

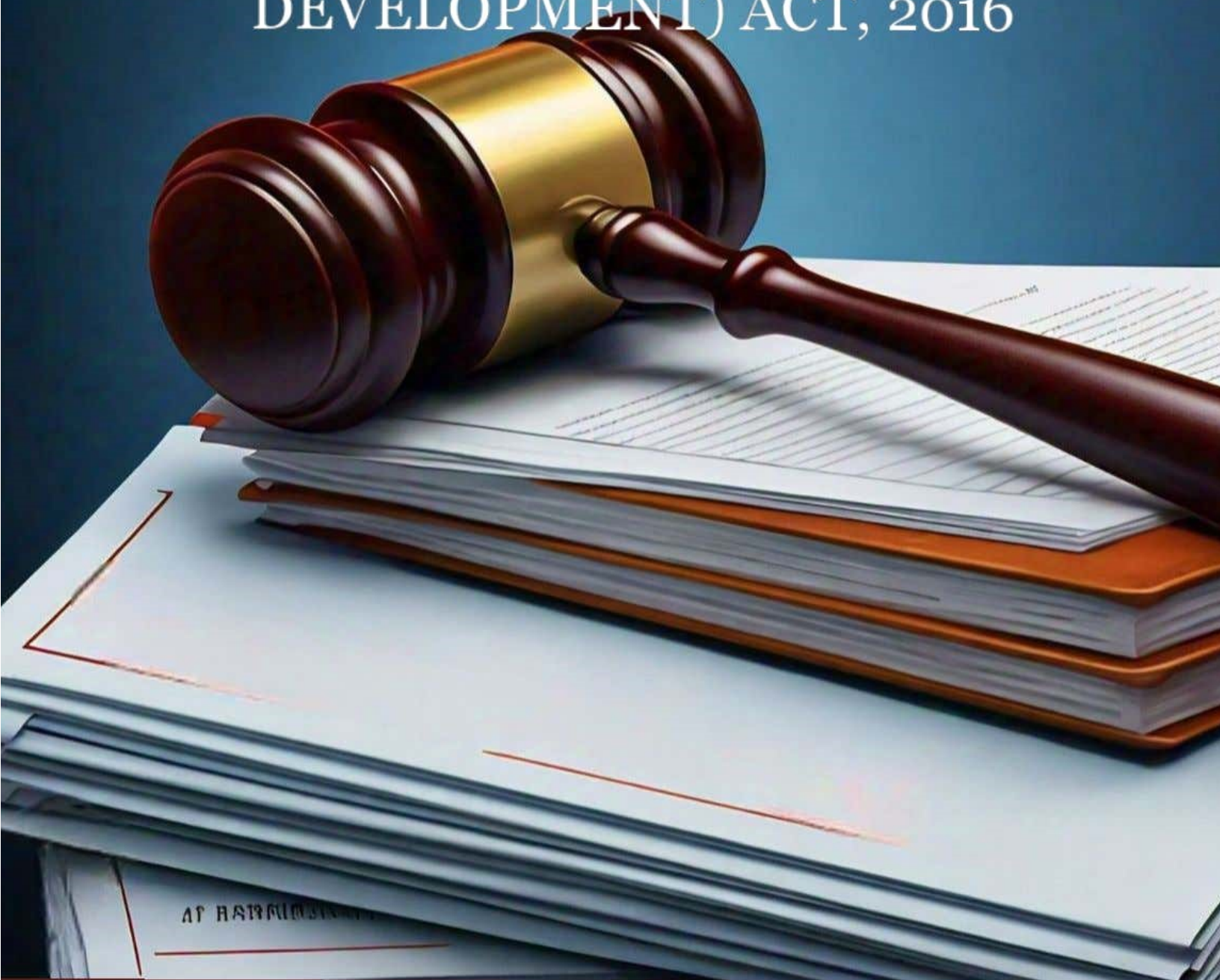
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RERA TIMES

REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016



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RERA TIMES

REAL ESTATE

(REGULATION AND DEVELOPMENT) ACT, 2016

(A Journal on Real Estate Bye Laws)

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FROM THE EDITOR'S DESK...



Dear Readers,

The world is witnessing pivotal changes across diverse fields, from South Asian geopolitics to shifts in global economies. Bangladesh, for example, faces a transformative phase amid an economic crisis and political upheaval. Prime Minister Sheikh Hasina's resignation and the appointment of Nobel Laureate Professor Mohammad Yunus as Chief Advisor to the interim government mark a turning point, potentially affecting regional alliances and foreign investments. Now, while beating up Awami League cadres, they had beaten up Hindus as there is a perception that Hindus in Bangladesh mean Awami League supporters. Instances like Hindu genocide and the problem of deep state is also relevant under the current situations prevailing in the country. For neighboring countries like India, along with global powers like the United States and China, these shifts could reshape strategies and alliances in South Asia. This editorial examines these changes and contemplates the ripple effects on Indian as well as global and regional relations.

In the economic arena, the IPO market of 2024 has shown a promising revival driven by changing economic conditions and investor enthusiasm across industries. Despite the optimism, factors such as geopolitical tension, elections, and interest rate fluctuations have introduced caution. Many experts expect IPO activities to remain strong into 2025 as global conditions stabilize, making this a dynamic area worth watching closely.

The U.S. election, too, has drawn considerable global attention. The re-election of Donald Trump as the 47th president could have significant implications for international relations, particularly with India. As the largest economy and a dominant military power, the United States influences global economic growth, trade policies, and peace efforts. Trump's victory suggests an emphasis on fiscal expansion, which could impact commodity-linked sectors due to inflationary pressures. Additionally, further stimulus from China might drive demand for commodities, reinforcing the intertwined economic landscape. US-India ties expected to strengthen, especially in defence under Trump. A great friendship shared between Prime minister Modi & President Trump is hopeful of unleashing harmony between both the nations. US-India ties could face a few bumps (mainly on the trade side) with Trump back in office, but their chemistry and political and ideological convergences will be a stabilizer. Like Trump's first term, India will also be hopeful of the Republican's support on its fight against global terrorism as well as keeping adversaries like Pakistan in check. India will be hopeful of a similar hard-nosed approach towards Pakistan by the Trump 2.0 administration.

On the domestic front, India's economy has shown resilience. GST collections in October 2024 reached Rs 1.87 lakh crore, marking an 8.9% increase over the previous year. The total GST revenue for 2024 thus far stands at Rs 12.74 lakh crore, reflecting robust growth. The financial health of Indian states like Gujarat and Maharashtra continues to bolster overall economic stability, demonstrating strong governance and fiscal management at the state level.

In recent political developments, the Haryana Assembly election saw the Bharatiya Janata Party (BJP) emerge as the single largest party, winning a historic third term. Contrary to exit polls, which had predicted a victory for the Indian National Congress-led alliance, the BJP secured 48 seats. The party's consistent governance and electoral success reflect India's inclination toward political stability, encouraging long-term investment and sustainable development.

India's foreign policy approach reflects a careful balancing act between its strategic relationships with the United States and Russia, using its unique position to promote cooperation wherever possible. This multi-aligned strategy underscores India's role as a pivotal global player in a challenging geopolitical landscape. India's bond with Russia is rooted in historical ties, encompassing long-standing cooperation in defense and trade. Simultaneously, India's partnership with the U.S. has deepened significantly in recent years, creating a dual-engagement strategy central to Prime Minister Modi's diplomatic agenda.

Meanwhile, on another critical front, India and China have initiated troop disengagement at two key friction points—Demchok and the Depsang Plains in Eastern Ladakh. According to defense officials, this move aligns with mutual agreements and marks a crucial step as Indian forces begin relocating equipment from these areas. This development follows a recent border pact, ending a four-year deadlock that began after the June 2020 clashes, which resulted in the loss of 20 Indian soldiers and an unspecified number of Chinese casualties. The resolution aims to ease tensions and signals a potential thaw in bilateral relations strained since the deadly confrontation.

A grading system for builders can improve transparency, quality, and accountability in real estate by evaluating builders based on project quality, timelines, compliance, and customer satisfaction. This encourages high standards, reduces delays, and builds trust with buyers, while also promoting fair competition and attracting investment. Ultimately, it ensures that buyers receive reliable, quality housing aligned with industry standards.

On the domestic regulatory front, the real estate sector has shown remarkable evolution post-COVID-19. RERA (Real Estate Regulatory Authority) registrations have risen, indicating increased transparency and consumer confidence. These regulations enhance accountability, promote quality standards, and support steady investment, driving the real estate sector's growth. Another innovative step would be implementing a grading system for builders, allowing buyers to assess track records and make informed decisions. Such measures could further formalize the sector, fostering trust and attracting both domestic and international investors.

Additionally, unregulated land conversion is a pressing issue threatening India's agricultural base. Establishing a complaint cell dedicated to illegal land conversion would support sustainable land use, protect food security, and balance growth needs. Such a framework is essential for preserving agricultural resources for future generations. RERA in the context of conversion of agricultural land to unauthorized colonies should take strict action. Registration of such colonies under RERA should be made mandatory and rules & regulations for their proper adherence to law should be done.

This editorial underscores the importance of adapting to shifting global dynamics, advocating regulatory reform, and fostering a balanced approach to growth. As we move forward, the interplay of regional developments, economic policies, and political stability will be instrumental in shaping a more resilient and prosperous future for India and the world.

**"सत्यमेव जयते नानृतं, सत्येन पन्था विततो देवयानः।
येनाक्रमन्ति देवयाताः, तथासत्यस्य पथः पठन्ति॥"**

**(Truth alone triumphs, not falsehood. The path of truth is the
way of the divine. Those who follow the path of truth are
guided towards enlightenment and prosperity.)**

**With Regards
CA Sanjay Ghiya
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E-mail: ghiyaandco@yahoo.co.in
Place: - Jaipur
Date: 07/12/2024**

PART-I
HIGH COURT JUDGEMENT
IN THE HIGH COURT OF ALLAHABAD

Order dated: 01st October, 2024

Larsen & Toubro Limited

.....PETITIONER

VERSUS

State of U.P. and others

.....RESPONDENTS

CORAM: Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

For Petitioner(s): Raghuvansh Misra, Sr. Advocate

For Respondent(s): C.S.C., Mohd. Afzal, Rahul Agarwal

Gist: A developer sought project registration under RERA but faced delays due to objections from the regulatory authority, which required additional documentation and a co-promoter designation. Arguing that statutory timelines granted automatic approval, the developer petitioned the court to recognize the project as registered and address selective regulatory practices.

The case between Larsen & Toubro Limited (Petitioner) and the State of Uttar Pradesh, represented by the Uttar Pradesh Real Estate Regulatory Authority (UPRERA) among others, centers around issues in registering a real estate project under the Real Estate (Regulation and Development) Act, 2016 (RERA). The case involves the contractual and statutory entitlements of Larsen & Toubro to develop land in Noida under an Assignment Agreement and Power of Attorney from Jaiprakash Infratech Limited (JIL), as part of a broader development initiated by the Yamuna Expressway Industrial Development Authority (YEIDA). YEIDA granted a concession to Jaiprakash Industries in 2003, transferring land to be developed into sectors for residential, commercial, and industrial projects. After a series of mergers and assignments, JIL was created as a Special Purpose Vehicle (SPV) for the expressway project. Subsequently, in 2017, JIL transferred development rights to Larsen & Toubro over portions of the land through an Assignment Agreement and a General Power of Attorney. Larsen & Toubro's project, named "Green Reserve," includes four towers in specified pockets of land, and the company sought registration under RERA in June 2023 to develop two of these towers.

Upon applying for registration, UPRERA raised objections, requesting that JIL be included as a co-promoter due to the approved project map being under JIL's name. UPRERA also required a no-objection statement from the Suraksha Consortium, which had taken over certain assets of JIL following a resolution plan approved by the National Company Law Tribunal (NCLT). Larsen & Toubro responded, asserting its exclusive rights under the Assignment Agreement and that its legal entitlements negated any need to include JIL as a promoter. In July 2023, UPRERA rejected the application but invited Larsen & Toubro to reapply, stipulating the need for

additional documentation. Larsen & Toubro reapplied, yet UPRERA maintained objections, continuing to request confirmations related to the land and layout approvals.

Despite multiple submissions by Larsen & Toubro addressing UPRERA's demands, the application for project registration remained unresolved past the statutory 30-day review period prescribed by RERA. Larsen & Toubro claimed that, under Section 5 of the RERA Act, the project was "deemed registered" due to the Authority's delay and requested corresponding login credentials for project details on UPRERA's website. Meanwhile, UPRERA issued a notice alleging unauthorized advertisement of the project, which Larsen & Toubro contested, claiming a third party was responsible. Subsequently, Larsen & Toubro filed a writ petition seeking judicial relief from UPRERA's notices and confirmation of the project's deemed registration status.

