. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the

legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stakeholders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case. What the provision further emphasizes is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.

Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest. The intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. It negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.

Question no. 2: Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the

jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

According to the learned counsel for the appellants, the legislative intent is clear and unambiguous that the complaints emanating from the bundle of rights which flow from Sections 12, 14, 18 and 19 including the cause of action for refund and interest be withdrawn from the forums established under the Consumer Protection Act and in turn be filed before and adjudicated by the Adjudicating Officer under this Act and that being the legislative intent, matters arising under Sections 12, 14, 18 and 19 would be examined and adjudicated exclusively by the adjudicating officer as mandated by law.

Learned senior counsel for the respondents, while supporting the findings recorded by the High Court in the impugned judgment, submits that the Act provides distinct remedies, i.e., ‘return of amount/investment’ on the one hand and ‘compensation’ on the other, to be determined separately. According to her, the right to refund on demand is a statutory right, fundamentally, contextually and conceptually distinct from the right to receive compensation. While the right to refund emanates from the Legislature’s recognition of the fact that homebuyers are “**out of pocket**” financial creditors, the right to compensation seeks to make amends for injury or loss. **Thus, refund and compensation are two distinct rights under the Act and cannot be conflated. According to her, the determination of compensation involves a full-fledged adjudicatory process which is more complex than that involved in determining refund. The legislature in its wisdom has made a specific provision delineating power to be exercised by the regulatory authority/adjudicating officer.**

The opening words of Section 71(1) of the Act make it clear that the scope and functions of the adjudicating officer are only for “adjudging compensation” under Sections 12, 14, 18 and 19 of the Act. What is being referable to the adjudicating officer is for adjudging compensation, as reflected under Section 71 of the Act and accordingly rules and regulations have been framed by the authority for streamlining the complaints which are made by the aggrieved person either on account of violation of the provisions of Sections 12, 14, 18 and 19 or for adjudging compensation and there appears no question of any inconsistency being made, in the given circumstances, either by the regulatory authority or the adjudicating officer. **So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format, still if composite application is filed, can be segregated at the appropriate stage.**

A conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the

regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine.

Question no. 3: Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?

Learned counsel for the appellants submits, such power vests with the authority constituted under Section 21 and is not open to be delegated in exercise of power under Section 81 of the Act to a single member of the authority and such delegation is a complete abuse of power vested with the authority and such orders passed by the single member of the authority in directing refund of the amount with interest are wholly without jurisdiction and is in contravention to the scheme of the Act. Learned counsel submits that it has been consistently held by this Court that the power being quasi-judicial in nature, the presumption is that it ought to be exercised by the authority competent and no other, unless the law expressly or by clear implication permits it. Learned counsel further submits that even by necessary implication, the judicial power of the authority cannot be delegated by the multi-member authority to any of its members. If at all there are practical considerations of workload, the Government can always establish more than one authority in terms of the second proviso to Section 20(1).

Learned counsel for respondent submits that as a matter of fact the entire functioning of the authority has not been delegated to the single member. It is only the hearing of complaints under Section 31 that the single member of the authority has been empowered to deal with such complaints, keeping in view the overall object of speedy disposal of such complaints mandated under the law. Learned counsel further submits that Section 21 of the Act relates to the composition of the authority and does not deal with minimum bench strength. At the given time, the legislature has consciously avoided prescribing any minimum bench/quorum strength to hear complaints by the authority. At the same time, the Act only prescribes a bench/quorum only of the Appellate Tribunal under Section 43(3) of the Act and further submits that in the absence of the minimum bench/quorum strength being fixed by statute, it is impermissible to treat the composition of the authority itself as a minimum bench strength.

Hon'ble Court observed that if the power has been delegated by the competent authority under the statute, such action, if being exercised by a single member cannot be said to be de hors the provisions of the Act. Section 81 of the Act 2016 empowers the authority, by general or special order in writing, to delegate its powers to any member of the authority, subject to conditions as may be specified in the order,

such of the powers and functions under the Act. What has been excluded is the power to make regulations under Section 85, rest of the powers exercised by the authority can always be delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act.

What is being urged by the learned counsel for the appellants in interpreting the scope of Section 29 of the Act is limited only to policy matters and cannot be read in derogation to Section 81 of the Act and the interpretation as argued by learned counsel for the promoters if to be accepted, the very mandate of Section 81 itself will become otiose and nugatory. Section 81 of the Act positively empowers the authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act.

The further submission made by learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the authority or any other person, it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person but we are not examining the delegation of power to any third party. **To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the authority to any of its member to decide the complaint under Section 31 of the Act. What has been urged by learned counsel for the promoters is hypothetical which does not arise in the facts of the case. If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review.**

In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be de hors the mandate of law.

Question no. 4:- Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

Where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to

the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.

The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of authority/adjudicating officer cannot remain dependent on fulfillment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

Learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30 per cent of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the authority/adjudicating officer.

The intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated. It is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of pre-condition, if any, against the order passed by the Authority in question.

In view of Hon'ble Court, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

Question No.5:-Whether the authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?

If Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act. There appears some ambiguity in Section 40(1) of the Act that in our view, by harmonizing the provision with the purpose of the Act, is given effect to the provisions is allowed to operate rather running either of them redundant, noticing purport of the legislature and the above- stated principle into

consideration, we make it clear that the amount which has been determined and refundable to the allottees/home buyers either by the authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act.

PART-II
HIGH COURT JUDGEMENT

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
D.B. Civil Writ Petition No. 12738/2021
Order dated: 16/11/2021

VIVANTA CORPORATION

----- PETITIONER

VERSUS

**RAJASTHAN REAL ESTATE REGULATORY
AUTHORITY**

----- RESPONDENTS

Gist of case: Order passed by Single member bench of RERA not valid.

The petitioners have challenged vires of Regulation 9 of the Rajasthan Real Estate (Regulatory Authority) Regulations, 2017. Learned counsel for the petitioners fairly brought to our notice that in a recent judgment of the Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. etc. dated 11.11.2021 in which according to him, the formation of a Single Member Bench of Real Estate Regulatory Authority (RERA) in exercise of powers of delegation under Section 81 of the Rajasthan Real Estate (Regulation and Development) Act, 2016 has been upheld.

Counsel submitted that the question whether by framing a regulation under Section 85, such powers can be vested to a Single Member Bench is not decided by the Supreme Court in the said case. He drew our attention to the Division Bench judgment of the Punjab & Haryana High Court in the case of Janta Land Promoters Private Limited and Ors. Vs. Union of India and Ors. : 2020 (4) RCR (Civil) 845, in which similar regulation came to be declared unconstitutional.

Issue notice. By way of an ad interim relief, it is provided that the proceedings against the petitioners pending before the Single Member Bench of RERA shall not proceed further.

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) NO. 128 of 2021
Order date: 16/11/2021**

NIPUN PRAVEEN SINGHVI

----- PETITIONER

VERSUS

THE STATE OF GUJARAT & 1 other(s)

----- RESPONDENTS

Gist of Case: Government directed to fill the vacancy in Tribunal

The petitioner has sought for the following reliefs:-

“(a) Your Lordships may be pleased to pass a Writ of Mandamus or any other appropriate Writ, Order or direction, declaring the constitution of the Gujarat Real Estate Appellate Tribunal as “corm no judice” and violative of Articles 14, 19(1)(g), 21 & 50 of the Constitution of India and Section 43(3) of the Real Estate (Regulation and Development) Act, 2016 violative of the basic structure of the Constitution and hence void ab initio, in so far as it establishes the Gujarat Real Estate Appellate Tribunal and further contrary to the principles laid down by the Hon’ble Bombay High Court in case of Neel Kamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors.

(b) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondent No.1 to fill up the vacant posts of Chairperson and Technical Member and further pleased to direct the Respondent No.1 to appoint a Chairperson and technical or administrative member of Gujarat Real Estate Appellate Tribunal in accordance with the provisions and applicable rules of the Real Estate (Regulation and Development) Act, 2016 within a time bound duration as may be deem fit by this Hon’ble Court in the interest of justice;

(c) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondent No.1 to bring the functioning of the Gujarat Real Estate Appellate Tribunal under the supervision of the Legal Department, Ministry of Law & Justice, Government of Gujarat instead of the Respondent No.1;

(d) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondents to develop and maintain a separate website for the Appellate Tribunal i.e. Respondent No.2;

(e) Pending admission, hearing and final disposal of this Petition, Your Lordships may be pleased to restrain the Respondent No.2 from adjudicating or taking up any cases/appeal in the interest of justice;

On respondents being notified, the Incharge Under Secretary, Urban Development and Urban Housing Department, filed an affidavit narrating thereunder the manner in which the posts of the Chairperson as well the members of the Real Estate Appellate Tribunal(RERA) which had fallen vacant steps having been taken to fill up the said posts. It is also stated in Paragraph12 of the Affidavit that post of Chairman and Technical /Administrative Member in Gujarat Real Estate Appellate Tribunal has fallen vacant in the month of September2020 and proceedings have been initiated to fill up the quorum and it is under active consideration as on date.

The learned Assistant Government Pleader would submit that a communication has been forwarded to the Office of the Chief Justice of the High Court of Gujarat as contemplated under Section 46(2) of the Act read with Rule 4 of the Gujarat Real Estate (Regulation and Development) (Matters relating to Gujarat Real Estate Appellate Tribunal) Rules, 2016 for initiation of necessary action to seek appointment and similar steps have been taken to fill the vacancies for the post of Technical /Administrative Member in Gujarat Real Estate Appellate Tribunal and a proposal for reference to the Selection Committee has been initiated on 13.10.2021 and it is pending for final approval. The deponent has stated to the following effect :-

“15. It is humbly submitted that the State Government is taking all the efforts to fill up the vacant posts and it is expected that the process would be completed within period of three (3) months.”

Having regard to the above facts and the affidavit filed by the respondent and placing the same on record, we direct that entire process shall be completed as undertaken in the Affidavit dated 28.10.2021.

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
D.B. Civil Writ Petition No. 13688/2021
Order date: 14/12/2021**

M/s. UNION BANK OF INDIA ----- PETITIONER

VERSUS

STATE OF RAJASTHAN & ORS ----- RESPONDENTS

Gist of Case: Single Member bench orders valid, RERA to prevail over SARFAESI Act and RERA authority can issue directions to promoter

The petitioner has challenged the validity of Regulation 9 stating that the same is ultra vires the provisions of the Rajasthan Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred as ‘RERA Act’).

By way of consequential relief the petitioner has challenged a resolution dated 25.09.2020 adopted by RERA resolving that all matters shall be heard by single benches

The petitioner has also challenged an order dated 20.09.2021 passed by a single member of RERA giving certain directions with respect to semi constructed residential complex over which the petitioner bank claims security interest. The case of the bank is that it is not amenable to jurisdiction of RERA since RERA can issue directions only against a promoter, allottee or a real estate agent. The

bank being none of these entities, RERA cannot entertain any proceedings against the bank.