In court, UPRERA raised a preliminary objection on the grounds that Larsen & Toubro had an alternative remedy through the RERA appellate process. However, the petitioner argued that UPRERA exceeded its jurisdiction by rejecting an application deemed approved by statute. The court ruled in favor of addressing the merits, noting the alleged "excess of jurisdiction" as an exception to the alternative remedy doctrine. Arguments on behalf of Larsen & Toubro highlighted that RERA's purpose is consumer protection and promoter accountability rather than requiring land ownership for promoter status, which Larsen & Toubro fulfilled under the statutory definition. Furthermore, the Assignment Agreement provided the petitioner with comprehensive rights to develop, market, and sell project units without requiring JIL's involvement.

The petitioner also cited precedents where similarly structured developers received registration without landowner involvement, contending UPRERA's inconsistency in applying these standards as an example of selective regulation. Key provisions from the Assignment Agreement and Power of Attorney confirmed the petitioner's development rights, independent of JIL's co-promotion. Larsen & Toubro underscored RERA's deeming clause, arguing that statutory timelines implied automatic approval when the Authority fails to act, supported by jurisprudence that emphasizes enforcing legislative deadlines. Consequently, Larsen & Toubro requested the court to quash UPRERA's notices, declare its project registered by default, and direct the Authority to issue login credentials.

The court deliberated on RERA's objectives, balancing statutory timelines with consumer protection mandates. It scrutinized UPRERA's rationale for repeatedly requesting additional documents post-application and assessed whether UPRERA's requirements extended beyond RERA's intent or were justified under consumer safeguards. The decision would pivot on interpreting promoter obligations within the framework of RERA, the validity of statutory deeming provisions, and UPRERA's regulatory discretion in promoting fairness and transparency.

PART-II

REPORTING OF CASE LAWS

RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: Star Raison Landmarks

RESPONDENT: 1. Rajasthan RERA through its Registrar

2. Mr. Varun Kumar

CORAM: Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)

ORDER DATE: 24.09.2024

Appellant Representative: Mr. Rubal Tholia, Advocate

Respondent Representative: Mr. Chandra Vikram Singh, Advocate (R/1)

Mr. Prerak Swami, Advocate (R/2&3)

Mr. Gopal Lal Gupta in person (R/2&3)

Gist: The appeals challenge RAJ-RERA's unauthorized issuance of show-cause notices. The Tribunal found the notices inconsistent with the Real Estate Act, 2016, emphasizing judicial scrutiny for such actions. It set aside the notices, remanding the cases to the Regulatory Authority for reconsideration and accepted the delay condonation as genuine.

The present appeals, filed by the appellant-promoter under Section 44 of the Real Estate (Regulation and Development) Act, 2016 ("Act of 2016"), challenge the proceedings initiated by the Assistant Registrar, RAJ-RERA, Jaipur. The appellant was aggrieved by the actions taken in response to online complaints made by the respondents. The core issue raised in these appeals is whether the notices issued by the Assistant Registrar should be annulled on the grounds of being arbitrary and without jurisdiction. As the appeals involve the same legal question, they have been consolidated and are being addressed through this common order, as agreed upon by the counsels for both parties.

The appellant's counsel argued that the issuance of show-cause notices by the Assistant Registrar was per se illegal and violated the scheme and mandate of the Act of 2016. He relied on the Supreme Court's decision in **Newtech Promoters and Developers v. State of Uttar Pradesh** (2021 SCC Online SC 1044) to strengthen his claim, asserting that the Assistant Registrar's actions constituted a gross misuse of power. The Tribunal itself had previously recognized such misuse in **Appeal No. 125/2022, Skypeer Infrabuild LLP v. Sanjay Purohit & Ors.**, where it set aside similar notices in an order dated March 26, 2024. The Regulatory Authority, acknowledging the issue, also rectified a similar mistake in **Complaint No. 2023/6397, Sandeep & Ors. v. Star Raison Landmarks**, through an order dated March 11, 2024. These orders were presented to the Tribunal during the proceedings to substantiate the argument.

The appellant's counsel maintained that the Assistant Registrar acted outside the bounds of the law and argued that any such exercise of authority was not supported by the provisions of the Act of 2016 or judicial precedent. He emphasized that judicial functions, such as the issuance of notices, require careful consideration of the merits of each case. Consequently, not every complaint should automatically lead to the issuance of a show-cause notice without proper judicial scrutiny. The Assistant Registrar's actions, he argued, bypassed the requirement for due legal procedure and disregarded the need for a preliminary assessment of the complaints.

The respondent-allottee's counsel, however, contended that procedural lapses by the RAJ-RERA office should not invalidate the legitimacy of the respondents' claims. He emphasized that the substance of the complaints was important, and a failure to adhere strictly to procedural norms by the Regulatory Authority should not be used to defeat valid claims. Mr. Gravit Agarwal, counsel for RAJ-RERA, conceded that previous notices issued by the Assistant Registrar and Deputy Commissioner had been recalled, as acknowledged by this Tribunal and the Regulatory Authority.

The Tribunal also examined the delay condonation applications filed by the appellants. It found that the appellants had received certified copies of the relevant documents and realized that the notices did not comply with the provisions of the Act or the established legal procedures. The appeals were subsequently filed within the stipulated 60-day period. The Tribunal found that the delay in filing the appeals was genuine and not intentional. Consequently, the application for condonation of delay under Section 44(2) of the Act of 2016 was accepted.

Upon reviewing the order sheets and records pertaining to the issuance of the show-cause notices, the Tribunal observed that in *Appeal No. 125/2022, Skypeer Infrabuild LLP v. Sanjay Purohit & Ors.*, it had previously held that similar proceedings violated the legal procedures set out in the Act of 2016. The relevant portion of that order emphasized that the issuance of notices by the Assistant Registrar was unauthorized and beyond the scope of the law. The Tribunal reiterated that judicial functions, such as issuing notices, require thoughtful application of legal principles, and a decision to issue or withhold notices must be made judiciously.

The Tribunal referred to the *Newtech Promoters* case, emphasizing that there was no evidence that the Assistant Registrar had the authority to issue show-cause notices. According to the Supreme Court's guidelines, such authority must be expressly granted through a general or special order in writing. The issuance of notices, being a judicial function, requires that the Regulatory Authority evaluate each complaint's merits. **If there is no prima facie case, the Authority has the discretion to refuse to issue a notice. Issuing notices without careful legal assessment undermines the judicial process.**

Considering these observations, the Tribunal concluded that the appeals were meritorious. It ruled that the show-cause notices issued by the Assistant Registrar should be set aside. The cases are remanded to the Regulatory Authority, which is directed to reconsider the matters afresh and proceed according to the law. The Tribunal emphasized that any delay in filing the appeals should not prejudice the rights or interests of the parties. The appeals were thus allowed, and the interim applications were disposed of accordingly. The Tribunal ordered that a copy of this decision be provided to the parties, their counsels, and RAJ-RERA, Jaipur, and that it be recorded in each appeal's file. Finally, the case files were consigned to the record.

APPELLANT: Renu Singha

RESPONDENT: Indian Railway Welfare Organisation

CORAM: Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)

ORDER DATE: 24.09.2024

Appellant Representative: Mr. Abhishek Sharma, Advocate

Respondent Representative: Mr. Samkit Jain, Advocate

Gist: The appeal concerns a refund order issued by the Rajasthan Real Estate Authority, where the appellant sought interest on the refunded amount after withdrawing from a housing project due to delays. The Authority denied interest, citing the lack of a sale agreement, despite imposing a penalty on the respondent for violations.

The appeal referenced above challenges the order dated April 19, 2023, issued by the Rajasthan Real Estate Regulatory Authority, which provided specific directives regarding a real estate dispute involving the complainant, Renu Singhal, and the respondent, Indian Railway Welfare Organization. The Authority mandated that the respondent refund the entire amount of ₹49.09 lakh to the complainant within 45 days of the order, along with a compliance report to be submitted 15 days after the refund. Notably, the Authority declined to award any interest on the refunded amount, citing the absence of an executed sale agreement between the complainant and the respondent. The Authority acknowledged that while the promoter is obliged not to accept more than 10% of the total sale consideration without executing an agreement, the complainant also has a duty to request such an agreement. However, due to the lack of an executed sale agreement and the respondent's receipt of 98% of the total sale consideration without fulfilling this obligation, the Authority found the respondent in blatant violation of Section 13 of the Real Estate (Regulation and Development) Act of 2016. As a result, a penalty of ₹2 lakh was imposed on the respondent, to be paid to the Authority within 45 days, with a requirement for a compliance report 15 days thereafter. If the respondent fails to comply with these directives within the stipulated period, the complainant is permitted to recover the amounts from the respondent's assets in accordance with Section 40(1) of the Act and related rules.

The background of the case reveals that Renu Singhal booked a flat in the Group Housing project "Rail Vihar Jaipur Phase-III," launched by the respondent on November 10, 2014. The initial cost of the flat was ₹43.48 lakh, which was later increased to ₹47 lakh, with the complainant making a total payment of ₹45.09 lakh. The respondent assured that the project would be completed by December 2018; however, it subsequently obtained extensions, pushing the completion date to June 30, 2021. Frustrated by the delays in project completion and possession, the complainant withdrew her application on October 11, 2021, before a draw was conducted, and requested a refund. The respondent, disregarding this request, issued an allotment letter on December 8, 2021, prompting the complainant to protest through additional communications in December. It was further argued that the respondent failed to obtain both the "Completion Certificate" and the "Occupancy Certificate" from the competent authority, and while the respondent provided a Completion Certificate from an empaneled architect, it indicated that while the building was complete, it was not fit for habitation.

The April 19, 2023, order from the Authority mandated a refund of ₹45.09 lakh but did not award interest on the grounds that no "Agreement to Sale" was executed. The Authority imposed a penalty of ₹2 lakh on the respondent for accepting 98% of the sale consideration without an executed agreement, constituting a clear violation of the Real Estate Act. In her appeal, Renu Singhal contended that the Authority erred in denying interest on the deposited amount, emphasizing that the respondent's failure to complete the project in a timely manner justified her withdrawal and entitled her to interest under the provisions of the Act. The appellant referenced the case of Mohan Singh v. International Airport Authority of India to highlight the Authority's failure to acknowledge the necessity of awarding interest on refunds. The appellant further underscored the rights of allottees under Sections 18(1)(a) and 19(4) of the Act, asserting that a refund is warranted if the promoter fails to complete the project on time, supporting her claims with the ruling in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Ors.

Conversely, the respondent's counsel argued that the organization had complied with the April 19 order, refunding the full amount and paying the imposed penalty, which was accepted by the complainant. The respondent, a welfare society registered under the Societies Registration Act, claimed to operate on a "No Profit No Loss" basis, providing housing for railway personnel. The respondent's counsel contended that the appeal was filed in bad faith, despite the resolution of the complainant's grievances, and sought the dismissal of the appeal with costs.

In reviewing the appeal, it was noted that Renu Singhal had submitted a withdrawal application requesting her refund due to unavoidable circumstances, referencing the IRWO General Rules and asserting her entitlement to a refund as per Rule 20.3, which outlines the procedure for withdrawing after a booking letter is issued but before the allotment of the dwelling unit. According to this rule, the appellant is entitled to a refund of the full booking amount, minus certain deductions, if she withdraws before the allotment. The court found that the complainant had agreed to abide by these rules upon booking the unit, and thus, she could not claim a complete refund at this stage. Nonetheless, the respondent organization complied with the Authority's order by refunding the entire amount, which the appellant accepted.

The primary issue at hand was the entitlement to interest on the refunded amount. The Regulatory Authority previously declined to grant interest, emphasizing the complainant's responsibility to seek an agreement for sale. However, a closer examination of the Act revealed that the promoter bears the obligation to execute such agreements once a significant portion of the sale price is accepted. The Authority's imposition of a penalty on the promoter confirmed the violation of the Act's provisions, and the rationale for denying interest to the complainant based on her failure to request the agreement was deemed inadequate. The order from the Authority refusing to grant interest needed to be overturned, as the appellant is entitled to interest according to the prescribed rates under the Rajasthan Real Estate (Regulation and Development) Rules of 2017, which stipulates interest at the rate of SBI's highest Marginal Cost of Lending Rate plus 2%. Consequently, the appeal was granted in part, with the respondent obligated to pay interest on the refunded amount from the date of the withdrawal letter until the refund was issued. The respondent was instructed to ensure compliance with this order within 45 days, with a subsequent report to be filed within 15 days thereafter. The matter concluded with instructions for the parties involved and for the records to be properly maintained.