Perusal of the impugned order passed by RERA would show that the proceedings were instituted on complaints filed by the allottees of residential units in a complex which was being developed by the promoters. The scheme comprised of 38 flats. The project was launched in the year 2014. Agreements were executed with the allottees in the same year. Substantial amounts were also paid by the allottees towards the purchase price. The developer failed to complete the project and hand over the possession.

Allottees had taken loan from ICICI Bank against the allotment of flats on the strength of tripartite agreement. Resultantly the security interest in favour of ICICI Bank was created. The same was also registered with the Central Registry of Securitization Asset Reconstruction and Security Interest of India (for short 'CERSAI'). Despite this, according to the allottees developers had taken the loan of Rs.15 crores from Andhra Bank which is now merged into Union Bank of India, the present petitioner, by creating a mortgage in favour of the bank. This was done on or around 04.06.2016. According to the allottees this was done without verification of existing charge on the properties in question. The allottees therefore alleged before RERA that such loan was sanctioned wholly fraudulently and with malafide intentions.

In the meantime since the developer failed to repay the dues to the bank, the bank treated the account as NPA and tried to recover its unpaid dues by resorting to provisions of SARFAESI Act. Some of the allottees approached the DRT and thereafter DRAT to prevent the bank from auctioning the properties and thereafter approached RERA for taking suitable action against all concerned including the bank.

Before RERA the bank raised several contentions including that RERA has no jurisdiction to entertain any complaint against the bank and that in view of the proceedings which are pending before the DRT and DRAT, the complaints should not in any case be entertained. These objections of the bank were turned down by RERA.

ISSUE NO 1: VALIDITY OF REGULATION 9

As per decision dated 25.09.2020 all complaints and adjudication matters required to be decided by RERA will be heard and decided usually by Single Benches. However

all Single Benches wherever deemed necessary or desirable, may refer any particular matter or class of matters to Full Bench which shall comprise of chairman and at least one member as available. In terms of this resolution, thus ordinarily all matters will be heard by a single member Bench of RERA. The discretion would be vested in such member to fix a particular matter or class of matters before the Full Bench comprising of the chairman and at least one member

Hon'ble court held that Regulation 9 is merely procedural provision. Section 81 of RERA Act gives powers to the authority to delegate to any member powers and functions under the Act. Sub-section (1) of Section 85 enables the authority to frame regulations consistent with the Act and the Rules. Regulation 9 framed in exercise of such powers merely regulates the process of delegation of powers in single members of RERA. This regulation is thus not ultra vires the Act or invalid for any other reason.

ISSUE NO 2: APPLICABILITY OF RERA WHILE SARFAESI ACT IS ALSO ACTIVATED

Section 35 of the SARFAESI Act provides that the provisions under the said Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Similarly worded provision giving overriding effect to RERA Act is contained in Section 89. This Section as noted, provides that provisions of the said Act (i.e. RERA Act), shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The question would therefore arise which of the two provisions giving overriding effect to the statute would prevail.

Hon'ble court is of view that in the event of direct conflict between the two central statutes giving overriding effect to the Act, ordinarily the subsequent legislation would prevail.

ISSUE NO 3: APPLICABILITY OF RERA WHERE THE TRANSACTIONS BETWEEN BORROWERS AND THE BANKS ARE COMPLETED BEFORE ENACTMENT OF THE ACT

As is well settled, a statutory provision creating rights or obligations is presumed to be prospective unless specifically or by necessary implications it has been given retrospective effect.

As per Clause (h) of sub-section(4) of Section 11, after a promoter executes an agreement for sale for any apartment, plot or building he shall not mortgage or create a charge on such apartment, plot or building and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take apartment, plot or building, as the case may be.

Perusal of this provision would immediately make it clear that the same would be totally unworkable in a case where transaction between the borrower and the bank is completed before the introduction of RERA Act. As per this provision the promoter is precluded from mortgaging or creating any charge on apartment, plot or building with respect to which he has executed an agreement for sale. If he breaches this obligation, such mortgage or charge created shall have no effect on the right and interest of the allottee. This provision thus creates a new obligation and corresponding right in favour of the allottee. Such provisions cannot have retrospective effect. In any case as noted, enforcing any such obligation would be wholly unworkable. It would reopen closed transactions between the borrower and the lender. In our opinion therefore RERA Act would have no applicability to the secured creditors where such security interests have been created before introduction of the Act.

ISSUE NO 4: AUTHORITY OF RERA TO ISSUE ANY DIRECTIONS AGAINST A BANK OR FINANCIAL INSTITUTION

RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act.

PART-III

REPORTING OF CASE LAWS

HARYANA REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: Shri Mohan Singh

RESPONDENT: Haryana Real Estate Regulatory Authority

CORAM: Shri Darshan Singh (Chairman), Shri Inderjeet Mehta (Member (J))

Shri Anil Kumar Gupta (Member (T))

ORDER DATE: 09.11.2021

Appellant Representative: Advocate Rajiv Tyagi

Respondent Representatively. Senior Legal Officer, Geeta Rath

Gist of Case: Penalty of Rs.1.00 crore reduced to Rs30.00 lacs for non-registration of project due to leniency.

The present appeal has been preferred by the appellant promoter under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against the Order dated 19th June, 2019 passed by the respondent-Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called, „the learned Authority“) imposing a penalty of Rs.1,00,00,000/- (Rupees one crore) for violation of provisions of Section 3(1) of the Act as the promoter has advertised for sale of 24 units of 4BHK flats situated in Sector 56, Gurugram on behalf of “Heritage Royale”.

The learned Authority after perusal and analyzing of all the three documents (advertisement, brochure, show cause notice and reply) held that the promoter M/s EmEss Developers and Collaborators have violated Section 3(1) of the Real Estate (Regulation and Development) Act 2016, imposed the penalty of Rs.1, 00, 00,000/- (rupees one crore) for violation of under Section 3(1) of the Act.

Ld. Counsel for the appellant contended that the appellant informed the owners of the above said plots about the nature of his business and offered his services as facilitator for the sale of various apartments. The owners of plots informed him that they would not like to involve any third person, but the appellant would be free to independently solicit consumers for the sale of the floors of the building when constructed and approved. As the aforesaid properties are situated in the prime and much sought after

area of Gurugram, the appellant did not want to lose the opportunity of earning handsome profits by facilitating the sale of constructed portions of these plots and, therefore, visited the property almost daily.

Ld. counsel for the appellant further contended that the aforesaid plots owners have not authorized the appellant as their sole selling agent, advisor, consultant dealer and developer for the sale of constructed portions on the respective plots. **It was further contended that the appellant was acting in his individual capacity and not under any contractual relationship of partnership, developer, projector, construction contractor, agent, co-sharer or promoter whatsoever with the owners of the respective plots.**

It was also contended that the advertisements were given by the appellant in over enthusiasm without any knowledge of the provisions of the Act. It was further contended that the appellant in its reply before the learned Authority regarding show cause notice has erroneously described the construction of the various building as “the project”.

Ld. Senior Legal Officer for the respondent-Authority contended that the penalty of Rs.1,00,00,000/- has been imposed on the appellant vide impugned order dated 19.06.2019 which was conveyed to the appellant by the learned Authority vide letter dated 26.06.2019..She further contended that advertisement published by the appellant in Hindustan Times newspaper on 26.05.2019 for the Real Estate Project, namely Heritage Royale Sector 56, Gurugram came to the notice of the learned Authority. **The hoardings for the same project installed by the promoters also came to the notice of the learned Authority. She further contended that the documents such as advertisement in the newspaper and brochure of the said project show that these have been issued by the appellant-company as its name EmEss Developers stood imprinted in the above said documents. It is also mentioned in the advertisement that brokers/facilitators will be incentivized with minimum 6.0 lac commission. This clearly shows that the appellant-company is a promoter developer and not a real estate agent or facilitator as is being project by the appellant in the present appeal.**

Tribunal duly considered the aforesaid contentions. It emerges from the facts of the case and contentions raised by both the parties that the learned Authority took suo-moto cognizance of the advertisement published by M/s EmEss Developers, Hindustan

Times“ newspaper on 26.05.2019 for real estate it is very clear that the Appellant company is constructing and causing to construct for sale of upscale apartments 24 units of 4BHK (approximately 3000 per sq. ft.) each, and therefore the appellant company is very much covered in the definition of a promoter as given at Section 2 (zk) of the Act.

It was contended by the appellant that the appellant is merely a real estate agent/property dealer and did not have the financial resources to undertake and execute the project of such magnitude and the penalty imposed on him is highly irrational.

As per the contentions raised by ld. counsel for the appellant, the appellant was merely a real estate agent. The appellant has not produced before us any documentary evidence to show that actually he is carrying out the profession of the real estate agent. As per section 9 of the Act even a real estate agent is required to be registered with the ld. Authority. There is no plea or the proof to show that the appellant was registered as a real estate agent for facilitating the sale or purchase of any plot, apartment or a building, as the case may be.

The imposition of penalty is an important function of the authority. As per section 59 of the Act, the contravention of provision of section 3 invites the penalty which may extent up to 10% of the estimated cost of the real estate project as determined by the Authority. So, the ld. Authority has discretion to impose the penalty to any extent but not exceeding 10% of the estimated cost of real estate project. It is settled principle of law that when a judicial authority is invested with discretionary powers the same are expected to be exercised judiciously. While determining the quantum of penalty all the factors including the mitigating circumstances in favour of the violator are to be taken into consideration.

It was assured that in future no such advertisement shall be published in the newspaper nor the pamphlet/handbills with respect to the project in question shall be distributed. It has also been mentioned that they have not received any money against any advance booking/sale from any buyer in consequence of the said advertisement.

There is also no material on record to show that the appellant in consequence of the aforesaid advertisement had made any advance booking/sale of any unit. There is also

no material at file to show that the appellant has indulged in any such activities prior to present violation.

Taking into consideration these mitigating circumstances and conduct of the appellant, it will be just and appropriate to take the lenient view in the matter of the penalty. Consequently, the appellant is directed to pay the penalty of Rs. 30 Lakh instead of Rs. 1,00,00,000/- (rupees one crore) as imposed by the Id. Authority in the impugned order.

MAHARASHTRA REAL ESTATE APPEALLATE TRIBUNAL

APPELLANT: Mr. Smitesh Shivaji Patil

RESPONDENT: Hubtown Limited

CORAM: Shriram Jagtap, Member(J) MEMBER (J) &S.S. SANDHU,

MEMBER (A) ORDER DATE: 03.09.2021

Appellant Representative: Advocate Sudhir Medhekar

Respondent Representative: Advocate Rubin Vaki

Gist of case: Interest and compensation to be decided at the time of final order. Authority directed to pass the final order.

This Appeal emanates from the interim order dated 31st July 2020 passed in by the Chairperson, Maharashtra Real Estate Regulatory Authority, Mumbai, whereby the Authority has directed Respondent to complete the project and obtain Occupancy Certificate as per the revised time limit stipulated in their registration webpage and handover possession of the apartment in question with Occupancy Certificate to Complainant at the earliest and reserved the relief of grant of interest for delay as per the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 **till disposal of the Complaint, in other words, deferred the task of computation of interest till the final order.**

Appellant has challenged the legality, propriety and correctness of the impugned order on the grounds enumerated in the appeal, mainly, on the grounds that:

- 1. Neither Complainant nor his Counsel has agreed for computation of interest on account of delayed possession to be done in the final order,**

- 2. The impugned order is contrary to the provisions of Section 18 of the RERA,**
- 3. The impugned order is not in accordance with the provisions of Section 36 of the RERA,**
- 4. The learned Authority has failed to consider sufferings of Appellant from last ten years without fault on his part and,**
- 5. The learned Authority has not followed the procedure and violated the principles of natural justice.**

Appellant sought the relief of setting aside the impugned order and further prayed that the computation of interest on account of delay in handing over possession of the disputed flat may be done by the Tribunal and the relief sought by Appellant in the Complaint may be granted. Respondent has mooted affidavit in reply and resisted the appeal contending that Appellant has unconditionally accepted possession of the flat from Respondent vide letter dated 11th November 2020 confirming that Respondent has complied with all obligations under the agreement for sale and that there are no further acts, deeds and obligations pending on its part and Respondent shall not be liable for any acts in connection with the said flat and thereby Appellant has waived his claim of compensation for purported delay

Respondent argued that, if complainant has any grievance in regard of recording of submissions of complaint by the Authority then he must make appropriate application for correction/ clarification/ rectification before the Authority but appellant has not filed such application. Still, the complaint is pending before the Authority for adjudication and, therefore Appeal is liable to be dismissed.

Tribunal was of the view that they do not approve the decision of the Authority for deferring the grant of interest till passing of the final order, The Authority ought to have decided the complaint in its entirety, considering and deciding all the claims sought by Complainant including grant of interest to avoid multiplicity of litigations on account of orders passed in a piece-meal or phased manner in the same Complaint.

As the Authority has not declined to consider the claims by Complainant, it is necessary for Complainant to approach the Authority to get the complaint finally decided including the relief for grant of interest due to delay in handing over

possession. Therefore, we are of the considered view that the impugned order does not warrant interference in this appeal.

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: Mr. N. Sriram and Mrs. R.D. Dhanalakshmi

RESPONDENT: M/S. Casa Grand Builder Pvt. Ltd.

CORAM: Mr. Justice B. Rajendran Chairperson, Mr. N. Balasubramanian

Judicial Member & Ms. Leena Nair, Administrative Member

ORDER DATE: 02.11.2021

Respondent Representative: M/S. Ganesh and Ganesh

Gist of case: Development of single Villa in Group Housing Project is a real project required to be registered where developer & landowner entered into development of several villas in group housing scheme.

The Home buyer purchased a plot No.78 measuring 1327 sq. ft. on 12.06.2019 from through the power agent the promoter herein. On the same date the promoter and the home buyer entered into construction agreement and the promoter agreed to hand over the villa after complete construction by August 2019.

Being aggrieved by the inordinate delay of the promoter, delay in handing over the completion certificate and for some other defects the home buyer came forward with the complaint before the Regulatory Authority for the reliefs namely hand over of villa as promised, to register the project as group development building project, to furnish completion certificate or occupation certificate for the villas as well as for common amenity, proportionate reduction and return of money for shortage of built up area, to install STP to handle 180 units, to share UDS calculation details and register under the individual owner name instead of association, to restrain the promoter to extend the amenities to other projects and to fix the water seepage issue.

After contest, the Regulatory Authority directed the promoter to hand over possession with electricity connection or alternative arrangement on or before 30.09.2020, directed the promoter to register the Bloom project, directed the promoter to refund excess cost of land value of the club house and the construction cost of the club house

to the allottees of the 159 villas and also directed not to extend the club house facility outside bloom. The authority further directed to refund excess amount collected from the allottee due to short fall in the actual built up area if any. Regarding STP and wall tamppness and water seepage issues the authority accepted the explanation of the promoter. **Hence aggrieved upon the same the home buyer preferred this appeal on the following grounds:**

- The authority ought to have issued a positive direction to restrain the promoter from effecting any further sale till the project is registered.
- The authority ought to have imposed penalty for non-registration as well as for misrepresentation as layout project.
- The authority ought to have imposed penalty of non-furnishing of occupancy certificate
- The authority ought to have restrained the promoter for further sales without obtaining environmental clearance certificate.
- The authority ought to have taken into account the proposed construction of 180 villas and even if on an average 4 persons per villa taken into account total comes to 720 hence STP installed is insufficient.
- The authority ought to have directed the promoter to release the mortgage with regard to club house construction and directed to hand over the documents to the association.
- The authority ought to have restrained the promoter from insisting for a NOC from the home buyers.

In addition to the above grounds the learned counsel for the appellant/home buyers would submit that the leniency shown by the authority towards the promoter caused further loss to the home buyers. Therefore this appeal has to be allowed.

Point for consideration:

1. Whether the plea of the promoter as the project of the promoter is not the Group Development Building Project is sustainable?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

According to the promoter even though they have obtained layout plan approval and RERA Registration they have got building sanction for a single villa and not for the group villas. Hence, they are exempted under Section 3(2)(1)(a) of The Real Estate (Regulations and Development) Act, 2016. This is the only contention raised by the promoter.

Admittedly, the project of the developer is a Real Estate Project and the developer entered into development agreement with the land owners for the development for the purpose of sale of villas to the allottees. The developer clearly and categorically stated in its brochure about the development of 159 units but obtained building plan approval as if the developer is going to develop only one villa below the 500 sq. m. Admittedly, both the developer and the land owners entered into an agreement for the development of group of residential villas. Hence the plea of the promoter that it is not the group development building project is not sustainable.

Point No.2:

The appellants/homebuyers have put forth as main grounds namely the authority has not passed an order by imposing penalty. Further would refer earlier cases ordered by the authority by imposing penalty and restraining the promoter from further sales. But in this case the authority has not passed such an order. This is the main grievance. The authority has negated the claim of the home buyers with regard to STP on the ground of absence of documentary evidence. The appellants/home buyers have not produced any technical proof regarding STP.

In such circumstances without any technical proof the findings of the Regulatory Authority cannot be set aside. The grounds put forth by the appellants/home buyers are not sufficient to interfere with the findings of the Regulatory Authority.

In the result, the appeal is dismissed. No costs.

KERALA REAL ESATE REGULATORY AUTHORITY**COMPLAINANT: Favourite Homes Pine Clounaty Apartments Owners Association****RESPONDENT: M/s Favourite Constructions Pvt.Ltd****CORAM: Shri P H Kurain Chairman,****ORDER DATE: 05.11.2021**

Complainant Representative: Adv. Mukseh Kumar Gandhi

Respondent Representative: Adv. Sajad Karim

Gist of Case: Rectification of defect beyond the period of 5 years from the date of handing over of possession does not fall within the premise of 14(3).

The Complainant is the association of 75 Apartment owners of the favorite Homes Pine County Apartments constructed by the Respondents. All the owners are the victims of the defective improper construction of basement car parking in the said project. **The Respondents have completed the construction of the basement car parking without providing adequate measures for arresting water seepage and has miserably failed to execute proper and required civil works for the disposal of excess water egress and prevent basement flooding. Instead they provided a temporary pipe line for pumping rain water discharge to main road at the time of construction and couple of sumps for water percolation which is not sufficient and which after objection by local people was closed by them.**

It was informed that water can be reused to flushes and gardening, where no garden was provided for such discharge. The association is pumping water back to the flushes, but the quality of STP Plant installed by the Respondents does not have ultra-filtration and will stink when pumped to the flushes. **The Respondents used poor and substandard quality materials for the construction of the basement area and without proper study of water table and that is sole reason for water ingress and egress on all area which is contrary to the agreement for construction to all buyers.** The respondents transferred the aforesaid building to the Association during 2013-14. On 03/02/2014 itself the Association has pointed out the problem of water ingress in the basement area and contacted the Respondents on several times to fix the

problem but instead of taking any remedial action always insisted the Association for the maintenance of STP.

The reliefs sought by the Complainant are:-

1. To correct the improper construction of basement car parking area and to provide adequate measures to correct the water seepage and stagnation in the Apartment.
2. To take immediate an adequate measures to provide for excess water discharge (both rain water and STP water) in the project.
3. To provide for ultra-filtration system of STP output water.
4. To provide for garden land for discharge of both rain water and STP water.

The Respondents have filed objection and submitted that the Complainant has earlier filed C.C.P.No.94/2020 before the Adjudicating Officer for the same reliefs sought for in the above Complaint and the same is dismissed on 01/10/2021. The project named “Favourite Homes Pine County Apartment” was handed over to the Complainant as early as in the year 2013-2014. The building permit for the said project was obtained on 12/11/2009 from the Corporation of Thiruvananthapuram and the project was fully completed and obtained Occupancy Certificate dated 28/09/2012 from the Corporation and the copy of the same is produced. The owner association viz, the Complainant was formed on 15/12/12. Hence the said Project was not required to be registered under the Kerala Real Estate Regulatory Authority.

After hearing both parties in detail and on perusal of documents produced, the Authority is convinced that the above project named 'Favourite Homes Pine County Apartment' was handed over to the Complainant as early as in the year 2013-2014. Since the Occupancy Certificate is obtained on 28/09/2012, the Authority has no jurisdiction to entertain the above matter. Hence the above Complaint is not maintainable before the Authority.

Moreover, As per section 14(3) of the Act, any structural defect in workmanship quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the

promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act. But in the above case, the year of handing over of possession is 2013-2014 as admitted by the Complainant, so the question of rectification of defect beyond the period of 5 years from the date of handing over of possession does not fall within the premise of 14(3).

UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: SUO MOTO

RESPONDENT: LA PALACIA

CORAM: M.R. RAJSEH KUMAR TYAGI(SECRETARY)

ORDER DATE: 01.11.2021

Gist of Case: Lapsed project to be completed by Promoters & Association jointly.

1. The project 'La Palacia' Reg, No UPRF,RAPR.16069 (herein referred as 'Project'), being developed by M/S Newtech La Palacia Pvt. Ltd. (herein referred as Promoter'), is a group housing project located at Plot No. GH-09A, Sector-Techzone-TV. The development work of the Project, comprising of 4 towers and 406 units, commenced in November 2014.
2. The completion date of the Project, as submitted at the time of registration with Uttar Pradesh Real Estate Regulatory Authority, hereafter called as "Authority", lapsed on 30th June 2019.
3. The Promoter failed to complete the Project, within the specified period i.e., 30th June 2019. Although the registration of the Project has lapsed, the Promoter still expressed its intent to complete the Project and approached the Authority for guidance and appropriate directions in the matter.
4. **Since it is not permissible for the Promoter to get extension of registration of the Project under Section 6 of the RERA Act, the only course available to**

facilitate the completion of this Project is under Section 8 of the Act, wherein it has been provided that upon lapse of the registration or on revocation of the registration under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out the remaining development work by competent authority or the Association of the allottees or in any other manner as may be determined by the Authority.