APPELLANT: ARG CG Developers LLP

RESPONDENT: Chitrakshy Sharma

CORAM: Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)

ORDER DATE: 22.10.2024

Appellant Representative: Mr. Prerit Goyal, Advocate

Respondent Representative: Mr. Harshal Tholia, Advocate

Gist: The appellant-respondents appealed against the Rajasthan Real Estate Regulatory Authority's orders concerning delays in possession and outstanding payments for a property. The Tribunal partially upheld the original order, allowing the appellant to adjust certain dues while affirming the directions for possession and interest payments to the complainants.

In the case, the appellant-respondents filed appeals under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against orders of the Rajasthan Real Estate Regulatory Authority (RERA). The initial order was issued on June 15, 2023, and was followed by a subsequent order on April 15, 2024. Both appeals involve similar parties and issues and have been consolidated for a common decision.

The complainants, Ms. Chitrakshi Sharma and Mr. Neeraj Kumar, filed a complaint stating that the late Shri Har Prashad Sharma (the father of Ms. Sharma and father-in-law of Mr. Kumar) had booked Flat No. 108 in Tower 2 of the project "ARG Ananta." The booking amount was paid, and the complainants subsequently deposited ₹18,09,164 against a total sale consideration of ₹21,56,000. An agreement for sale was executed on June 14, 2018, with project registration number RAJ/P/2017/054. The project had a registration validity until December 31, 2022, with a partial completion certificate obtained on March 30, 2022, for Blocks 1 and 2. The complainants were supposed to receive possession of the flat by August 2020, including a grace period of six months. However, due to the respondents' failure to deliver possession within the stipulated time, the complainants requested a refund along with interest and compensation of ₹5,00,000.

The appellant-respondents contended that the complainants had not paid an outstanding amount of ₹3,14,649, and that a demand for ₹1,02,324 was raised on April 29, 2021, for which interest of ₹62,629 accrued. They argued that, according to the agreement's clause on force majeure, they were not liable to pay compensation or interest due to construction delays caused by material shortages and the COVID-19 pandemic. The learned Regulatory Authority had already granted extensions for the project's completion.

Upon reviewing both parties' submissions, the Regulatory Authority issued an order on June 15, 2023, directing the promoter to hand over the flat to the complainants upon payment of outstanding consideration, which would be adjusted against accrued interest at a rate of 8.6%.

In Appeal No. 106/2023, the appellant argued that the Regulatory Authority failed to consider the terms of the agreement and the complainants' failure to pay installments on time. They also noted a dishonored cheque of ₹1,32,000. Appeal No. 106 was initially dismissed for non-prosecution but was later restored. The complainants filed an execution application to enforce the June 15, 2023, order, resulting in the freezing of the appellant's bank accounts.

The appellant then filed Appeal No. 196/2024, contesting the April 15, 2024, order, which issued a fresh recovery certificate reiterating the same grounds as in the earlier appeal. They maintained that the complainants had failed to pay timely installments and referenced the bounced cheque issue.

The respondents denied the appellants' allegations and claimed that the appeal was filed to avoid compliance with the June 15 order. They pointed to multiple letters indicating that recovery proceedings had begun and stated that the appellant was misusing the appeal process.

During the hearing, the appellant's counsel emphasized that a partial completion certificate was issued for Towers 1 and 2, and an occupancy certificate was granted on July 24, 2024. The appellant argued that the Regulatory Authority had failed to account for the complainants' outstanding payment obligations, including the bounced cheque.

The respondent's counsel refuted the appellant's claims, noting that the bounced cheque issue pertained to a prior allottee and had no bearing on the current complainants'

responsibilities. They argued that the appellant's attempts to introduce new allegations were unwarranted and delayed the resolution of the case.

The Tribunal noted that the appeals were filed with delays of 15 days and 146 days, respectively. However, given the circumstances and absence of rebuttal by the complainants, the Tribunal condoned the delays. It was determined that the flat was completed and ready for possession, subject to the clearance of outstanding amounts due from the complainants, which the appellant had previously acknowledged in demand letters.

The Tribunal also highlighted that the bounced cheque for ₹1,32,000 was never paid to the appellant and that the complainants, as successors to the previous allottee, remained liable for any outstanding amounts.

The Tribunal partially allowed Appeal No. 106/2023, confirming the order for possession while adjusting the outstanding amount of ₹1,75,500 against the complainants. Consequently, the Tribunal set aside the April 15, 2024, order and the recovery certificate issued on June 25, 2024, remanding the matter back to the Regulatory Authority for further hearings, ensuring both parties are heard.

In summary, while the appellant was entitled to adjust certain outstanding amounts, the overall direction for the transfer of possession to the complainants remained intact, emphasizing the need for prompt compliance with regulatory directives in the real estate sector.

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPELLANTS : Rajeshwari Ramesh Pillai

Ramesh Subramaniam Pillai

RESPONDENT: Aishwarva Avant Builders LLP

CORAM: SHRIRAM R. JAGTAP, MEMBER (J) & SHRIKANT M. DESHPANDE, MEMBER (A)

ORDER DATE: 27.09.2024

Appellants Representative: Mr. Aman Shukla (Advocate)

Respondent Representative: Mr. Tushar Kadam (Advocate)

Gist: The appeal stems from a MahaRERA order requiring execution of a registered agreement for a flat booking after the Allottees paid a significant sum. The Promoter's failure to sign the allotment letter led to a denied home loan, prompting the Allottees to seek a refund. The Promoter resisted, citing non-payment and dismissal grounds. The Tribunal ultimately found in favor of the Allottees, mandating a refund with interest due to violations of RERA provisions, emphasizing consumer protection and fairness in real estate transactions.

This appeal arises from an order dated January 27, 2021, by MahaRERA regarding complaint No. CC0060000000171648 filed by the Allottees. The Authority directed the parties to execute a registered agreement for sale within one month, referencing an allotment letter dated May 20, 2019. The Allottees contend that the Authority did not adequately address their requested reliefs.

The Promoter owns land in Mumbai where they launched the "Avant Heritage" project. The Allottees booked Flat No. 1603, paying ₹13,50,000 of a total consideration of ₹1,15,00,110. However, a home loan application was denied due to a missing signature on the allotment letter,

which was issued solely in the name of one of the Allottees. Consequently, the Allottees informed the Promoter of their inability to proceed and requested a refund, but the Promoter failed to respond or refund the payment.

The Promoter contested the complaint, asserting that it lacked merit and claimed no violations of the RERA Act occurred. They noted that the Allottees agreed to a discounted price contingent upon timely payments, which the Allottees failed to meet. After several correspondences and requests for payment extensions, the Allottees sought to cancel the allotment and demanded a refund, but the Promoter maintained that the complaint should be dismissed due to the Allottees' defaults.

The learned Authority issued an order stating that the Allottees could not claim a refund under Section 13 of the RERA Act, which does not specifically address refunds. Instead, the Authority directed both parties to execute a registered agreement for sale within one month, or else the Promoter must refund the Allottees' payment.

Upon review, it was determined that the Allottees had paid ₹13,50,000, exceeding 10% of the total consideration, but the Promoter failed to execute the necessary agreement. Furthermore, the Promoter's demand for an additional ₹6,50,000 violated Section 13 of the RERA Act. The appeal found that the Allottees were entitled to invoke Section 18 of the RERA Act due to the Promoter's non-compliance and lack of refund. Despite the Authority's direction for a full refund, the Promoter did not comply, nor did they provide a draft agreement.

The RERA Act 2016 does not allow promoters to forfeit earnest money upon cancellation of a booking without justifiable reasons. The Act emphasizes consumer protection, and the absence of evidence that the promoter suffered damages due to the Allottees' cancellation signifies that forfeiting the entire amount is against the Act's purpose. The Supreme Court highlighted the need for regulatory oversight to protect homebuyers, considering them vulnerable stakeholders.

In this case, the Allottees paid ₹13,50,000 but did not receive a registered agreement or refund from the Promoter, violating the learned Authority's order. Therefore, the Appellate Tribunal directed the Promoter to refund the full amount along with interest from the payment date until the amount is realized, asserting the Tribunal's inherent powers to ensure justice.

ASSAM REAL ESTATE APPELLATE TRIBUNAL

APPELLANTS : M/s Sai Construction

RESPONDENT: Manik Nandi

CORAM: HON'BLE MR. JUSTICE (RETD.) MANOJIT BHUYAN, CHAIRPERSON

ORDER DATE: 04.10.2024

Appellants Representative: Mr. Fazley Elahi Choudhury (Advocate)

Respondent Representative: Ms. M. Kumari (Advocate)

Gist: The appeal was filed by a promoter against a RERA order concerning the delayed handover of a flat in a real estate project. Despite the buyer's full payment, possession was delayed by six years. The Tribunal rejected the promoter's arguments on payment terms, refund discretion, and arbitration precedence, affirming RERA's order for flat handover.

The appeal is filed by M/s Sai Construction (the Promoter/Builder) against the final order passed by the Real Estate Regulatory Authority (RERA) in Complaint Case No. RERA/ASSAM/COM/2023/48. The case involves a real estate project named "SAI NIWAS" in Ulubari, Guwahati, where the respondent, Shri Manik Nandi, had purchased Flat No. 2(B), measuring approximately 1196 sq. ft. The parties had entered into a registered Memorandum of Agreement on 20.11.2015, where the total consideration for the flat was agreed to be Rs. 20,00,000, with the builder promising to deliver possession of the flat within 24 months, subject to force majeure conditions.

However, despite the respondent having paid the entire consideration, the possession of the flat was not delivered even after nearly six years from the scheduled handover date. As a result, the respondent filed a complaint with RERA on 17.08.2023, seeking two main reliefs: (1) possession of the flat with car parking space, and (2) execution and registration of the final sale deed.

In the present appeal, the appellant, represented by counsel Mr. Fazley Elahi Choudhury, raises three primary contentions. The Tribunal has reviewed the arguments of both parties and addressed the appellant's contentions. First, the appellant's claim that the total consideration for the flat was Rs. 40,00,000, instead of Rs. 20,00,000, was rejected. The Tribunal found no evidence to support this claim, noting that the Memorandum of Agreement clearly stated the total consideration as Rs. 20,00,000. Therefore, the appellant's first contention was without merit.

Second, the appellant argued that they should be discharged of all liability as they were willing to return the Rs. 20,00,000 paid by the respondent along with interest. However, this was rejected, as neither the Memorandum of Agreement nor the RERA Act grants the promoter the discretion to return the amount at their convenience. Under Section 18(1) of the RERA Act, the promoter is required to return the amount only upon the allottee's demand. Thus, the second contention was dismissed.

Lastly, the appellant contended that the arbitration clause in the agreement should take precedence over the RERA proceedings. The Tribunal upheld the jurisdiction of RERA, referencing Sections 88 and 89 of the RERA Act, which affirm that RERA is a special law providing additional remedies that cannot be overridden by an arbitration clause. Citing Supreme Court precedents, the Tribunal concluded that the remedy available under the RERA Act cannot be bypassed in favor of arbitration. Therefore, the third contention was also rejected.

The Tribunal concluded that there is no merit in the appeal and dismissed it. The order passed by RERA is upheld and must be complied with by the appellant/promoter. The appellant is directed to hand over possession of Flat No. 2(B) in the "SAI NIWAS" building to the respondent/complainant within 4 weeks from the date of the judgment.

The flat should be handed over on an "as is where is" basis, as agreed by the respondent's counsel. The case records are to be returned to the office of RERA, Assam, and copies of the judgment will be made available to the parties and sent to RERA, Assam.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**COMPLAINANT: Rajesh Kumar Sharma since deceased through his legal representatives****RESPONDENT: Terra Realcon Private Limited****Sunil Kumar****Mahendra Arora****CORAM: Smt. Veenu Gupta, Hon'ble Chairperson****ORDER DATE: 30.09.2024**

Complainant Representative: Yash Sharma, (Advocate)

Respondent Representative: Adv Rubal Tholia (Advocate)

Gist: In cases of delayed possession, if a project is now complete with a valid completion certificate, the buyer may be directed to accept possession while the promoter is liable to pay interest for the delay period, as specified under applicable real estate regulations. Refunds are typically discouraged once the project is completed.

A complaint was filed under the Rajasthan Real Estate (Regulation and Development) Act, 2016, regarding a delayed possession of flat B-403 in the 'Terra Castle' project. The buyer, who paid ₹21,95,534 of the agreed ₹22,53,550, was promised possession within 36 months plus a 6-month grace period, as per the April 2014 agreement. Since possession has not been delivered, the buyer seeks a refund of the paid amount along with interest until payment is completed.

The respondent-promoter filed a reply, referring to a similar case, *Dr. Poonam Kashyap vs. Terra Developers* (Complaint No. RAJ-RERA-C-N-2021-4556). In that case, the Authority directed the respondent to hand over the allotted flat to the complainant, allowing compensation for the delay period. This compensation would be adjusted towards the due installment and interest, but no interest would be charged from September 28, 2021, when the current complaint was filed. The respondent requested that the complainant be directed to take possession of the flat as per the agreement terms and that the complaint be dismissed.