5. The Authority, using its enabling provisions of the Section 8 of the Act, offered to the Promoter to consider its request for permitting it to undertake the remaining development work of the Project, if it submitted a proposal to the Authority in this regard jointly with the association of the allottees of the Project.
6. The allottees of the Project have formed an association under the name as "La Palacia Social Welfare Society" (herein after called as Association) and got the same registered on 20th September 2021. The Association 'approached the Authority requesting it to intervene and facilitate the completion of the Project so that allottees get the possession of the units booked by them.
7. Subsequently, a series of meetings were held with the Promoter and the Association to understand the issues and to arrive at an appropriate strategy for completing the balance development work in the Project..
8. The proposal of the Promoter and Association was examined in the Project Management Division of the Authority. The appraisal report of the Project Management Division, based on the information and assurances of the Promoter is as follows:
 - a) The project is a group housing project. There are 4 towers i.e., Tower A, Tower B, Tower C and Tower D in the project.
 - b) As per sanctioned plan, the promoter proposed to develop 24 units in Tower A (G+3), 144 units in Tower B (G+18), 102 units in Tower C (G+18) and 136 units in Tower D. The structure work in Tower C and Tower D has been completed and finishing work is pending, whereas the structure works up to 9th floor have been completed in Tower B.

- c) Estimated cost to complete the remaining development work in the Towers B, C and D is Rs. 10,36cr, Rs. 5.71 cr and 5.42 cr respectively. Further to that additional cost for completion of non-tower area is Rs. 4.54 Cr and the cost for completion of external services is Rs. 5.3 cr. The outstanding dues payable to Greater Noida Industrial Development Authority against land dues is Rs. 23.78 cr which includes interest also. The entire estimated cost for completing balance work of the project is Rs. 55.11 cr.**
- d) There has been no construction and sale in Tower A, and the Promoter intends to exclude this tower from the overall proposal for completion of the Project as registered with U.P. RERA.**
- e) Out of 382 sanctioned units under Tower B, C and D, 318 units have been sold and 64 units are yet to be sold. Sum of balance receivables from the sold units is Rs. 32.22 cr and the expected receivables from unsold inventory is Rs. 27.14 cr at a market value of Rs. 3500 per sq. ft bringing total cash inflow from the project to Rs. 59.36 cr. There is existing material worth Rs. 1.73 cr available at the project site and further an amount of Rs. 0.5 cr would be infused by the promoter within 15 days of the order under Section 8 of the RERA Act.
- f) As per the construction plan submitted by the promoter, Tower D will be completed by October 2021, Tower C by July 2022 and Tower B by December 2022. All the basic amenities along with other facilities would also be completed by December 2022.
- g) The demand for balance receivables from existing allottees will be raised as per the payment plan agreed to by the Association in respect of individual towers. The demand for Tower B will be raised in four installments i.e., June/July 2021, November 2021, May 2022 and the remaining with the offer of possession in December 2022. For Tower C the demand will be raised in three installments i.e., June/July 2021, December 2021 and rest on offer of possession in July 2022. For Tower D the demand will be raised in two installments i.e., June/July 2021 and rest on offer of possession in October 2021.**

- h) Promoter proposed to complete the remaining development work in the project by December 2022 and to meet any shortfalls in cash inflows for the project.
- i) The Project Management Division feels the timelines for raising demand should be deferred by three months because of the time consumed in processing of this matter and issuing order under Section 8 of the RERA Act.

9. The Project was inspected by the Technical Division of the Authority in July 2021, wherein it has been stated that the overall physical progress under Tower B is about so percent and that the structure work in Tower C and Tower D has been completed.

10. The proposal of the Promoter and the Association was considered by the Authority, along with other relevant facts and documents available at its level, in its meeting held on 20th October 2021. The Authority, after careful and thorough deliberation on the proposal submitted by the Promoter and consented to by the Association and perusal of the recommendations of its Project Advisory & Monitoring Committee based on the report of its officers and the Project Management Division, arrived at the considered view the proposal of the Promoter consented to by the Association is, prima facie, convincing, and can be accepted in fulfillment of its mandate to facilitate the completion of the Project under the present conditions i.e. where the registration has lapsed and the Authority needs to facilitate the remaining development work in order to protect the interests of the allottees of the Project.

11. Therefore, with a view to facilitate the completion of the Project in a time bound manner, to protect the interests of the allottees, the Authority, resolved to authorize the Promoter, with consent of Association, to Undertake the completion of the remaining development and the construction work of the Project, subject to the following terms and conditions:

- a) The Association shall submit, within 15 days of the order, a general body resolution of the Association consented by more than 50 percent of the allottees of the Project giving their explicit consent to authorize**

the Promoter to undertake the remaining development and construction work of the Project. It is further emphasized that more than so percent of the allottees means all the allottees of the Project irrespective of the fact whether any of them is a member of the la Palacia Social Welfare Society' or not.

- b) The demand for Tower B shall be raised in four installments i.e., October/November 2021, February 2022, August 2022 and the remaining with the offer of possession in December 2022. For Tower C the demand shall be raised in three installments i.e., October/November 2021, March 2022 and the remaining on offer of possession in July 2022. For Tower D the demand shall be raised in two installments i.e., October/November 2021 and remaining on offer of possession.**
- c) The Promoter shall complete the 3 towers in the Project as per completion submitted by it and agreed to be the Association.**
- d) The Authority hereby constitutes a Project Advisory and Monitoring Committee under the chairmanship of Sh. Balvinder Kumar, Hon'ble Member, U.P. RERA with CEO, Greater Noida Industrial Development Authority', Financial Controller tr.P. RERA, Technical Advisor U.P. RERA, Officiation Consultant U.P. RERA, Consultant Project Management Division U.P. RERA, concerned Bank Financial institution, the Association and the Construction Consultant appointed by the Authority as members for monitoring of the Project on monthly basis.**
- e) The Authority will review the progress of the project on quarterly basis.**
- f) The Authority, on its website, will shift the project to the special category of projects under Rehabilitation as per the provisions of Section 8 of RERA Act. The promoter shall continue to update the details of the project, including the quarterly progress report of the project. in stipulated time or as directed by the Authority.**
- g) The Promoter shall open a separate account for the project in a scheduled bank which shall be updated on the webpage of the project under the relevant category. The promoter shall deposit all its contribution towards**

the project, as agreed with the AoA as per this Order, and also all the money received from the allottees as per builder buyer agreements, existing and prospective, or any other funds from any other source including the existing accounts of the Project, time to time, in the separate account and the same shall be utilized only for the work relating to the construction and development of the project and/or any other expenditure directly related to the development, construction and completion of the Project.

- h) The promoter shall approach the concerned competent regulatory / statutory authorities for seeking / renewing such permissions / approvals for completion of balance development work and for handing over possession of units to allottees as may be required.**
- i) The promoter may appoint/engage such contractors, vendors or suppliers as may be necessary for the completion of the project, by following transparent method of tendering etc., as the case may be, The same will, however, be audited by the Construction Consultant appointed by the Authority for this project.
- j) The Authority shall appoint a Construction Consultant for the concurrent audit till the completion of the project. The cost thereof shall be met from the receipts of the project.
- k) The promoter shall be bound by the terms and conditions of the existing and future agreements for sale and shall be responsible for completion of the project as per the specifications and within the stipulated time.
- l) The promoter shall be responsible for all relevant statutory compliances in order to complete the balance development work and handover the possession of the units to the allottees.
- m) The promoter shall ensure that proposed sale price cannot be lower than the floor price quoted by the promoter in their cash inflow. The promoter, however, shall not have any discretion to offer new rebates / discounts to any of the buyers, existing or prospective. All the matters relating to the sale price of the unsold units will be audited by the Construction Consultant who shall submit its report to the Authority at the end of every quarter.

- n) The promoter, after completion of the project, shall apply to the competent authority for occupancy certificate as provided under local laws and offer possession to the allottees.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Shambhu Kumar Gupta

RESPONDENT: Parsvnath Developer Ltd.

CORAM: Shri Shailendra Agawal (Member)

ORDER DATE: 16.11.2021

Respondent Representative: Mr. Irfan Usmani

Gist of case: Inordinate delay in possession. Order to refund amount with intent

The instant case pertains to a project by the name “Parsvnath City Centre” being promoted by the respondent promoter. On the last date, representative on behalf of the respondent Irfan Usmani made effort for settlement of the dispute, to which the complainant had agreed. It was stated by the complainant that no settlement has been able to be reached between the complainant and the respondent on several grounds like, number of installments, rate of interest and the total amount to be paid by the respondent as refund. He, however, agreed that there was a substantial delay in delivering the possession of the commercial space booked by the complainant.

The arguments of both the complainant as well as the respondent were heard and it turns out that an agreement for sale was signed between the complainant and the respondent on 24.01.2008 whereby a commercial space measuring 836 sq. ft. was booked in the aforementioned project at a total cost of Rs.30,92,991/-. Clause 13(a) of the agreement for sale mentioned that the complex was to be completed within a period of thirty months from the commencement of construction and delivery of the possession would be given thereafter. However, even after more than 13 years have now passed, the project is not completed and the possession of the commercial space has not yet been delivered by the respondent. The complainant claims to have paid Rs. 30,00,000/- within three years as per the demand of the respondent promoter and this has not been rebutted by the respondent. The proof of payment by the complainant to the respondent is on the file whereby a ledger receipt of the record of the respondent,

clearly mentions that an amount of Rs. 30,00,192.50 has been received by the respondent promoter.

It is clear that the complainant has been harassed for more than 10 years and has not been given possession of the commercial space booked by him for more than 10 years now. As per the agreement for sale, the commercial space was to be handed over by July, 2010 which has not been done so far. It is justified for the complainant to seek a refund of the amount deposited by him along with interest.

Accordingly, it is directed that the respondent promoter refunds the entire amount of Rs. 30,00,192/- deposited by the complainant along with interest at SBI Highest MCLR (7.30%) + 2%, i.e., 09.30 percent per annum as provided in the Rajasthan Real Estate (Regulation and Development) Rules, 2017 on the amount paid by the complainants from the promised date of completion of the project, i.e., 24.07.2010 till the date of making payment within 45 days from the date of issue of this order and submit a compliance report to this Authority within fifteen days thereafter.

COMPLAINANT: Ritu Garg

RESPONDENT: Ayaan Buildtech Private Limited

CORAM: Shri Salvinder Singh Sohata(Member)

ORDER DATE: 18.11.2021

Respondent Representative: Adv. Rishi Raj Maheshwari

Complainant Representative: Adv. Aditya Kumar Mitruka

Gist of case: Refund not allowed if completion certificate is obtained.

In the present case the complainant booked a flat bearing No. 601 in Block-F, 6th floor in the project “Max Heights Majestic” having registration No. RAJ/P/2017/150 and executed a buyer’s agreement on 22.07.2014. A commitment to hand over physical possession within 24-30 months by the respondent was made, but after lapse of 5 years, possession is not delivered. Complainant has already invested more than Rs.31 lac for the purchase of the said unit. Respondent in his reply claimed a completion certificate issued on 19.01.2021 and offer on the same day is already made to obtain possession by the applicant. Therefore, prayed for dismissal of the application. Applicant during the course of hearing submitted an additional complaint for

amendment of the prayer to allow refund for Rs. 30,03,522/-, litigation cost Rs. 50,000/- and any other appropriate relief which can be granted by the Authority.

The record available on file proves that a buyer's agreement was executed on 22.07.2014. Clause 25-A of the agreement stipulates that construction of the project be completed within 48 months with grace period of additional 6 months. Accordingly, expected completion date of the project is 21.01.2019. Therefore, claim of the applicant is not sustainable that a commitment by the promoter was made with applicant to hand over the possession within 24-30 months since booking in the month of October, 2013. Once the rival parties are agreed upon stipulated date for handing over the possession of the flat through agreement, therefore, oral assurance made by either of party are not required to be looked into. The Authority is bound to accept the completion date of the project as 21.01.2019 on the basis of terms and conditions enumerated in the buyer's agreement.

It was found through browsing the website of the Authority, while submitting an application for registration for the on-going impugned project, expected completion date was mentioned therein as 31.12.2018 under the provisions of section 4(2)(l)(C). Subsequently, the aforesaid, validity of registration certificate is extended upto 31.12.2021 by the Authority. Meanwhile, promoter respondent obtained a completion certificate for Block-D, E & F of the project on dt. 19.01.2021 (Annex.-R/2) and for other Block on dt.03.03.2020 (Annexure-R/1). The applicant's unit is situated in Block-F. Accordingly, it is proved that the impugned flat is ready for handing over to the applicant.

Respondent claims that an offer for possession on dt.21.01.2021 (Annexure-R/3) is already made to applicant by the promoter respondent; hence, applicant is not entitled to obtain refund of the deposited amount as claimed in the additional application. **On the issue, the Hon'ble Supreme Court has already laid down the principles in the case of IREO GRACE REALTECH PVT. LTD. Vs. ABHISHEK KHANNA AND ORS (2021) 3 SCC 241 that after issuance of completion certificate, refund is not to be allowed.** On the basis of Annexure-R/2, completion certificate related to block of the applicant's flat is already issued. Therefore, the additional application submitted by the complainant is liable to be dismissed.

For the delayed delivery of offer/possession, applicant is entitled to get interest on the deposited amount with effect from expected date of delivery i.e. 22.01.2019. It

is made clear that subsequent extension with regard to validity of extension does not curtail the rights to claim interest by the applicant.

It is apt to mention here that a moratorium period is declared by the Authority w.e.f. 13.05.2020 to 31.03.2021 with regard to claim interest on the deposited amount by the allottees with promoter. On the basis of the aforesaid administrative directions, applicant is not entitled to claim interest w.e.f. 13.05.2020 to 21.01.2021 (date of offer after issuance of completion certificate). Accordingly, interest on deposit for the period 22.01.2019 to 12.05.2020 is required to be awarded only. Applicant is not entitled to claim interest after issuance of completion certificate and making an offer by the promoter to obtain possession by the applicant for the impugned property.

COMPLAINANT: Suo Moto

RESPONDENT: Sanrachna Infravision Pvt.Ltd.

CORAM: Shri Salvinder Singh Sohata (Member)

ORDER DATE: 02.12.2021

On behalf of Authority: Advocate Gaurav Gidwani

Gist of case: A non-bailable warrant issued for personal appearance

A notice under section 8 and 61 of the Rajasthan Real Estate (Regulation and Development) Act, 2016 was issued against the promoter for the project “The Trump”, registration No. RAJ/P/2017/241 elapsed on 31.12.2019. Respondent promoter has neither submitted completion certificate within stipulated period nor applied for extension of validity of registration certificate. A notice was issued against the promoter to explain the status as to why a penalty upto extent of 5% of the project cost be imposed against him and work of the project be assigned to another agency for completion of the project.

A penalty for Rs.20,000/- was imposed vide order dt. 01.07.2021 against the promoter in Comp. No. RAJ/RERA/C/2019/3180 Richa Sharma Vs. Sanrachna Infravision Pvt. Ltd. and connected matters. The aforesaid amount is not remitted yet by the promoter.

In both the cases, notices through Speed Post and e-mail (registered with the Authority by the promoter) issued against the promoter. The notice through Speed Post were undelivered and returned with the remarks ‘addressee left’ but service was treated as

complete through e-mail on the registered e-mail address provided by the promoter himself at the time of registration of the project. But, the promoter has chosen to be voluntarily absent and never filed reply in both the cases.

In view of the project already elapsed on 31.12.2019, promoter has neither submitted a completion certificate within stipulated period nor applied for extension of the project. **Therefore, in the interest of the buyers, the Authority finds it appropriate to ensure physical presence of the promoter before the Authority to explain his status with regard to physical status of the project and payment of penalty imposed in the another case. It is directed that if promoter of the Company fails to comply with aforesaid directions of the Authority or does not appear before the Authority to explain his status upto the next hearing on dt. 13.01.2022, a non-bailable warrant is to be issued for personal appearance for compliance of directions against the authorized signatory of the affidavit, made available to the Authority**

COMPLAINANT: Kritika Sharma and Dilip Kumar Sharma

RESPONDENT: Arihant Dream Infra Projects Ltd.

CORAM: Shri Nihal Chand Goel Chairman,

ORDER DATE: 20.12.2021

Complainant Representative: Shri Dilip Kumar Sharma

Respondent Representative: Adv Shruti Rai and Adv Samkit Jain

Gist of Case: Flats attached by the authority as part of execution proceedings.

The present complaint, filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the RERA Act'), was decided vide this Authority's order dated 23.10.2019, whereby the respondent was directed to "refund to the complainants the deposited amount of Rs. 15,79,653/-, without interest, within 45 days from the date of issue of this order".

The matter came up again before this Authority on the filing of an execution application by the complainants for implementation of the aforesaid order dated 23.10.2019. While the execution application was being heard, the respondent filed S.B. Civil Writ Petition No. 529/2020, wherein an interim order was passed by the Hon'ble Rajasthan High Court on 15.01.2020 directing the issue of notices and that, in the meanwhile, operation of this Authority's order dated 23.10.2019 shall remain

stayed. In view of the said order of the Hon'ble High Court, further proceedings were stayed in the present matter on 23.09.2020.

The hearing on the execution application was resumed after the complainants submitted an order dated 31.08.2021 passed by the Hon'ble Rajasthan High Court in the aforesaid writ petition, whereby the said writ petition was dismissed as withdrawn

The respondent produced an interim order dated 05.05.2021 passed by the Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No. 5474/2021.

Though the aforesaid D.B. Civil Writ Petition was filed in connection with some other matter, a general stay order was passed therein as aforesaid, staying all proceedings against the respondent that were pending before this Authority. The respondent does not appear to have removed the defects therein, but the aforesaid D.B. Civil Writ Petition No. 5474/2021 was tagged with D.B. Civil Writ Petition No. 1456/2021, which has since been disposed of by the Hon'ble High Court on 14.12.2021 whereby all stay orders in the proceedings pending before this Authority have been lifted and the petitioners have been given liberty to file reply/appeal upto 15.01.2022.

Counsels of the respondent submit at the hearing today that they propose to file an appeal in the matter before 15.01.2022. Meanwhile, no adverse orders may be passed against the respondent.

The complainants, on the other hand, submit that their complaint was decided by this Authority more than two years ago, directing the respondent to refund the deposited amount of Rs. 15,79,653/-. But the respondent has been delaying compliance of the said order of this Authority, on one pretext or another. At present, there is no stay order of the Hon'ble High Court applicable to the present matter. The writ petition in the present matter was dismissed by the Hon'ble High Court on 31.08.2021, with a liberty to the respondent to file an appeal, but the respondent has not filed any appeal till date and the limitation of 60 days for filing appeal, even if reckoned from the date of the said order of Hon'ble High Court, has already expired. Therefore, the respondent may be compelled to refund their deposited amount in compliance of this Authority's order dated 23.10.2019.

Having heard the parties and having perused record of the case, authority find that the respondent is simply misusing the process of law so as to avoid or delay the compliance of this Authority's order dated 23.10.2019. There is no justifiable reason for the respondent not to have filed an appeal against this Authority's order dated 23.10.2019, even while the Hon'ble High Court had granted him liberty to do so. Against a limitation of 60 days from the date of the order of Hon'ble High Court, 110 days have passed and the respondent has not filed any such appeal. They now propose to file an appeal. They are welcome to do so. But, their proposal to file an appeal does not stay the hand of this Authority from enforcing its order dated 23.10.2019. The fact remains that, as on date, there is no stay order of the Hon'ble High Court or the Appellate Tribunal that applies to the present case. Therefore, under section 34(g) of the Act, this Authority is duty-bound to enforce its order dated 23.10.2019 forthwith.

From a perusal of online record of the Authority, authority find that the project in question 'Arihant Dynasty' stands completed on 18.07.2021; and, as per the latest Quarterly Progress Report submitted by the respondent, out of total 245 flats, 239 have been sold and 6 flats remain unsold. **Out of 6 unsold flats, Flat No. 904 (2 BHK), Flat No. 219 (1 BHK) and Flat No. 509 (that was allotted to the complainants), are hereby attached under section 40(2) of the RERA Act read with Rule 26 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017; and Registrar of the Authority is directed to take possession of these 3 flats and put them to auction to recover the amount payable to the complainants. From the date of taking over possession of these 3 flats and until the date possession is handed over to the auction-purchaser, these flats will be kept in the possession of Shri Dilip Kumar Sharma, the complainant, as receiver of the attached property. Registrar of the Authority is further directed to comply with the directions hereinabove and submit action taken report on the next date of hearing.**

PART-IV
NOTIFICATION & CIRCULARS

PUNJAB REAL ESTATE REGULATORY AUTHORITY

Date – 15th November, 2021

Subject: Withdrawal of application for registration by a real estate agent.

Section 9 of the Real Estate (Regulation and Development) Act, 2016 (the Act) requires every real estate agent to obtain registration under the Act before facilitating the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project registered under the Act.

Rule 9(2) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 requires an agent to pay registration fee at the time of application as per Schedule provided in the Rules.