In an additional affidavit, the respondent clarified that an incorrect completion certificate had been submitted earlier due to human error, as the project was only partially complete at that time. A corrected completion certificate dated December 28, 2022, was issued for Towers B and C by the competent authority. The respondent also submitted a letter dated December 16, 2022, from the project's empaneled architect, requesting the resubmission of the completion certificate for all three towers, Type-B (Tower-C) and Type-C (Tower-A and Tower-B).

The complainant's counsel argued that the respondent-promoter offered possession on April 20, 2022, even though the project was incomplete and lacked a completion certificate. Due to the unfinished state of the project, the complainant did not wish to take possession and instead sought a refund. However, if deemed appropriate, the complainant is willing to accept possession, provided that interest for the delay period is granted, as there had been no valid possession offer from the promoter.

The respondent's counsel argued that since a completion certificate was issued on November 28, 2022, the respondent has offered possession to the complainant as per the agreement terms. The respondent claimed that a refund is now difficult and requested that the complainant be directed to take possession of the flat. Citing the Supreme Court judgment in *IREO Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors* (Civil Appeal No. 5785 of 2019), which discourages refunds in completed projects, the respondent contended that granting a refund would not be in the

project's interest. However, the complainant is entitled to interest for the delay in project completion.

The Authority directed the complainant to take possession of the flat, as the project is now complete and has received a completion certificate. Due to the delay, the respondent-promoter is ordered to pay interest from the expected possession date of October 16, 2017, until November 28, 2022, when the completion certificate was obtained. The interest rate is set at 11.10% (SBI's highest MCLR + 2%), excluding any moratorium period. Compliance must occur within 45 days of this order being uploaded on the Authority's web portal.

COMPLAINANT: Anil Bagaria

RESPONDENT: Sahara Prime City Ltd.

CORAM: Smt. Veenu Gupta, Hon'ble Chairperson

ORDER DATE: 30.09.2024

Complainant Representative: CA Amit Kumar Kedia

Respondent Representative: Manoj Pareek (Advocate)

Gist: If a promoter fails to deliver possession of a property within the stipulated time, the allottee has an absolute right to seek a refund of the amount paid along with interest, as per the Real Estate (Regulation and Development) Act, 2016. The promoter is obligated to pay interest at the rate prescribed by the State Government for the period from the scheduled possession date until the refund is made.

The complainant filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, seeking a refund of ₹35,42,451 along with interest due to the non-development of the project and delay in possession. The complainant had booked two units (B5-703 and B5-801) in the Sahara City Homes project in Jaipur for a total consideration of ₹35,34,000. An allotment letter was issued on 18.03.2012, with possession promised within 38 months, i.e., by 17.05.2015. However, possession has not been handed over to date.

The respondent argued that the Authority lacks jurisdiction as the project is not registered under the Real Estate (Regulation and Development) Act, 2016. They further claimed no development was ongoing at the project site when the Act came into effect, and no bookings were made post-enactment. Additionally, citing a Supreme Court order dated 21.11.2013, the respondent stated that all movable and immovable properties of the Sahara Group are under SEBI's control, which manages all transactions, preventing the respondent from making decisions regarding construction, development, or possession of the units. Based on these arguments, the respondent sought dismissal of the complaint.

The complainant has paid ₹35,42,451 for the units, and over a decade has passed since the scheduled possession date without any indication of possession in the near future. Therefore, the case warrants a refund.

After hearing arguments from both sides and reviewing the record, the respondent's counsel did not dispute the amount paid by the complainant. It was also noted that since the project was not completed before the enactment of the Act, it is required to be registered and falls under the jurisdiction of the Authority.

The Hon'ble Supreme Court, in the case of Newtech Promoters and Developers Pvt. Ltd. vs. State of Uttar Pradesh, affirmed that it is the allottee's right to seek a refund if possession is not

delivered within the stipulated time, and the promoter is obligated to pay interest at the prescribed rate. Based on these principles, the respondent is directed to refund ₹35,42,451 along with interest at 9.10% (highest MCLR of SBI) + 2% from the promised delivery date (17.05.2015) until the date of refund, within 45 days of the order being uploaded on the Authority's webpage.

COMPLAINANT: Pramod Kumar Singh & Others

RESPONDENT: Terra Realcon Private Limited

CORAM: Shri Sudhir Kumar Sharma, Hon'ble Member

ORDER DATE: 01.10.2024

Complainant Representative: Amit Bhardwaj (Advocate)

Respondent Representative: Rubal Tholia (Advocate)

Gist: Under the Real Estate (Regulation and Development) Act, 2016, if a promoter fails to deliver possession or obtain valid completion/occupancy certificates, the allottee is entitled to a refund with interest from the due possession date until repayment.

The complainant filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, regarding the project "Terra Heritage" (Registration No. RAJ/P/2017/157). The complainant booked Unit No. C-302 in Tower Windsor (C-Block) and executed a Buyer's Agreement (BA) on November 26, 2013, for a total sale consideration of ₹23,84,800. The respondent was to deliver possession within 36 months, i.e., by November 26, 2016. The complainant paid ₹23,11,165 but did not receive possession as the project remained incomplete even after eight years. The complainant seeks a refund, interest, compensation, and litigation costs.

The respondent's counsel argued that the promoter obtained a completion certificate for Tower Type C on November 24, 2022, and subsequently offered possession to the complainant as per the agreed terms. Citing the Authority's decision in *Priti Mittal & Others vs. Terra Realcon Pvt. Ltd. & Another* (July 24, 2023), where possession was directed despite complainants seeking a refund, the counsel asserted that the complainant is obligated to take possession. The respondent requested the dismissal of the complaint and sought a directive for the complainant to accept possession as per the agreement.

During final arguments, the complainant's counsel presented a letter from the Bhiwadi Integrated Development Authority (BIDA) dated July 12, 2022, objecting to the respondent's completion certificate due to discrepancies in the as-built drawings. It was highlighted that the certificate indicates renaming of tower types in a manner inconsistent with the approved maps and not disclosed in the allotment letter or Builder-Buyer Agreement, making the certificate invalid until BIDA's objections are resolved.

The counsel argued that since the respondent has not obtained an Occupancy Certificate, a refund with interest and compensation should be granted. Conversely, the respondent's counsel maintained that Tower Windsor is completed, a completion certificate has been obtained, and the complainant should be directed to accept possession.

The promised apartment (C-302, Windsor C-Block, 975 sq. ft.) is incomplete, as evident from the completion certificate dated November 24, 2022, issued by Architect Mayur Goyal. The certificate notes that "Tower-B" was renamed as "Tower-C," and "Tower Type-C" was renamed as "Tower-A, B & C," indicating the promised Tower-C in the allotment letter is not yet

complete. Additionally, the fresh possession offer letter mentions an apartment area of 1,014 sq. ft., further confirming that the originally promised apartment is not being offered. The respondent's reply does not address the issue of the occupancy certificate.

The Authority directed the promoter to refund the complainant's deposited amount with interest at 11.10% per annum (SBI's highest MCLR + 2%) from the expected possession date, November 26, 2016, until payment is made, excluding any moratorium period. This decision was based on the promoter's failure to obtain a valid completion certificate. Compliance must be completed within 45 days of this order being uploaded on the Authority's web portal.

COMPLAINANT: Hari Shankar Sharma

Kalpana Sharma

RESPONDENT: Felicity Projects Pvt. Ltd.,

Ramesh Chandra Roongta

Anil Roongta

Arun Roongta

Ajay Roongta

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

ORDER DATE: 16.10.2024

Complainant Representative: Mr. Himanshu Jain, (Advocate)

Mr. Abhinav Shekhar, (Advocate)

Respondent Representative: Mr. Rishi Raj Maheshwari (Advocate) for Respondent No.

Ms. Twinkle Lalwani, (Advocate) for Respondent no 3, 4 and 5.

Gist: Under the RERA Act, compensation can be claimed for delays in possession, even after taking possession, based on financial losses or mental distress caused by the delay. The principle of res judicata does not apply in RERA cases, and promoters must pay the awarded compensation within a set time, with interest for delays.

The present complaint, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and Rule 36 of the RERA Rules, 2017, involves a claim for compensation against the promoter of the project "Felicity Roongtas Aventura." The complainants booked Flat No. A-1102 for a total consideration of Rs. 79,80,287 and initially paid Rs. 7,71,084. Subsequently, they paid an additional Rs. 90,76,910, primarily through bank loans. The sale agreement was executed on February 23, 2017, and stipulated possession by May 15, 2018, including a grace period. However, possession was delayed until April 13, 2021, and the sale deed was signed on June 30, 2021, after the completion certificate was issued on March 1, 2021. The delay caused financial losses for the complainants, who had to reside in government accommodations and pay lease rent after retirement, losing out on house rent allowance (HRA).

The promoter acknowledged the booking, payments, and the executed sale deed but argued that the complaint was not maintainable since possession was eventually granted. The promoter also contended that the case was barred by res judicata, referencing a dismissed complaint by the RERA Authority on August 22, 2023, which did not grant the complainants any relief. In rebuttal, the complainants presented documents substantiating their lease rent payments to BSNL and emphasized the promoter's failure to deliver possession on time.

The Tribunal rejected the promoter's preliminary objections. It ruled that taking possession does not bar an allottee from claiming compensation, which remains a substantial right. It also clarified that the principle of res judicata does not apply since the RERA Authority and Adjudicating Officer have distinct jurisdictions, as established in *M/s. Newtech Promoters*

and Developers Pvt. Ltd. v. State of U.P. The RERA Authority had, in fact, noted that the complainants had an alternative remedy for compensation, making the current complaint maintainable.

On the merits, the Tribunal found that possession was not handed over by May 15, 2018, as claimed by the promoter. Evidence showed that provisional possession was only given on April 13, 2021, backed by a completion certificate dated March 1, 2021. The sale deed also indicated ongoing construction at the time. Thus, the promoter breached Section 18 of the RERA Act by delaying possession for over three years.

The Tribunal assessed compensation based on the financial losses incurred by the complainants. They claimed Rs. 15 lakhs, citing lease rent payments and lost HRA. Documents showed they paid an average of Rs. 30,000 to Rs. 36,144 per month in rent, totaling approximately Rs. 10 lakhs. The promoter's failure to refute this evidence, coupled with no justification for the construction delay, underscored the deficiency in service.

The Tribunal ordered the promoter to pay Rs. 10 lakhs for financial losses and Rs. 1 lakh for mental agony and litigation costs. The total amount of Rs. 11 lakhs must be paid within 45 days, failing which a 6% per annum simple interest will accrue. No relief was granted against respondents 2 to 5, and the order is to be published on the RERA website and communicated to the parties. The case was then consigned to the records

COMPLAINANT: Shri Bajrang Lal Bajaj

Late Smt. Geeta Devi Bajaj

Shri Bajrang Lal Bajaj

RESPONDENT: Felicity Projects Pvt. Ltd.

Capt. Chetan Prakash Goyal

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

ORDER DATE: 22.10.2024

Complainant Representative: Mr. Samkit Jain, (Advocate)

Respondent Representative: Respondent proceeded ex-parte

Gist: The complainants filed a RERA complaint after the respondent failed to deliver possession of a booked flat by the promised date. RERA ordered a refund due to project delays but denied interest due to the absence of a formal sale agreement. One complainant, representing the deceased co-complainant, sought compensation for financial loss, emotional distress, and litigation costs. The tribunal found the respondent liable for project delays and awarded compensation accordingly.

The complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) by Bajrang Lal Bajaj and Smt. Geeta Devi Bajaj against the respondent for compensation. The complainants booked a flat in "Felicity Irene Usha Tower" in 2014 and paid a total of ₹25 lakh, but the respondent failed to execute the agreement for sale or deliver possession by the promised date of November 17, 2017. Despite repeated requests for a refund with interest, the respondent did not comply.

The complainants filed a complaint with RERA, which granted a refund but denied interest due to the lack of a formal agreement. After the death of Smt. Geeta Devi Bajaj, Bajrang Lal Bajaj became the successor and is now seeking compensation for loss of interest, physical and mental

agony, and litigation costs. The respondents did not appear to contest the complaint, leading to an ex-parte decision.

The complainants argued that the project's failure to complete as promised deprived them of their funds and opportunity to secure housing, leading to significant financial loss. They requested adequate compensation reflecting these hardships, particularly given the ongoing loss of potential interest.

The complainants, Bajrang Lal Bajaj and the late Smt. Geeta Devi Bajaj, filed a complaint under RERA after paying ₹25 lakh for a flat in "Felicity Irene Usha Tower" without receiving possession by the promised date of November 17, 2017. Following Smt. Bajaj's death on December 19, 2020, her will assigned the flat to Mr. Bajang Lal Bajaj, who represented her in the complaint.