However, there is no explicit provision with regard to withdrawal of an application by an agent during the process of registration under the Act. The matter has been reviewed considering practical convenience to the agents and it has been decided by the Authority that in case an applicant applies for withdrawal of the application for registration before the expiry of period of 30 days from its submission, fee to the extent of 10% paid under the Rule 9(2) shall be retained as processing fee by the Authority and remaining amount shall be refunded to the applicant. However, if the application is received after the expiry of the 30 days from the date of application, full registration fee shall be forfeited. The order is issued with the approval of the Authority in the 16th Regular Meeting held on 28.09.2021.

KERALA REAL ESTATE REGULATORY AUTHORITY

K-RERA/T31102/2420

Date – 15th November, 2021

Order

Subject:- Kerala Real Estate Regulatory Authority - Registration of Real Estate Streamlining the process of application -

With regard to submission of application for registration of ongoing as well as new projects, the Kerala Real Estate Regulatory Authority has resolved the following, inviting powers vested on them under section 35 and 37 of the Act.

1. Confirmation of requirement of a valid permit for registration process

As normal situation restored after the pandemic, the Authority decided to stream line the application scrutiny according to the general merit of the application and decided to withdraw the order No.K-RERA/T3/102/2020(1), dated 06.01 .2021 relaxing the prerequisite for a valid building permit by producing an affidavit cum declaration.

Hence it is hereby notified that all applications received in this office including those pending registration for want of further information or rectification shall be processed based on full merits and satisfactory submission of all genuine supporting documents as required under Section 4 and 11 of the Real Estate (Regulation and Development) Act 2016 read with Rules 3, 4, 5 and 17 of Kerala Real Estate (Regulation and Development) Rules, 2018.

2. Avoiding mistakes and mismatches in the supporting documents

It is noticed that the applications for registration coming online have a lot of mistakes and some promoters have uploaded incomplete /wrong documents and details in the wrong fields.

It shall also be noted that mere registration of a real estate project shall not be construed that the details furnished by the promoter are found by the authority as correct. The authenticity of the details or documents, which are submitted by the promoter and uploaded in the website of the authority as mentioned above, shall be the sole responsibility of the promoter concerned as provided under Rule 17(4) of the Kerala Real Estate (Regulation & Development) Rules, 2018. The promoters are bound to ensure that they received all required approvals and permits and all information furnished are true and accurate as declared by them during the

registration process. If details or documents furnished are incorrect or deficient, it will lead to litigations and may attract penal action against promoter under section 60 of the Real Estate (Regulation & Development) Act, 2016.

3. Project proposals in phases of development

For projects proposed to be developed in phases, the application for registration of each phases shall be enclosed with approved development permit / layout plan for the entire project area including all phases planned. This means the promoter has to obtain development permit /layout approval by clearly showing the phases in the drawings submitted to the authority concerned. As provided under Section 3(2) Explanation.- of the Act every such phase shall be considered as a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately. All sale agreement documents concerned shall incorporate a schedule of the amenities proposed for the entire area as well as pertaining to the particular phase. As provided under Section 4(2)(c) of the Act, authenticated copy of the approvals and commencement certificate from the competent authority for each such phases shall be produced.

4. Issue of registration certificate to villa projects

In the case of issue of registration certificates to villa projects, only the details of development permit will be recorded in the registration certificate.

5. Development permit for number of plots proposed to be developed exceeds eight.

In case of registration of real estate projects, where the number of plots proposed to be developed exceeds eight, as provided under Section 3(1) & (2) of the Act, development permit shall be obtained from the competent authority

PUNJAB REAL ESTATE REGULATORY AUTHORITY

Circular No. RERA/LEGAL/2021/15No.

Date – 06th December, 2021

The judgment dated 11.11.2021 of Hon'ble Supreme Court in the case titled “M/S Newtech Promoters and Developers Pvt Ltd vs State of UP and Others etc.” in Civil Appeal No(s) 67456749 of 2021 and other connected matters was considered in detail by the Authority in a meeting held on 22.11.2021; and after due deliberations, it has been decided as follows:

I. Complaints against unregistered projects:

- A. No complaint under Section 31 of the Act filed against any unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record.
- B. In case of complaints against unregistered projects filed prior to passing of the judgment dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgment dated 11.11.2021.

II. Jurisdiction to hear complaints:

- A. Complaints falling under Section 18 (1) of the Act where the claim is only for return of the amount paid by the allottee, and interest on this amount, shall be dealt with by the Authority.
- B. Complaints falling under the proviso of Section 18 (1) of the Act seeking interest for the period of delay in delivery of possession will continue to be heard by the Authority.
- C. Complaints where only the claim for compensation, or compensation and interest thereon, is claimed under Sections 12, 14, 18 and 19 of the Act shall be dealt with by the Adjudicating Officer.

- III. In the case of complaints pending with the Adjudicating Officer, where the claim is for refund of the amount paid by the allottee and interest on the refund amount along with compensation, the Adjudicating Officer shall pass an order to forward one copy of such complaints to the

concerned Bench for adjudication on the issue of refund and interest thereon. One set will be retained with the Adjudicating Officer to adjudge compensation under the provisions of the Act, if the complainant chooses to press for this relief.

- IV. In case of fresh complaints in which the composite relief of refund, interest and compensation is claimed, the Registry/Legal Branch of Authority shall advise the complainant to file two separate complaints i.e. (i) for claim of refund of amount paid by the allottee and interest thereon in Form 'M' and (ii) for his/her claim of compensation and interest thereon in Form 'N' (if the complainant (s) want to press the relief of compensation). In other words, the complainant (s) shall have to file a separate claim in Form 'N' before the Adjudicating Officer for compensation at the initial stage itself, in addition to his claim in Form 'M' for refund of amount deposited and interest thereon.
- V. Complaints filed prior to passing of judgment dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, shall be scrutinized by the Registry/Legal Branch of the Authority in accordance with the above decisions. All such complaints will be transferred to the Authority or the Adjudicating Officer.
- VI. All applications for rectification/review of orders, and execution of orders will be taken up by the Authority or its Bench or the Adjudicating Officer, whoever passed the original order whose execution is sought.

The above will apply with immediate effect to all pending complaints and to those to be received in future.

The above is for information of, and compliance, by all concerned. The Circular No. RERA/PB/LEGAL/24 dated 05.03.2021 shall stand modified to this extent.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/ Secy/ File No. 27/ 268 /2021

Date – 07th December, 2021**Subject: Regarding Registration of Sale Component of Redevelopment Projects****ORDER**

Whereas, there are several redevelopment projects being undertaken in the State, such as Slum Rehabilitation Projects, Redevelopment of Housing Societies, Redevelopment of Housing Schemes of MHADA & Other Public Authorities, Cluster Redevelopment! Redevelopment of Cessed Buildings etc. under 33(5), 33(7), 33(7 A), 33(78), 33(9), 33(9A), 33(98), 33(10), 33(10, 4), etc. of Greater Mumbai DCPR 2034 and under 7.3, 7.4, 7.6, 1.4.6, 74.7, etc. of UDCPR for Maharashtra State.

And whereas, the Sale Component in these redevelopment projects needs to be registered with MahaRERA as per Section 3 of the Act. And whereas, there is a need to clarify the details of the documents to be submitted by Promoter for these projects so as to ensure completeness of the registration application and removal of any ambiguity. This shall ensure comprehensive information is available to citizens in a simple and easily understandable formats, ensuring informed decision making. This shall enhance transparency and citizen centricity in real estate sector in the State.

Therefore, the following documents have to be attached for registration of Sale Component of Redevelopment Projects:

- Resolution / NoC from Society/Association of residents of the rehabilitation component confirming the Promoter's rights to undertake the redevelopment project.
- LoI / NoC / Equivalent Document from the Planning Authority confirming Promoter's rights to undertake the redevelopment project.
- Valid Commencement Certificate of Sale Component from concerned Planning Authority.

- All the above documents should be in name of the Promoter entity. Where the Promoter's name is not on Commencement Certificate, a copy of the collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be, confirming the right of Promoter entity to execute the agreement for sale or such other document, in respect of the saleable component.
- All the documents provided above should be clearly legible.
- The data provided in the documents should be current up-to-date and true on the date of submission of application.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No. F1(31)RJ/RERA/2019/2833

Dated: 08.12.2021

Minutes of the 9th Meeting of the Authority — 15.11.2021

The 9th meeting of the Rajasthan Real Estate Regulatory Authority was held on 15.11.2021 at 3.00 pm under the Chairmanship of Shri Nihal Chand Goel, Hon'ble Chairman of the Authority, in his chamber at Udyog Bhawan, Jaipur.

Present:

1. Shri Nihal Chand Goel, Hon'ble Chairman (in Chair)
2. Shri Shailendra K. Agarwal, Hon'ble Member
3. Shri Salvinder Singh Sohata, Hon'ble Member

In attendance:

1. Shri Hari Kumar Godara, Adjudicating Officer
2. Shri Ramesh Chandra Sharma, Registrar

Agenda-wise discussion held and decisions taken:

Agenda-1: Confirmation of the minutes of 8th Meeting of the Authority held on 24th August, 2021

Decision

9.1 The minutes of 8th meeting of the Authority were confirmed.

Agenda-2: To discuss the provisions of section 3(2) of RERA Act, 2016

Decision

9.2.1 The provisions of section 3, particularly clause (a) of subsection (2) of section 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), were discussed in detail. In this context, observations of the Authority in its order dated 05.08.2020 passed in the matter of "Suo Moto vs. Shivaaz Developer LLP" (File No. F.15(44)RJ/RERA/C/ 2019) were also noted. Having taken into account the intent and purposes of the Act and the fact that the threshold for the requirement of registration has been mentioned in Proviso to the said clause (a) as "five hundred square meters or eight apartments", it was decided as in para 9.2.2 following.

9.2.2 All such real estate projects are required to be registered under the Act where the area of land proposed to be developed exceeds five hundred square meters or the number of apartments proposed to be developed exceeds eight (inclusive of all phases). That is to say that a real estate project is required to be registered under the Act, if it satisfies either of the following two conditions:

(i) The area of land proposed to be developed exceeds five hundred square meters;
OR

(ii) The number of apartments proposed to be developed exceeds eight.

Conversely, a real estate project is not required to be registered under the Act, if it satisfies both the following conditions:

- (i) The area of land proposed to be developed is less than or equal to five hundred square meters; and
- (ii) The number of apartments proposed to be developed is only eight or less than eight.

Thus, if either of these two conditions is not met, the real estate project is not exempt from registration under clause (a) of subsection (2) of section 3 of the Act.

Moreover, for the purpose of determining whether a real estate project requires to be registered under section 3 or should be treated as exempt under clause (a) of sub-section (2) of section 3 of the Act, the area of land and the number of apartments proposed to be developed in the project will be reckoned on the basis of the project as it is marketed, not so much on the basis of how it is physically being constructed or developed on the ground. To illustrate —

1. If a promoter proposes to develop a project comprising nine or more plots, apartments or buildings, on a piece of land having an area of 500 sq mtr. or less and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or buildings in that project, the project is liable to be registered under the Act.
2. And, even if a promoter proposes to develop a project comprising only one or less than nine plots, apartments or buildings, but on a piece of land having an area of more than 500 sq. mtr. and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or buildings in that project, the project is liable to be registered under the Act.
3. Further, even if only one or less than nine plots, apartments or buildings are proposed to be constructed or developed on a piece of land having an area of 500 sq. mtr. or less, but advertised, marketed, booked, sold or offered for sale as part of a group of more than eight such plots, apartments or buildings, whether adjoining or not, the group of plots, apartments or buildings so advertised, marketed, booked, sold or offered for sale, is a project liable to be registered under the Act, even though individually such plots, apartments or buildings, being less than nine in number and

constructed/developed on independent pieces of land having an area of 500 sq. mtr. or less, may not require to be registered.

4. In none of the above 3 cases, or any other case where the project is otherwise required to be registered, if the promoter does not ever advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in that project, he is not required to register such project, because the requirement of registration under section 3 of the Act is triggered only if and when the promoter proposes to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in the project that he proposes to develop or is in the process of developing.

Agenda-3 To discuss the matter of Form-O & Form-N

Decision

9.3.1 Under Rule 35 and Rule 36 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017, read with the decision taken by the Authority in its 8th meeting held on 24.08.2021, the complaints where the only relief sought is of compensation, are required to be filed in Form-O as Application to Adjudicating Officer, while the complaints where any relief of interest, penalty, refund, possession or any other direction to the respondent is sought, are required to be filed in Form-N as Complaint to the Authority. In complaints filed in Form-N, if the complainant so wishes, he can also make a prayer of granting him liberty to seek the additional or alternative relief of compensation from the Adjudicating Officer and file an application in Form-O for that purpose.

9.3.2 But some complainants have in the past, due to lack of clarity on the respective jurisdictions of the Authority and the Adjudicating Officer, filed complaints in the inappropriate form before the inappropriate forum. In this context, the Authority has decided that —

1. The complaints pending for hearing before the Adjudicating Officer, wherein some relief other than compensation has been (or has also been) sought, shall be transferred by him to the Authority, under intimation to the parties concerned, while also informing them of the date of hearing before

the Authority (which date shall be settled by him in consultation with Dy. Registrar (Court) attached with the Authority);

2. The complaints pending for hearing before the Authority, wherein the only relief sought is of compensation, shall be transferred by the concerned Bench of the Authority to the Adjudicating Officer, under intimation to the parties concerned, while also informing them of the date of hearing before the Adjudicating Officer (which date shall be settled by it in consultation with Asst. Registrar (Court) attached with the Adjudicating Officer);
3. The complaints pending for hearing before the Authority, wherein a comprehensive relief of refund, interest, penalty or possession, as also of compensation, has been sought, will continue to be heard and disposed of by the Authority, i.e., by the concerned Bench of the Authority in respect of the relief(s) sought other than that of compensation. If, while the Authority is deciding the complaint, holding it to be a case of violation of the provisions of the Act and/or the rules and regulations made thereunder, the complainant insists on the additional or alternative relief of compensation being granted, the Authority may either grant him liberty to file an application in Form-0 before the Adjudicating Officer or transfer the case file to the Adjudicating Officer for determination and award of compensation, if any be found due to the complainant.

9.3.3 In the matter of complaints that have not yet been fixed for hearing and new complaints that get filed in future (in Form-N or Form-O), it was decided in 7th meeting of the Authority that the Registry will check each and every complaint (whether filed in Form 'N' or Form 'O') with regard to jurisdiction, to determine whether it falls within the jurisdiction of the Authority or the Adjudicating Officer according to the procedure laid down in the matter of "Amit Kumar Lamba V/s Shekhar Home Developers" decided by the Authority on 23.04.2019. For deciding whether a complaint is to be referred to the Authority or to the Adjudicating Officer or the complainant is to be advised to file it in the other Form, Deputy Registrar will send it to Registrar. On the basis of relief claimed in the complaint filed, Registrar will decide whether it is to be referred to the Authority or to the Adjudicating Officer. The complaints wherein refund is demanded shall necessarily be referred to the Authority.

To partially modify and give effect to the above decision of the Authority, it was further decided that —

1. To determine whether a complaint falls within the jurisdiction of the Authority or the Adjudicating Officer, the Registry will henceforth refer, not to the Authority's decision in the matter of 'Amit Kumar Lamba V/s Shekhar Home Developers', but to the subsequent decision taken by the Authority under Agenda-2 of 8th meeting of the Authority held on 24.08.2021.
2. The Registry will make a preliminary scrutiny of each and every complaint (whether filed in Form-'N' or Form-'O') in following aspects, before issuing show cause notice to the respondent(s):
 - a. whether the complaint is within the territorial jurisdiction of this Authority, i.e., whether the project in question is located in Rajasthan;
 - b. whether the subject matter of the complaint is under the purview of RERA Act;
 - c. whether the complaint is within the jurisdiction of the Authority or the Adjudicating Officer and has been filed in appropriate Form (Form-'N' or Form-'O', as the case may be);
 - d. whether the complainant is an aggrieved person. In the case of complaints filed by the allottees, it shall be particularly seen that the complaint has been filed in the name of the person(s) in whose favour the agreement for sale has been executed or the booking receipt or allotment letter has been issued; and
 - e. whether name and other particulars of the respondent(s) have been correctly shown as per the project details registered with the Authority or the agreement for sale or other documents submitted with the complaint

Based on this preliminary scrutiny, the Registry shall convey its objection, if any, to the complainant, who will then modify the complaint accordingly. For this, an objection module shall be incorporated in the existing online complaint module. And, if the complaint/ modified complaint is

found to be in order, a show cause notice shall be issued to the respondent(s) along with a copy of the complaint.

After filing the complaint online, the complainant shall submit as many hard copies of the complaint as are the respondents plus one. It will be the duty of the party/counsel submitting a reply, rejoinder or any other applications/documents, to serve an advance copy thereof on the opposite side before submitting the same to the Authority. All replies, rejoinders or any other applications/documents shall be submitted to the Authority only in a single copy.

Agenda-4 To discuss the provisions of section 32 of CPC for enforcing attendance of parties at hearing stage

Decision

9.4 After discussions, it was decided that when a party is not present at the hearing despite service of notice, usually the Authority or the Adjudicating Officer need not take any further action to enforce his attendance. In such cases, as contemplated under Rule 35(2)(j) of RERA Rules, 2017, matter can be heard/decided ex parte. Where the complainant does not submit the required documents or remove the defects/deficiencies pointed out, the complaint may be dismissed in default by the Registrar at the stage of preliminary scrutiny and by the Authority or the Adjudicating Officer, as the case may be, if it has been taken up for hearing.

Agenda-5 To discuss the provisions for enforcing attendance of parties at execution stage, Order 21 Rule 37-40 of CPC

Decision

9.5 After discussing relevant provisions of the Act, the Land Revenue Act and the CPC, it was decided that following action may be taken in case of execution of orders passed by the Authority:

1. In the first instance, when the notice for execution of order comes up for the hearing, the Authority may impose per day penalty under section 63 of the Act, while granting some further time for complying with the order and for depositing the penalty.
2. At the next or adjourned hearing, if the order remains uncomplied, the Authority may proceed to recover the ordered amounts either by issuing a recovery certificate under section 40(1) to the District Collector concerned

or by issuing directions under section 40(2) of the Act to the Registrar of the Authority. Where considered necessary, the Authority may also resort to suspension/revocation of registration of the project, arrest/civil imprisonment of the judgment-debtor or any other measures considered appropriate in the facts and circumstances of the case.

Agenda-6 To discuss the present system of Show Cause Notice and Notice for Hearing

Decision

9.6 It was decided that the present system of first issuing a show cause notice for reply on the receipt of complaint and subsequently a notice for hearing on the receipt of reply, shall be dispensed with; and henceforth one comprehensive notice, in the nature of a show cause-cum-hearing notice, will be issued to the respondent(s), along with a copy of the complaint, while indicating the day, date, time and place for appearance of the parties. A copy of the notice shall be endorsed to the complainant, requiring him to appear on the date fixed for hearing.

Agenda-7 To discuss the issues concerning attachment of units in incomplete projects

Decision

9.7 The members took note of the order passed by the single bench of Hon'ble Chairman in Complaint No. 2020-3958 & connected matters. In the interest of the Act's overarching objective of project completion, it was decided that incomplete flats in incomplete projects may not be attached, except when the construction is stalled at initial stage and project land is to be attached along with the structures thereon or when registration of the project has lapsed and the Authority decides to oust the promoter from the project under section 8 of the Act. If, however, the project is completed and there are some unsold flats or flats of the promoter, it may be best to attach such flats in the execution proceedings. Other properties of the promoter may be attached if the complainant furnishes, by way of an affidavit, the details of such properties, during the execution proceedings.

Agenda-8 Adoption of certain rules of the State Government with suitable modifications

Decision

9.8 The item was withdrawn to bring it up afresh in the form of a Schedule of Powers for the purpose of using the extant rules of the State Government in the Authority.

9 Additional Agenda Items taken up with the permission of Chairman

- (1) To note the observations contained in the judgment of the Hon'ble Supreme Court passed on 11.11.2021 in the matter of M/s Newtech Promoters and Developers Pvt. Ltd., particularly on the permissibility of single-member benches in a Real Estate Regulatory Authority**

Decision

9.9.1 Having discussed the contents of the aforesaid judgment of the Hon'ble Supreme Court, it was found that the judgment of Hon'ble Allahabad High Court passed on 04.02.2020 in civil writ petition No. 2248 of 2020, which was the guiding factor for this Authority when it decided to constitute single-member benches in the Authority in its 5th meeting held on 25.09.2020, has been upheld by the Hon'ble Supreme Court. Regulation 24 (a) and decision dated 05.12.2018 of UP RERA Authority, which has been duly considered by the Hon'ble Supreme Court in the said judgment, is in pari materia with Regulation 9 and decision dated 25.09.2020 of this Authority and, therefore, the said decision dated 25.09.2020 of this Authority is fully covered by the said judgment passed by the Hon'ble Supreme Court; and the orders being passed by the single-member benches of this Authority do not suffer from any defect of jurisdiction/quorum under the provisions of the Act.

Accordingly, it was decided to bring this fact to the notice of Hon'ble Rajasthan High Court by way of an application in the writ petitions pending before it on the subject.

(2) Registration of development agreements

Decision

9.9.2 Based on a decision taken in the 4th meeting of the Authority, an order was issued by the Authority on 12.02.2020 that for the purpose of registration of a project where the promoter is not the owner of the project land, the Authority will accept the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, duly executed, entered into between the promoter and such owner, if and only if such agreement is registered under the Indian Registration Act, 1908.