The Hon'ble RERA Authority ordered a refund of ₹25 lakh on September 20, 2023, due to the project's delay but did not award interest, citing the lack of a formal agreement for sale. The complainants presented various documents, including proof of payment and promises from the respondent's authorized signatory regarding project completion. These documents went unrebutted, leading to the conclusion that the respondent violated Sections 18 and 19 of the RERA Act by failing to complete the project, thus entitling the complainants to adequate compensation.

The tribunal addressed the issue of compensation under RERA, highlighting that compensation encompasses financial loss, emotional suffering, and litigation costs, and is determined based on individual case circumstances. In this case, the complainants had requested a refund due to the non-completion of their project, and although the Hon'ble RERA Authority ordered a refund of ₹25 lakh, it did not award interest because no written agreement existed.

The tribunal stated that compensation for loss is distinct from interest and must be adjudicated independently. The complainants demonstrated a loss of interest calculated at 12% per annum, amounting to over ₹25 lakh. The tribunal deemed this amount justified and necessary to restore the complainants financially. Additionally, the complainants experienced physical and mental anguish, warranting further compensation of ₹1 lakh for these issues.

The final decision ordered the respondent to pay a total of ₹26 lakh (₹25 lakh for financial loss and ₹1 lakh for other compensatory claims) within 45 days. If unpaid, a simple interest of 6% per annum would apply on the awarded amount until payment is made. The tribunal clarified that no relief would be provided against the landowner (respondent no. 2) and directed that the order be published on the RERA website and communicated to both parties.

COMPLAINANT: Surendra Kumar Katyal

RESPONDENT: Aakriti Landcon Private Limited

Naresh Sharma

Purshottam Daval Dubey

Baroda Rajasthan Kshettriya Gramin Bank

CORAM: Smt. Veenu Gupta, Hon'ble Chairperson

ORDER DATE: 30.10.2024

Complainant Representative: Sh. Mohit Khandelwal (Advocate)

Respondent Representative: Sh. Pranjul Chopra (Advocate) for Respondent No. 3.

Sh. Ankit Somani (Advocate) for Respondent No. 4.

Gist: A homebuyer filed a complaint under RERA after a developer failed to deliver a flat that had been secretly mortgaged to a bank. The Authority ruled that the bank, as a mortgagee and assignee, held promoter responsibilities under RERA, ordering it to issue an NOC to facilitate the buyer's sale of the flat.

This complaint is filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, regarding the 'Shreenath Oasis' project. The complainant booked Flat No. A-908 for ₹25,00,000, paying in full at the time of the agreement on September 12, 2015. Although possession was promised within 36 months, the developer failed to deliver. In 2014, the project was mortgaged to a bank without disclosure to the complainant.

The complainant claims that despite assurances from the developer, the flat was encumbered due to a ₹15,00,00,000 loan defaulted on by the developer, which led to the bank classifying the loan as an NPA in 2019 and initiating recovery actions under the SARFAESI Act. The complainant registered the sale deed in 2021 but only learned about the mortgage when the bank issued a public notice in 2022. The complainant alleges fraud, arguing that the bank selectively issued NOCs to certain individuals while blocking others, including his flat, despite assurances of its unencumbered status.

The complainant seeks an NOC from the bank to sell the flat, as well as a directive preventing the bank from seizing the unit. He emphasizes that he should not be penalized for the developer's default, especially given his urgent need for funds for his wife's medical treatment.

In response to the complaint, the bank (Respondent No. 4) argues that it is not a "promoter" under the Real Estate (Regulation and Development) Act, 2016 (RERA) and thus claims the Authority lacks jurisdiction over it. The bank contends that the complainant failed to perform due diligence to check the mortgage status, as the project was lawfully mortgaged, registered with CERSAI, and the bank, as the primary charge holder, has the right to proceed under the SARFAESI Act. Additionally, the bank insists that sales of flats required a No Objection Certificate (NOC), which the developer bypassed, invalidating such sales under the Transfer of Property Act.

The Authority reviewed previous cases, notably *Mukesh Agarwal vs. SNG Real Estate Pvt. Ltd.* and *Union Bank of India vs. Rajasthan RERA*, where similar issues were addressed. These cases established that a financial institution holding a mortgage could be considered an "assignee" and thus a "promoter" under RERA, if it assumed control over a mortgaged project. Since a mortgage creates a transfer of interest, the bank, as an assignee of the developer, inherits promoter responsibilities and obligations to the allottees under RERA. Consequently, the Authority determined it has jurisdiction to direct the bank in this case.

The Authority reviewed whether the bank's rights as a secured creditor under the SARFAESI Act take precedence over the rights of bona fide allottees under the RERA Act. It determined that the RERA Act, being enacted later and with a specific focus on protecting real estate consumers, prevails over the SARFAESI Act. Section 89 of RERA includes a non-obstante clause, meaning its provisions override conflicting laws. Additionally, the sale deed registered in favor of the complainant is undisputed, and the complainant is confirmed as a bona fide allottee.

Regarding the complainant's right to sell the flat, the Authority emphasized that homebuyers should not bear the consequences of a promoter's loans or defaults. Under Section 11(4)(h) of RERA, banks may recover dues through the developer's unsold assets but cannot auction or sell

allotted flats. The bank's control over the project as a mortgagee does not invalidate the allottee's rights. **Therefore, the bank is directed to issue a No Objection Certificate (NOC) to the complainant, enabling them to sell their flat, as they should not be penalized for the developer's default.**

Conclusion:

- 1. The Authority has jurisdiction to decide the case.**
- 2. The bank, as an assignee of the promoter, is treated as a promoter under RERA.**
- 3. The complainant is a bona fide allottee, and their rights under RERA cannot be superseded by SARFAESI.**
- 4. The bank must issue an NOC to allow the complainant to sell the flat.**

KARNATAKA REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: MRS. SHRUTI GAUTAM

RESPONDENT: M/S MANTRI DEVELOPERS PVT LTD

CORAM: SHRI G.R. REDDY, HON'BLE MEMBER

ORDER DATE: 30.08.2024

Complainant Representative: MR.M MOHAN KUMAR , ADVOCATE

Respondent Representative: MR. SRINIVAS.R, ADVOCATE

Gist: In this case, the complainant sought compensation from the developer for a significant delay in handing over possession of an apartment in the "Mantri Webcity 2A" project. The Karnataka RERA ruled in favor of the complainant, ordering the developer to pay interest for the delay and complete the sale deed and possession transfer within 60 days.

In the case Mrs. Shruti Gautam vs. M/s Mantri Developers Pvt. Ltd., the complainant, Mrs. Shruti Gautam, filed a complaint with the Karnataka Real Estate Regulatory Authority (KRERA) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA). The complaint concerns the delay in the possession, execution of the sale deed, and handover of an apartment within the project "Mantri Webcity 2A" developed by the respondent, M/s Mantri Developers Pvt. Ltd.

The complainant entered into a sale and construction agreement on November 11, 2014, for an apartment identified as H-1805 on the 18th floor, paying a total amount of ₹52,67,267 to the developer. Per the agreement, the developer was to deliver possession by October 2016, with a six-month grace period until April 2017. However, despite this timeframe, the developer failed to complete the project and hand over the apartment, causing the complainant financial strain and emotional distress.

Mrs. Gautam sought redressal from KRERA, asking the Authority to mandate the developer to pay interest for the delay, compensate for the mental anguish suffered, and finalize the sale deed and possession of the apartment.

In their defense, M/s Mantri Developers admitted to the delay but cited reasons beyond their control, including legal proceedings with the National Green Tribunal (NGT), which issued an order on May 4, 2016, stopping construction due to environmental compliance issues. This halt lasted until March 5, 2019, when the Supreme Court lifted the ban. Following this, further construction delays arose due to the COVID-19 pandemic. The developer also pointed out that they had handed over 128 of the 334 apartments in the project, with 120 sale deeds registered,

although occupancy certificates from the Bruhat Bengaluru Mahanagara Palike (BBMP) were still pending. Furthermore, the developer claimed that the complainant had outstanding payments, which had also contributed to the delay.

In support of their arguments, the respondent presented documentation, including court orders from the NGT and Supreme Court, construction status photographs, and stage-wise progress reports. The developer argued that the complainant's claims were excessive and unjust given the challenges faced.

KRERA examined whether the complainant was entitled to the claims sought, and concluded affirmatively. It found that the developer had indeed failed to deliver the apartment within the agreed timeframe despite receiving substantial payment. **KRERA ruled that the complainant was entitled to interest for the delay period starting from April 2017 to June 2023, amounting to ₹42,87,427 at a rate of MCLR + 2%.**

The final order required the respondent to pay this interest amount within 60 days of the order date. Furthermore, KRERA directed the developer to execute the sale deed in favor of Mrs. Gautam and hand over possession of the apartment within 60 days, contingent upon the receipt of any pending balance from the complainant. If the developer fails to comply, the complainant is permitted to take legal action to enforce possession and execution of the sale deed.

KRERA's decision provided no additional compensation for mental anguish, as it fell outside the Authority's jurisdiction, and no costs were ordered.

COMPLAINANT: Anitha Bakhtani

RESPONDENT: M/S MANTRI DEVELOPERS PVT LTD

CORAM: SHRI G.R. REDDY, HON'BLE MEMBER

ORDER DATE: 12.09.2024

Gist: In Anitha Bakhtani vs. M/s Mantri Developers Pvt. Ltd., the complainant sought compensation for a nearly seven-year delay in receiving possession of her apartment in the "Mantri Webcity 3A" project. Karnataka RERA ruled in her favor, ordering the developer to pay ₹65,62,875 as delay interest and comply with the order within 60 days.

In the case *Anitha Bakhtani vs. M/s Mantri Developers Pvt. Ltd.*, the complainant, Anitha Bakhtani, filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA) with the Karnataka Real Estate Regulatory Authority (KRERA). The complaint was against M/s Mantri Developers Pvt. Ltd., specifically regarding delays in possession, alleged excess charges, and inadequate fulfillment of promised amenities for a unit in the "Mantri Webcity 3A" project.

Anitha Bakhtani had reserved Flat No. U601 in the Mantri Webcity 3A project for a sale price of ₹88,82,569. She made an initial payment of ₹4,95,000 at the signing of the sale and construction agreement on June 30, 2013, with subsequent payments to fulfill the agreed price. The developer committed to delivering the flat with all agreed-upon amenities by March 31, 2015. However, due to repeated delays, the possession was only transferred on November 18, 2022—almost seven years late.

The complainant initially sought reimbursement for the excess amount charged by the developer but later amended her relief request to claim interest for the delay period,

totaling ₹65,62,875, as of November 18, 2022. KRERA issued a notice to the respondent, who appeared through legal representation and challenged the complaint, arguing that the revised claims were inconsistent with the initial complaint and that the developer had complied with statutory requirements. They argued that the complainant could not amend the claim without formal permission and asked KRERA to dismiss the case.

KRERA reviewed evidence including the agreement of sale, bank statements, payment receipts, and the complainant's calculations for delay compensation. Based on the materials presented, KRERA ruled in favor of the complainant. **It determined that M/s Mantri Developers had failed to meet the contractual handover deadline of March 2015, despite receiving the full sale consideration, thereby justifying the claim for delay compensation. Citing a Supreme Court ruling in *Newtech Promoters vs. State of Uttar Pradesh*, KRERA affirmed that under Section 18 of RERA, the complainant was entitled to interest for the delay, as she did not withdraw from the project.**

KRERA ordered the respondent to pay ₹65,62,875 to the complainant as interest, calculated at MCLR + 2% from the original handover date until November 2022. Additionally, KRERA granted the complainant the right to pursue recovery action if the respondent failed to comply within 60 days, and no further costs were awarded in the case.

COMPLAINANT: KAPIL CHANDRIKA PANDEY & PUNAM KAPIL PANDEY

RESPONDENT: SHRIPROP PROJECTS PVT LTD

CORAM: SMT.NEELMANI N RAJU

ORDER DATE: 12.09.2024

Complainant Representative: Punam Kapil Pandey

Respondent Representative: Mr. Joseph Anthony, Advocate & Others, Jsm Law Partners

Gist: In this case, K-RERA directed the developer to pay ₹15,31,620 as delay period interest for nearly two years of delayed possession of an apartment, rejecting the developer's force majeure claims and affirming the buyers' right to compensation despite RERA extensions for project completion.

In the case Kapil Chandrika Pandey & Punam Kapil Pandey v. Shriprop Projects Pvt. Ltd., the Karnataka Real Estate Regulatory Authority (K-RERA) addressed a dispute regarding delayed possession of an apartment in the "Shriram Southern Crest" project developed by Shriprop Projects Pvt. Ltd. The complainants, Kapil and Punam Pandey, booked a flat in the development and completed all payments as per the sale and construction agreement dated March 3, 2017. According to the terms, the developer was obligated to hand over possession within three years, with a six-month grace period, effectively setting a deadline of September 23, 2020. However, the possession was delayed, and the complainants eventually received the property on September 9, 2022, resulting in a delay of nearly two years.