Having regard to the fact that registration of such documents has never been compulsory under the said Act, and with a view to ameliorate the difficulties of the promoters who had paid the due stamp duty before the aforesaid order was issued on 12.02.2020 but have not got the document registered, it was decided that a clarification may now be issued to the following effect:

That if the collaboration agreement, development agreement, joint development agreement or such other agreement was executed and stamp duty was paid at the prevailing rates before the issue of aforesaid order dated 12.02.2020, and the document is certified by Inspector General, Dy. Inspector General or Collector (Stamps) to have been duly stamped, it will be accepted by the Authority, without insisting on its registration.

There being no other business, the meeting ended with a vote of thanks to the Chair.

GUJARAT REAL ESTATE REGULATORY AUTHORITY

Order No.: 57/2021

Date – 10th November, 2021

Subject: Project Completion Compliance — Submission of all requisite Documents

Gujarat Real Estate Regulatory Authority has made available the online facility for Project Completion Compliance with required documents as per the Authority Order No 30 of 27th September, 2019. Accordingly, promoters are required to submit:

- i. Declaration in the form of an affidavit for completion of the project along with:
- ii. Architect Certificate in Form - 4 (as per Order 20)
- iii. Building Use Permission / Occupancy Certificate
- iv. Society Registration Certificate &
- v. All applicable No Objection Certificates (NOC)

These documents are critical for Project Completion Compliance. It has however, been noticed that some promoters have not filed the above documents.

Promoters of all projects are directed to ensure that Project Completion Compliance filed by them on Gujarat RERA Portal complies with Order No 30 of the Authority and

all certificates / documents along with applicable NOCs are duly submitted. In case any of the documents have not been submitted, the same has to be updated for their respective projects on GujRERA Portal using Promoter's login. Promoters filing their Project Completion Compliance must ensure compliance with Order No 30 and ensure that the documents (i) to (v) above for their respective projects are duly uploaded on the Authority portal.

After a critical review of the issue the following directions are issued by GujRERA Authority for compliance by the promoters:

- i. Promoters who had filed their QE before September - 2019 without BU and society registration certificate, shall be allowed to upload these documents on the portal without any processing fee.
- ii. Promoters who had filed their QE after September - 2019 without BU and society registration certificate, shall be allowed to upload their necessary documents on portal by paying processing fee as under.

No.	Project cost	Processing fees
1	<25cr.	10,000
2	25-50cr.	20,000
3	50-100cr.	40,000
4	>100cr.	60,000

- iii. Promoters who have not filed their Project Completion Compliance by project end date but have received BU and society registration certificate for their project, shall be allowed to file their Project Completion Compliance by paying below mentioned processing fee up to 31/12/21.

No.	Project cost	Processing fees
1	<25cr.	25,000
2	25-50cr.	50,000
3	50-100cr.	1,00,000
4	>100cr.	1,50,000

- iv. Penal action will be initiated against the promoters who fail to file their Project Completion Compliance from 01/01/2022. Similarly, penal action will be initiated against promoters of the projects whose Project Completion

Compliance is found not to be in conformity with Authority orders from 01/01/2022.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No. F1(31)RJ/RERA/2019/2882

Date – 15th December, 2021

Order

Subject: Registration of development agreements

Vide this Authority's order no. 490 dated 12.02.2020 it was directed that for the purpose of registration of a project where the promoter is not the owner of the project land, the Authority will accept the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, duly executed, entered into between the promoter and such owner, if and only if such agreement is registered under the Indian Registration Act, 1908.

In reference to the order dated 12.02.2020, it is hereby clarified as under:

That if the collaboration agreement, development agreement, joint development agreement or such other agreement was executed and stamp duty was paid at the prevailing rates before the issue of aforesaid order dated 12.02.2020, and the document is certified by Inspector General/Dy. Inspector General (Registration & Stamps) or Collector (Stamps) to have been duly stamped, it will be accepted by the Authority, without insisting on its registration.

This issues in pursuance of the decision no. (Decision 9.9.2) taken by the Authority in its 9th meeting held on 15.11.2021.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No. F.1(5)RJ/RERA/2018/D-2895

Date – 17th December, 2021

Subject:- Dispensing with the requirement of submission of hard copy of Form-H (Application for Registration of Real Estate Agent)

Vide Government of Rajasthan, Urban Development and Housing Department Notification No.F.10(32)UDH/3/2009/part dated 11.11.2021 (published in Rajasthan Gazette on 12.11.2021), in sub-rule (1) of rule 10 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules'), for the existing expression "in Form-H to the Authority", the expression "electronically in Form-H to the Authority through the official website of the Authority" has been substituted.

In view of the above, and in partial supersession of this Authority's order no. F.1(5)/RJ/RERA/2018/D-1196 dated 12.04.2018 (as amended vide order no. F.1(5)/RJ/RERA/2018/D-1747 dated 28.08.2018 and no. F.1(5)/RJ/RERA/2018/D-2356 dated 10.04.2019) insofar as it relates to registration of real estate agents, the requirement of submission of Form-H in hard copy, along with the supporting documents, is hereby dispensed with. Real estate agents will henceforth be registered based only on the online applications made on web portal of the Authority.

The applications for registration of real estate agents received online before 12.11.2021 and pending for approval for want of hard copy of the application and supporting documents, will also be processed without insisting on submission of such hard copy and payment of any delay processing charges on that account. However, delay processing charges, wherever already deposited in such pending cases of registration, shall not be refunded and approved cases shall not be re-opened.

PART-V

RERA NEWS

THE TIMES OF INDIA
06.11.2021

71,307 projects registered under RERA; 78,903 cases disposed so far

In over four years since RERA was fully notified, 71,307 projects have been registered under it across the country as of November 2021. Maharashtra, Gujarat and Karnataka lead in project registrations till date with 31,664, 9,272 and 4,497 projects registered respectively. UP and Haryana have disposed of the highest number of cases, accounting for an approximately 61% share of total disposed cases. In terms of grievances redressal of aggrieved homebuyers, as many as 78,903 cases have been disposed so far by various state and UT regulatory authorities. All States/UTs have notified rules under RERA except Nagaland, where it is under process.

Many developers with under-construction projects outside RERA had focused their resources on projects that did come under its ambit. This is no longer an option. The number of heavily delayed and even stalled units is likely to reduce. Another key issue addressed by the Supreme Court earlier was regarding the provision of appeal for developers whom RERA has fined. Previously, the appeal option was often used as a reason to delay matters. It has now been clarified that while fined developers can appeal, they must nevertheless deposit at least 25% of the fine amount with RERA.

BUSINESS STANDARD
11.11.2021

Builders can't cite RERA Act to deny investors assured returns: Haryana RERA

Haryana Real Estate Regulator Authority's Gurugram bench, while disposing of 26 cases related to non-payment of assured returns to investors, has made it clear that developers can't walk away from a contractual obligation or cite a new pact being executed because of the RERA Act coming into effect in 2016.

Several cases have been filed before the regulatory authority, with aggrieved allottees accusing real estate developers of luring them into investing in realty projects by

promising a certain rate of monthly returns on the money deposited as consideration against the unit's price. The assured returns schemes often appear very lucrative to buyers as they are promised an assured rate of interest and also possession of the property on the agreed date of completion.

While pronouncing the judgment, the authority, relying on the view taken by the Bombay high court on Neelkamal Realtors Suburbans case, held that the Real Estate (Regulation and Development) Act, 2016, has no provision for re-writing of contractual obligations between the parties. Therefore, the developers cannot be allowed to take a plea that there was no contractual obligation to pay the amount of assured returns to the allottees after the RERA Act, 2016, came into effect or that a new agreement is being executed with regard to that fact.

PTI

19.11.2021

SC verdict on RERA likely to force states to amend rules

The Supreme Court verdict upholding the jurisdiction of the Real Estate (Regulation & development) Act over all ongoing real estate projects that had not received a completion certificate before the law took effect could result in a major change in state specific rules based on the regulation.

The Supreme Court upheld the RERA Act's application to all projects that were unfinished at the time the act was enacted and had not received a completion certificate. RERA regulations in states such as Uttar Pradesh, Haryana, Punjab, Karnataka, Telangana, and Tamil Nadu are not in sync with the Act and may need to be amended to ensure that all active projects are covered under RERA.

TNN

25.11.2021

Delhi: All unregistered projects stayed by Rera Tribunal

In a move that will help homebuyers, Delhi's Real Estate Tribunal stayed all construction activity on unregistered projects. Taking note of Delhi Police's stand that it is investigating at least 27 FIRs registered against societies/individuals fraudulently

offering membership of housing projects, the Real Estate Appellate Tribunal noted that even though builders are covered under the Act, several projects have been constructed without seeking the mandatory registration. The object of the statute is to redress the grievances, if any, of the buyer against any builder in transactions of residential and commercial projects and to further ensure the timely completion of the projects. These objectives are not meant to be flouted by some unscrupulous people for their own benefit. All construction activity in NCT of Delhi, residential as well as commercial, being undertaken without registration with RERA is stayed till the registration of their project.

THE ECONOMIC TIMES

21.12.2021

Rajasthan HC holds banks accountable under RERA

In a landmark judgment, divisional bench of Rajasthan High Court has held that complaints against banks can be filed before the Real Estate Regulatory Authority (RERA) if lending banks has taken the possession of a project as a secured creditor, pursuant to the default of the promoter in paying the loan.

The court also held that in event of conflict between the RERA Act and the recovery proceedings of the bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, RERA Act would prevail.

TIMES OF INDIA

25.12.2021

Societies that change redevelopment builder must ensure new allottees get flats: MahaRera

In an order that clarifies the role of a housing society in redevelopment projects, the Maharashtra Real Estate Regulatory Authority recently held that societies have a duty to give reasons when changing a builder midway and must also honour allotments made by the old builder towards buyers of the project's free sale component.

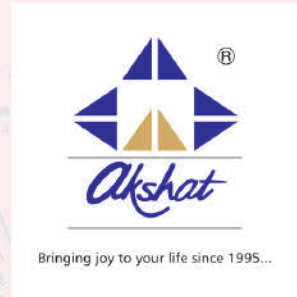
The order, given by MahaRERA chairperson Ajoy Mehta on December 3, held that in such projects, a housing society has the dual responsibility of not only ensuring that its original members are rehabilitated but also that the new allottees in the sale component are put in possession of the premises offered for sale.

THE ECONOMIC TIMES
28.12.2021

MahaRERA can decide payout for mental agony to flat buyers

The Maharashtra Real Estate Regulatory Authority has held that it has jurisdiction to decide on compensation payable to flat purchasers for the mental agony caused due to delay in possession.

The order was passed on a complaint by Sanjay and Shailaja Gaikwad who sought not only direction to Omkar Realtors and Developers to hand over possession of the flat and to pay interest for delayed possession, but also Rs 2 crore compensation for the “mental torture and agony” caused to them.



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