The Pandey's alleged that they incurred financial losses due to this delay, including bank interest and rental expenses, which also caused them mental stress. Despite multiple communications with the developer's Customer Relationship Management (CRM) team, they were denied any compensation, as the developer claimed an extension was granted by RERA until March 2023 due to COVID-19 and other force majeure reasons. Dissatisfied, the Pandey's sought relief from K-RERA, demanding interest for the delay.

Shriprop Projects Pvt. Ltd., represented by counsel, countered the claim, stating that the delay was unintentional and caused by the pandemic, labor shortages, and supply disruptions beyond their control. They further argued that RERA's extension effectively nullified the delay, and thus, no penalty or interest was owed. They also contended that similar cases where delay period interest was claimed had been stayed by the High Court of Karnataka, and the complainants' demands were an attempt to gain profit through litigation.

Upon reviewing the evidence, K-RERA examined the sale agreement, occupancy certificate, and sale deed, concluding that Shriprop Projects Pvt. Ltd. failed to meet the contractual obligation to deliver the apartment by the agreed date, even considering the force majeure arguments. K-RERA emphasized that the RERA extension applied to project completion but did not absolve the developer from compensating buyers for delayed possession. Citing a Supreme Court precedent, which upheld the right of allottees to claim interest for delay without withdrawing from the project, the Authority deemed that the Pandey's were entitled to compensation.

K-RERA awarded the complainants a delay period interest of ₹15,31,620, calculated from September 23, 2020, to September 9, 2022, as per the terms outlined in the Real Estate (Regulation and Development) Act, 2016. The developer was ordered to pay this amount within 60 days, with the complainants entitled to pursue legal recovery actions if the developer failed to comply. The decision reinforced the principle that RERA extensions for project completion do not negate the accountability of developers to compensate buyers for delay in possession.

HARYANA REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Mrs. Neeru Bhatia

RESPONDENT: M/s Emaar MGF Land Ltd.

CORAM: Shri. Ashok Sangwan

ORDER DATE: 04.09.2024

Complainant Representative: Sh. Kuldeep Kohli (Advocate)

Respondent Representative: Sh. Harshit Batra (Advocate)

Gist: In this case the complainant alleged delays and unauthorized charges by the developer for a residential unit in Gurugram. HARERA dismissed the case as time-barred, ruling that the complaint was filed well beyond the permissible period for seeking relief.

The complaint, Neeru Bhatia v. Emaar MGF Land Ltd., filed under the Real Estate (Regulation and Development) Act, 2016, pertains to alleged delays in possession and unauthorized charges by the developer Emaar MGF. The case concerns Unit No. EHF-350-I-FF-078 in the "Emerald Hills Floors" project in Gurugram. Initially, the unit was allotted to Mrs. Gurdeep Kaur Sood and Mr. Nitin Sood, the original allottees, who secured the allotment in July 2009 after an initial payment of ₹5,00,000. The buyer's agreement signed on 28.12.2009 stipulated that possession would be granted within 27 months from execution (i.e., 28.03.2012) with an added grace period of six months, making 28.09.2012 the due date. In May 2011, the original allottees transferred their rights to Neeru Bhatia for ₹70,00,000. Bhatia, the complainant, paid ₹21,00,000 to the original allottees and later covered the remaining balance of ₹49,54,521 to Emaar MGF, as documented in the payment statements dated 16.08.2012.

The complainant alleged that Emaar failed to complete the project on time and claimed that repeated attempts to inspect the property were denied. She stated that by 2012, the unit was

incomplete, lacking even a proper access road, despite the full payment made. Emaar only obtained the occupation certificate for the unit on 09.06.2016, and the official offer of possession was extended much later on 28.04.2017, with physical handover occurring on 04.07.2017. When possession was offered, Bhatia contended that Emaar demanded additional fees that were not part of the original buyer's agreement, including electrification charges (₹65,167), sewerage connection charges (₹316), water connection charges (₹3,996), and electricity connection charges (₹27,600). These charges, she argued, were unfair and invalid as they were never agreed upon contractually.

In addition, Bhatia claimed Emaar raised a demand for advance maintenance fees amounting to ₹53,823 for 23 months, which she argued was improper. According to her, maintenance charges should be collected monthly after expenses are incurred. She claimed Emaar withheld possession until these charges were paid, which, she alleged, constituted an unfair business practice. She submitted that, as per judgments by the National Consumer Disputes Redressal Commission (NCDRC), any possession offer conditioned upon such payments was invalid.

In response, Emaar contended that the complaint was inadmissible, as it exceeded the Authority's jurisdiction, arguing that the issues required detailed examination beyond summary proceedings. Emaar also asserted that Bhatia was an investor rather than an allottee, implying she bought the unit for profit, not personal use. The company claimed the original allottees voluntarily opted for the unit in a construction-linked plan and asserted that they were fully aware of the project's status. Emaar argued that the complainant was aware of potential delays as part of the force majeure clause included in the buyer's agreement. Moreover, Emaar claimed that the complainant herself had delayed payments on multiple occasions, resulting in interest penalties, as evidenced by eight payment reminders issued between 2009 and 2013.

Emaar maintained that the complainant had taken possession of the unit in 2017, and her execution of the conveyance deed on 04.09.2017 legally finalized their obligations. They argued that the signing of the deed marked the end of the contractual relationship, limiting any claims or liabilities thereafter. Emaar further claimed that the delay was excusable under force majeure, citing a period of 166 days lost to statutory delays beyond their control. Furthermore, they contended that the case should be dismissed based on the statute of limitations, given that the complaint was filed in October 2022—over five years after the offer of possession. Emaar argued that under normal circumstances, complaints should be filed within three years, and any delays beyond this period, even accounting for COVID-19-related legal extensions, were unreasonable.

The Haryana Real Estate Regulatory Authority (HARERA) assessed the facts, focusing on whether the complaint could be considered despite the alleged delay and the implications of the conveyance deed. HARERA clarified that, while the conveyance deed transferred ownership, it did not preclude Bhatia's right to seek delayed possession charges. Citing a precedent set by the Supreme Court in *Arifur Rahman Khan and Aleya Sultana v. DLF Southern Homes Pvt. Ltd.*, HARERA noted that a buyer's acceptance of possession should not bar claims for compensation on delays, as buyers are entitled to perfect their title without forfeiting the right to damages. HARERA emphasized that executing a conveyance deed does not release a promoter from the obligation to compensate for delays.

However, on the question of limitation, HARERA took a strict approach, ruling that while the Real Estate (Regulation and Development) Act, 2016, does not prescribe a strict limitation, complaints must be filed within a reasonable period—interpreted generally as three years. The Authority applied the Supreme Court's temporary suspension of limitation periods during the COVID-19 pandemic but noted that the complaint's filing

delay of 5 years, 5 months, and 20 days was excessive. HARERA determined that the case was indeed time-barred, as the cause of action began on 28.04.2017, the date Emaar offered possession.

In its final ruling, HARERA dismissed the complaint as untimely, affirming that Bhatia forfeited her right to relief by filing beyond a reasonable period. Despite recognizing potential merit in the grievances related to additional charges and delays, HARERA could not proceed due to the strict time limitations governing the complaint. The case was officially closed on 04.09.2024, with directions for the file to be consigned to the registry, signaling the conclusion of proceedings in this matter.

COMPLAINANT: Rajesh Ahuja

RESPONDENT: M/s Pareena Infrastructures Pvt. Ltd.

CORAM: Shri. Ashok Sangwan

ORDER DATE: 04.09.2024

Complainant Representative: Kalvan Singh Bhati (Advocate)

Respondent Representative: Prashant Sheoran (Advocate)

Gist: In this case, the complainant sought a refund for delayed possession of his unit in the “Micasa” project, Gurugram. HARERA upheld the cancellation due to missed payments but ordered Pareena to refund Ahuja’s payments after a 10% deduction, with interest, citing unjustified delays despite force majeure claims.

In Rajesh Ahuja v. M/s Pareena Infrastructures Pvt. Ltd., HARERA Complaint No. 4732 of 2023, the complainant Rajesh Ahuja brought forth claims under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA) due to delays in the possession of his unit in the “Micasa” project, Sector-68, Gurugram, developed by Pareena Infrastructures. Ahuja’s unit, No. 1002 on the 10th floor of Tower 5, was allotted to him through a buyer’s agreement dated 24.11.2015, with the total sale price of ₹83,32,455. The agreement stipulated possession would be handed over within four years of either the agreement’s execution or the construction’s start date, whichever was later. With construction beginning on 26.04.2016, the possession due date was set to 26.10.2020, factoring in a six-month COVID-19 extension.

Ahuja fulfilled his payment obligations up to ₹17,16,952 by December 2019. However, he faced indefinite delays as Pareena Infrastructures neither delivered the possession nor obtained the necessary occupancy certificate. Despite repeated requests to the developer to expedite the handover, Ahuja received no satisfactory response, and the project remained incomplete. On 21.09.2022, Ahuja formally requested a cancellation of the booking due to the prolonged delay, asking for a full refund with interest. His follow-up reminders went unaddressed, and he subsequently learned that Pareena had allegedly canceled his booking without his knowledge and potentially reallocated the unit.

In its defense, Pareena argued that the project delays were due to force majeure conditions. These included restrictions by the National Green Tribunal (NGT), construction bans by authorities, and disruptions caused by the COVID-19 pandemic. The developer contended that such external factors affected the project's timeline and claimed it was still actively working on the project, stating that the unit would soon be ready once the occupation certificate was granted. Pareena also highlighted that Ahuja defaulted on payments and that they issued a pre-cancellation notice on 26.03.2022 before formally canceling the booking on 30.04.2022. They argued that the cancellation was legally justified and maintained that they had acted in good faith.

HARERA analyzed the case and ruled that while force majeure events could potentially justify some delays, the instances cited by Pareena were temporary and insufficient to account for the extended delay in the possession date. Specifically, HARERA found that the NGT restrictions and similar environmental orders, which affected construction in the NCR region, were short-term and did not provide grounds for indefinite delay. The Authority held that developers should account for such annual, routine delays in their project timelines, emphasizing the principle that a developer cannot benefit from their own failings or inability to meet project deadlines.

While the cancellation was deemed valid due to Ahuja's missed payments as per Section 19(6) of RERA, HARERA ruled that Pareena Infrastructures was obligated to refund Ahuja's paid amount after a lawful deduction. Citing precedents from the Supreme Court in **Maula Bux v. Union of India** and **Sirdar K.B. Ram Chandra Raj Urs v. Sarah C.G. Urs**, as well as similar cases from the National Consumer Disputes Redressal Commission (NCDRC), **HARERA limited the forfeiture to 10% of the sale consideration as earnest money, aligning with the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of Earnest Money by the Builder) Regulations, 2018. Therefore, Pareena was ordered to refund Ahuja's paid amount of ₹17,16,952 with a 10% deduction and an annual interest rate of 11.1%, based on the State Bank of India's highest marginal cost of lending rate (MCLR) plus 2%, applicable from the cancellation date (30.04.2022) until the refund's realization.**

HARERA advised Ahuja to approach the adjudicating officer separately for additional compensation and litigation costs, as the authority does not have jurisdiction over such matters. Finally, Pareena was given 90 days to comply with the order, failing which it would face legal consequences. The case was formally closed on 28.08.2024, and the file was consigned to the registry. This decision underscores HARERA's stance on protecting buyer rights while enforcing fair and reasonable deductions in cancellations.

HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: 1 Smt. Sita Devi wife of Sh. Satya Pal Nandrajog,

2 Sh. Satya Pal Nandrajog son of Late Phula Ram

RESPONDENT: M/s Ahlawat Developer and Promoters

CORAM: Chairperson

ORDER DATE: 07.09.2024

Complainant Representative: Sh. Atul Pundir, Ld. Counsel along with Sh. Satya Pal Nandrajog

Respondent Representative: Ms. Neha Gupta, Ld. Counsel along with Sh. J.S. Ahlawat

Gist: In this case, the complainants sought a conveyance deed or refund for a flat purchased in Himachal Pradesh due to prolonged delays in legal ownership transfer. HARERA upheld the consumer court's decision to execute the conveyance deed but ordered a refund with interest if the deed was not completed within two months.

In *Smt. Sita Devi & Sh. Satya Pal Nandrajog v. M/s Ahlawat Developer and Promoters*, HARERA Himachal Pradesh Complaint No. HPRERA2023022/C, the complainants, Sita Devi and Satya Pal Nandrajog, alleged that Ahlawat Developers failed to execute the conveyance deed and secure the necessary Section 118 permissions under the Himachal Pradesh Tenancy and Land Reforms Act, 1972, for their property. In 2011, they booked and fully paid for Flat No. 403 in Tower A-1, Himachal One Project, Baddi, Himachal Pradesh, paying a total of

₹19,00,000. Despite this, the developers did not complete the conveyance deed or provide a legal title, even after a 2017 consumer court order instructed them to do so. The complainants argued that this delayed transfer left them without legal ownership, and they could not secure the required Section 118 permissions from the Himachal authorities because the developer had not obtained a completion or occupancy certificate for the property.

The complainants initially took the matter to the District Consumer Disputes Redressal Forum in Solan, Himachal Pradesh, where they won a 2017 ruling ordering the developer to execute the conveyance deed within 30 days, as well as to pay ₹5,00,000 in compensation for mental distress and ₹3,000 in litigation costs. However, the developer did not fulfill these obligations and appealed the decision to the Himachal Pradesh State Consumer Disputes Redressal Commission, delaying the completion of the conveyance deed. Due to this, the complainants filed a new complaint with HARERA, seeking either the conveyance deed or a full refund with interest.

In response, Ahlawat Developers contended that the issue was already addressed by the consumer court, arguing that *res judicata* applied, barring the complainants from re-litigating the matter in a different forum. *Res judicata* is a principle preventing parties from raising the same issues that have already been decided by a competent court. The developers also asserted that Section 118 permission for sale to non-Himachalis was the buyer's responsibility and claimed the complainants had failed to pay maintenance and electricity charges, amounting to ₹5,19,723. They also pointed out that the complainants had rented the property multiple times, which they argued suggested that the complainants were acting as investors rather than resident owners. The developer further maintained that it was actively seeking the Section 118 permission but that delays were due to bureaucratic issues beyond its control.

HARERA reviewed the case, recognizing that while the consumer court had jurisdiction over the conveyance deed issue, the developer's non-compliance with that order necessitated action. HARERA ruled that the consumer court decision indeed applied *res judicata* to the request for a conveyance deed but allowed the complainants to pursue an alternative remedy of a refund given the prolonged delays. HARERA held that, although the complainants had accepted informal possession in 2012, this possession was incomplete, as the developer had failed to secure a completion or occupancy certificate. Furthermore, HARERA found that the developer could not indefinitely delay the conveyance under the guise of seeking Section 118 permission, especially after having offered possession without these certifications.

Therefore, HARERA ordered that the developer was required to either execute the sale deed within two months or refund the complainants' payment of ₹19,00,000 with interest at 11.2% per annum, calculated from the date of the current complaint filing. The interest rate was based on the State Bank of India's highest marginal cost of lending rate (MCLR) plus 2%, following Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017. Should the developer fail to execute the deed, the refund amount was to be directly paid to the complainants or deposited with HARERA, upon which the complainants would be required to return possession of the property.

This decision reinforced HARERA's stance that developers cannot indefinitely delay the execution of property rights due to procedural delays or incomplete compliance with local requirements, especially when buyers have fully paid. The case was closed on 07.09.2024, establishing an example of the Authority's role in balancing legal obligations while protecting consumer interests against protracted delays.

KERALA REAL ESTATE REGULATORY AUTHORITY**COMPLAINANT: M/s. Realine Properties Pvt Ltd****RESPONDENT: Srnt. Jiji Vijayan****CORAM: Dr. B Sandhya Member****ORDER DATE: 04.09.2024**

Gist; In the "Green City" case, the Respondents withdrew their registration application but violated orders by marketing the project without proper registration. The Real Estate Regulatory Authority imposed a Rs. 1 Crore penalty and mandated registration within 30 days, emphasizing compliance with real estate regulations.

In the case concerning the real estate project "Green City," the Respondents submitted an application for registration to the Real Estate Regulatory Authority (RERA) on November 11, 2022, for a development located in Pantheerankavu, Kozhikode District. However, on January 17, 2024, they filed an affidavit withdrawing this application, citing technical issues and disagreements with landowners involved in the project. They asserted that no sales had been conducted and no funds had been collected.

The Authority accepted this withdrawal and issued an order on April 19, 2024, explicitly instructing the promoters not to advertise, market, or initiate sales of the project without proper registration, as mandated under Section 3 of the Real Estate (Regulation and Development) Act, 2016. Despite this directive, the Respondents proceeded to market the project on social media platforms, including Facebook, where they promoted "Green City" as a real estate development featuring villas.

On May 31, 2024, the Authority issued a notice for a hearing to address potential penalties for violating Section 3 and the order of April 19. During the hearing on August 16, 2024, the Respondents' counsel, Adv. Serji Joseph Thomas, contended that the project remained in the proposal stage and claimed that the marketing materials were not intended to solicit sales. They also noted the establishment of a trust, "Lifeline Green City Trust," to manage common amenities for the project.

However, the Authority found that advertisements were still active as of the hearing date, promoting the project with a total estimated cost of Rs. 2,000 Crores, misleadingly suggesting that lower prices were available due to the absence of RERA registration. The Authority confirmed that the Respondents had previously applied for project registration but later withdrew the application.

After reviewing the evidence, the Authority concluded that the Respondents violated statutory provisions of the Act, which prohibits advertising, marketing, or selling properties without proper registration. Under Section 59(1) of the Act, the Authority imposed a penalty of Rs. 1,00,00,000 (One Crore) on the Respondents for these violations. Additionally, the Authority mandated that the Respondents complete the project registration within 30 days.

Furthermore, the Authority requested that the Secretary of the Perumanna Grama Panchayat issue a stop order to halt all construction activities associated with the project and instructed the District Registrar of Kozhikode to refrain from executing any agreements or sales deeds related to the project. This case underscores the importance of

compliance with regulatory frameworks governing real estate projects and the consequences of non-adherence to established legal guidelines.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: Rupesh Jaikaran Deshbhratar

RESPONDENT: 1. Rakesh Menon

2. Ms. Monisha Nair

CORAM: Shri. Mahesh Pathak

ORDER DATE: 30.09.2024

Complainant Representative: Ld. Adv. Vaibhav Choudhary

Respondent Representative: Ld. Adv. Dhvani Joshi

Gist: In the "Ruparel Optima Ph I" case in Mumbai, two complainants sought refunds and compensation from the promoter for canceled flat bookings, citing unjust forfeiture of payments and mental distress. MahaRERA has conducted hearings but is awaiting further documentation from both parties to resolve the dispute, emphasizing the need for transparency and adherence to contract terms in real estate transactions.

In the case of the "Ruparel Optima Ph I" project in Mumbai, two complainants approached MahaRERA with demands for refunds, interest, and compensation for mental distress, alleging that the promoter had unfairly canceled their flat bookings and wrongfully forfeited their payments. The first complainant, Rupesh Deshbhratar, claimed that he booked a flat in the project but faced unexpected changes when the developer increased the building's floors beyond what was initially agreed. Unhappy with these modifications, he stopped making further payments, after which the promoter terminated his booking in 2019. Deshbhratar argued that the cancellation was unjust and demanded his payment to be refunded along with interest.

The second case involved a couple, Rakesh Menon and Monisha Nair, who also booked a flat in the same project but had to cancel it in 2020, citing financial difficulties resulting from the COVID-19 pandemic. They asserted that the unprecedented circumstances had severely impacted their ability to meet financial obligations and, therefore, they sought a refund of the amount they had already paid. Additionally, the couple requested compensation for the mental stress caused by the cancellation and the lack of communication from the promoter.

MahaRERA, the real estate regulatory authority in Maharashtra, took cognizance of both complaints and initiated proceedings by conducting hearings where all concerned parties were present. During these sessions, the complainants provided their justifications for refunds, while the promoter defended the forfeiture of their payments, arguing that the cancellations were in accordance with the booking terms and conditions. MahaRERA instructed both sides to submit further documentation to support their claims and arguments by June 2024 to help facilitate a resolution.

Despite the hearings and the authority's directive, neither the complainants nor the promoter provided any additional documents or evidence by the specified deadline. As a result, the matter remains unresolved, with MahaRERA waiting for further action from both parties. The authority aims to ensure that the outcome aligns with the Real Estate (Regulation and Development) Act, 2016, which mandates transparency, accountability, and fairness in real estate transactions. This case reflects the challenges buyers face when there are changes in project specifications or

unforeseen financial crises, such as the COVID-19 pandemic, and how regulatory bodies like MahaRERA play a crucial role in balancing the interests of consumers and developers.

While the authority is yet to deliver a final verdict, the case highlights important legal and procedural issues in real estate disputes, particularly concerning the cancellation of bookings, forfeiture of payments, and consumer rights. It underscores the importance of timely communication between buyers and promoters and adherence to contract terms to prevent such conflicts. As it stands, MahaRERA is expected to make further inquiries or issue directions based on the available information if no new submissions are received. The resolution of this case will set a precedent for how similar disputes involving unforeseen circumstances and contract violations are handled within the regulatory framework.

PART-III

NOTIFICATION & CIRCULARS

KERALA REAL ESTATE REGULATORY AUTHORITY

File no. K-RERA/T3/102/2024(2)

Dated: 02.09.2024

CIRCULAR

Sub: Real Estate (Regulation and Development) Act 2016 – Mandatory submission of Updated Quarterly Progress Reports by Promoters – Compliance Reminder and Consequences of Non-submission – Reg.

The Kerala Real Estate Regulatory Authority (K-RERA) is committed to ensure transparency, accountability, and compliance under the Real Estate (Regulation and Development) Act, 2016. All promoters are hereby reminded that the periodical uploading of the Quarterly progress report (QPR) on the web portal of the Authority is one of the mandatory requirements after the registration of the project.

According to section 13 (2) of the Real Estate (Regulation and Development) Act, 2016, promoters must upload the quarterly progress of registered projects in a timely manner on the web portal of the Authority within seven days of the end of each quarter. The Authority has observed that some promoters are not timely

Uploading the Quarterly Progress Reports (QPR) on the web portal, which has resulted in the imposition of penalties. The non-compliance with the above statutory requirements shall also result in possible suspension or revocation of the registration of the project, inclusion in the list of non-compliant projects' potentially affecting the market reputation and legal action including blacklisting/ restraining the sales of the units.

This circular serves as a final reminder to all promoters to ensure full compliance with the statutory requirements. The Authority is committed to enforcing these regulations strictly in the interest of protecting homebuyers and promoting ethical practices in the real estate sector.

Order No. K-RERA/T3A02t2020

Date: 07/10/2024

PUBLIC NOTICE

Sub: Submission of annual report in Form No. 5 by 31st October 2024 for the financial year 2023-2024.

Ref: Public notice K-RERA/T3/1U12020 dated 09/09/2021.

As per the 3rd proviso of Section 4 (2) (I) (D) of the Real Estate (Regulation and Development) Act 2016 read with Regulation 4(4) of the Kerala Real Estate Regulatory Authority (General) Regulation 2020, the annual report on the statement of accounts in Form No. 5 shall be certified and signed by a Chartered Accountant in practice and shall be uploaded by the promoter in the allotted web page on the website of the Authority on or before 31st October of every year until the project is completed.

Hence, in the exercise of the powers conferred under section 37 of the Act 2016, the Authority hereby directs all the Promoters to strictly adhere to the above instruction for their registered projects on or before 31st October 2024.

To upload Form No. 5, log in to the K-RERA web portal and proceed as follows:

- Go to Project Details & Click on Document upload
- Choose Project Name
- Navigate to the tab Forms
- Choose file against **Annual report on the statement of accounts in Form no. 5**
- Select the Financial Year 2023-2024
- Click on Upload/Save

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

Order No. F.4(1)RJ/RERA/Part/2017/2140

Dated: 03/09/2024

ORDER

Regarding submission of Completion Certificate/Occupancy Certificate & Mortgage free letter on RERA web portal for registered projects in the Authority

As per Regulation no. 11(8) read with Regulation 13(5), the promoters are required to upload Completion Certificate, partial Completion Certificate, Occupancy Certificate for the projects other than plotted development and mortgage free letter for plotted development projects. However, it is observed that many a times the said documents are not uploaded for a long time causing avoidable delay in updation of the record. Also, in absence of dissemination of such information the stake holders remain unaware.

Therefore, it is mandated to upload the Completion Certificate, Partial Completion Certificate, Occupancy Certificate and mortgage free letter, as the case may be, within 45 days from the date of issuance of such certificate/letter by the Competent Authority.

This order is applicable with immediate effect.

This bears the approval of Hon'ble Chairperson.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

Order No: 61/2024

No. MahaRERA/Secy/File No. 27/677/2024

Date: 04/09/2024

Subject: Clarification of MahaRERA Order No. 56/2024 dated 27.06.2024

In order to ensure compliances of the provisions of Section 4(2)(I)(D) of the Real Estate (Regulation and Development) Act, 2016, MahaRERA has brought into force Order No. 56/2024, dated 27.06.2024, bearing No. MahaRERA/Secy/File No. 27/399/2024.

With the coming into force of the above-referred MahaRERA Order, there has been concerns voiced on the issue, whether Landowners having entitlement to Revenue Share / Area Share with the promoter-developer under a registered Development Agreement are required to maintain and operate the three bank accounts for the real estate project.

It is to be clarified that the above-referred MahaRERA Order requires only the Promoter as declared while seeking registration under Section 4 read with Section 3 of the RERA Act to follow the MahaRERA Order relating to the opening and operation of the three bank accounts. Thus, only in those cases where

the Landowners makes a declaration of his being a promoter would he be required to open the three bank accounts and operate them in the manner provided in the above-mentioned MahaRERA Order. In case the Landowner is not a promoter and it not declared as such, then there is no requirement for such a Landowner to open the three bank accounts as mentioned in the above referred MahaRERA Order. It is to be noted that wherever the word 'Promoter' has been used in Order No. 56 of 2024, it shall have the same meaning and connotation as mentioned in Section 2(zk) of the RERA Act.

This clarification shall come into force with immediate effect.

Order No: 62/2024

No. MahaRERA/Secy/File No. 27/1004/2024

Date: 22/10/2024

Subject: In the matter of registration of Agreement for Sale / Sale Deed of units in real estate projects that are excluded from registration and what denotes completion of plotted real estate projects.

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

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

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

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

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

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

And whereas, Section 3(2) of the Act lists the real estate projects that are exempted from registration with the Authority. Section 3(2) of the Act reads as follows:

"(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required: -

- (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that if the appropriate Government considers it necessary, it may reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project." Explanation. For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

And whereas, pursuant to receipt of requests inquiries from stakeholders, MahaRERA by Circular No. 25/2019, dated 11.10.2019, had clarified that submission of MahaRERA project registration certificate need not be insisted upon for registration of Agreement for Sale / Sale Deed in respect of real estate projects that are exempted from registration under Section 3(2) of the Act.

And whereas, MahaRERA, vide Circular No. 25A/2023, dated 09.06.2023, considering the ratio laid down by the Maharashtra Real Estate Appellate Tribunal at paragraph 23 of its majority judgement dated 10.07.2019, in the case of M/s. Geetanjali Aman Construction & Anr V/s Hrishikesh Ramesh Paranjpe & Ors., had issued further clarification regarding Clause (a) of Sub Section (2) of Section 3 of the Act.

And whereas, in view of Regulation 3B of the Regulations, MahaRERA by Order No. 37/2022, dated 13.12.2022, considering the ambiguity in what denotes completion of plotted development real estate projects had issued clarification at to what constitutes commencement and what denotes completion of plotted real estate projects.

And whereas, the various competent authorities in the State of Maharashtra follow a procedure different from that and as clarified by and under MahaRERA Order No. 37/2022, dated 13.12.2022, in the matter of what constitutes Commencement certificate and what denotes completion certificate for plotted real estate projects.

And whereas, regarding the land sub-division layout the UDCPR (Unified Development Control and Promotion Regulations for Maharashtra State) Rule 2.7.1 of the UDCPR defined Commencement which shall be in Form D-3 of UDCPR with following conditions.

- "1. It shall be the responsibility of the owner to carry out all the development work including construction of roads, sewer lines, water supply lines, culverts, bridges, street lighting, etc. and hand it over to the Planning Authority/Collector after developing them to the satisfaction of the Authority.
2. If you wish that the Planning Authority/Collector should carry out these development works, then you will have to deposit the estimated expenses to the Planning Authority/Collector in advance, as decided by the Authority.
3. As per the undertaking submitted by you in respect of recreational open space as stipulated in Regulation No.3.4, the said open space admeasuring (as the case may be) sq.m. stand vested in the name of plot holders of the layout or society of the plot holders and you have no right of ownership or interest in the said recreational open space.
4. This permission does not entitle you to develop the land which does not vest in you."

And whereas, considering that in the matter of registration of Agreement for Sale / Sale Deed of units in real estate projects that are excluded from registration the above-referred MahaRERA Circulars and Order are in force, the Authority in order to ensure ease of reference and harmonious construction as well as to cure the anomaly therein has decided that the issue /aspect to be covered under the above-referred MahaRERA Circulars / Order be merged and incorporated in a consolidated MahaRERA Order.

And whereas, considering the above, the clarification with regards to Clauses (a) and (b) of sub-section (2) of section 3 of the Act in the matter of real estate projects that are excluded from registration with MahaRERA is as follows:

A. 3 (2) (a) of the Act:

"where the area of land proposed to be developed is less than or equal to five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases";

Clarification regarding the above is as under:

- 1) real estate projects where the area of land proposed to be developed is less or equal to five hundred square meters shall not require MahaRERA project registration irrespective whether the numbers of apartments/units proposed to be developed is less than or more than eight apartments/units as the case may be inclusive of all phases.
- ii) real estate projects where number of apartments/units proposed to be developed is less or equal to eight apartments/units inclusive of all phases shall not require MahaRERA project registration irrespective whether the area of the land proposed to be developed is less than or more than five hundred square meters.

B. 3 (2) (b) of the Act:

"where promoter has received completion certificate for a real estate project prior to commencement of the Act".

Considering the provisions in UDCPR clarification regarding what constitutes commencement certificate and what denotes completion certificate for plotted real estate projects shall be as under:

- i) the final approval accorded to the land sub-division layout in Form D-3 of UDCPR or the approval of similar nature with non-agriculture permission (wherever necessary) shall be considered as commencement certificate for plotted real estate projects.
- ii) the certificate issued by the concerned competent authority informing the promoter and/or the licensed engineer/structural engineer/supervisor of the plotted real estate project; or the copy of the acknowledgement submitted to the concerned competent authority on self-certification of promoter; that the conditions imposed in the final approval accorded to the land sub-division layout in Form D-3 of UDCPR (or in the approval of similar nature) are complied or in cases wherever non-agricultural permission is necessary the receipt of the intimation of the Tahsildhar given as an acknowledgement of having received the intimation of the date of commencement of the non-agricultural use after completion and execution of all the conditions as may have been imposed by the concerned competent authority along with Form 4 duly filled in and signed by the project architect in compliance of Regulation 3 of the Regulations shall denote completion certificate for plotted real estate projects.

In the cases referred at 'A' and 'B' above, MahaRERA project registration certificate is not required to be submitted for registration of Agreement for Sale / Sale Deed, as such real estate projects are exempted from registration under Section 3 (2) of the Act.

This Order supersedes MahaRERA Circular Nos. 25/2019, dated 11.10.2019, and 25A/2023, dated 09.06.2023, as well as MahaRERA Order No 37/2022, dated 13.12.2022.

This Order shall come into force with immediate effect.

Order No: 63/2024

No. MahaRERA/Secy/File No. 27/1006/2024

Date: 22/10/2024

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

Ref:- 1) MahaRERA Order No. 54/2024, dated 29.04.2024;

2) MahaRERA Order No. 56/2024, dated 27.06.2024; and

3) MahaRERA Order No. 57/2024, dated 30.07.2024.

Whereas, by and under MahaRERA Order No. 60/2024 dated 03.09.2024, the proforma of the allotment letter was brought into force as well as promoters' were informed and called upon to provide details in some of the clauses as well as in the Second Schedule of the proforma of the agreement of sale as more specifically mentioned in the above-referred MahaRERA Order.

And whereas, clause 15A inserted by Notification bearing No. REA. 2018/C.R.106/RR-2. with effect from 06.06.2019, remained to be added in Annexure 'A' appended to MahaRERA Order No. 60/2024 dated 03.09.2024.

In view of the above, after clause 15 of the model form of agreement to be entered into between promoter and the allottees annexed as Annexure 'A' to the said MahaRERA Order No. 60/2024 dated 03.09.2024, the following clause numbered as 15A shall be added namely:

"15 A. In case the transaction being executed by this agreement between the promoter and the allottee is facilitated by a Registered Real Estate Agent, all amounts (including taxes) agreed as payable remuneration/fees/charges for services/commission/brokerage to the said Registered Real Estate Agent, shall be paid by the Promoter/allottee/both, as the case may be, in accordance with the agreed terms of payment."

In Annexure 'A' appended to MahaRERA Order No. 60/2024 dated 03.09.2024, the details. incorporated in view of the above-referred MahaRERA Orders as well as the directions issued therein shall come into force from the respective dates of the said MahaRERA Orders.

This MahaRERA Order shall be read along with MahaRERA Oder No. 60/2024 dated 03.09.2024, and shall come into force with effect from 03.09.2024.

WEST BENGAL REAL ESTATE REGULATORY AUTHORITY

No: 315/H4/2M-10/24

Date: 19/09/2024

Subject: Circular regarding Real Estate Project Registration with the west Bengal Real Estate Regulatory Authority (WBREERA)

CIRCULAR

The Govt. of West Bengal by enacting the West Bengal Real Estate (Regulation and Development) Rules, 2021 (hereinafter referred to as 'WBREERA Rules') on 27.07.2021 has implemented the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act'), The aim and objective of RERA Act is to establish Real Estate Regulatory Authority for regulation and promotion of the real estate sector in the state of West Bengal in an efficient and transparent manner and to protect interest of home-buyers in the real estate sector. As per the said Act the West Bengal Real Estate Regulatory Authority (WBREERA) has been established on 29.07.2021. The website of WBREERA (www.rera.wb.gov.in) has become operational on and from 31.01.2023 and on and from the same date online registration of Real Estate Projects with WBREERA Authority has commenced.

As per section 3 of the RERA Act read with Notification No, 42-H412M-01/2023 dated 06.06.2023 of the Housing Department, Govt. of West Bengal, every Real Estate Project (Residential/Com

mercial/Partly Residential and Partly Commercial) where land to be developed by the said project is more than 200 square meters (2.99 katha) or where the number of flats / apartments / plots to be developed are more than 5 (six), those projects are compulsorily to be registered with WBRERA Authority. If any of the two conditions, as mentioned above, are fulfilled by any Real Estate Project then the concerned Promoter is liable to compulsorily register the said project with the WBRERA Authority by submitting online Application for registration in the WBRERA website. It is to be mentioned that registration is to be taken Project-wise, not Promoter-wise. In case of Real Estate Projects in which the concerned Promoter / Developer shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it and which to be used for personal / own use of the Promoter / Developer, Registration with WBRERA Authority as per RERA Act is not mandatory.

It has come to the notice that number of Application for Registration of Real Estate Projects with WBRERA are not satisfactory and a large number of Real Estate Projects are getting Completion Certificates / Partial Completion Certificates / Occupancy Certificates from respective Corporations, Municipalities & Panchayat Bodies etc. without having WBRERA registrations even when registration is compulsory as per RERA Act.

And Whereas, the State Government has the power to formulate policy on Real Estate Sector (including review of laws related to real estate sector) or any other matter as per the provision of section 33 of the RERA Act

And Whereas, to ensure the number of registration of Real Estate Projects with WBRERA (where the registration is compulsory), It has been decided that no Completion Certificate / Partial Completion Certificate / Occupancy Certificate shall be issued by the Municipal Corporations/ Municipalities Panchayat Bodies where WBRERA Registration has not been taken and /or although registration has been taken but it has been lapsed as on the date of Application for Completion Certificates / Partial Completion Certificates / Occupancy Certificates.

Now therefore, henceforth, it shall be mandatory to submit the WBRERA Registration Certificate of a Real Estate Project at the time of online / offline application for Completion Certificate / Partial Completion Certificate / Occupancy Certificate etc. by the concerned Promoter / Developer, in those cases where WBRERA registration is compulsory.

And in case of Real Estate Projects in which the concerned Promoter / Developer shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it and which to be used for personal / own use of the Promoter / Developer, in those cases a DECLARATION is required to be submitted in this respect by the Promoter / Developer at the time of Application for Completion Certificate / Partial Completion Certificate / Occupancy Certificate etc, in such format as notified by the said Competent Authorities.

DECLARATION

I/We(name of the Applicant)son/daughter of residing at..... , do hereby declare that the Real Estate Project named as(name of the Project)....., situated pertaining to the sanctioned plan no dated..... approved by..... Municipal Corporation/Municipality/Zilla Parishad/Gram Panchayat has been constructed for my/our own personal uses only and I/We shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it.

[N.B - This Declaration shall not be applicable in following two cases:-

(i) if the Area of land to be developed by the Real Estate Project does not exceed 200 square meters (2.99 Katha); or

(ii) where the number of flats/apartments/plots to be developed do not exceed 6 (six)]

Date:

Signature of the Applicant(s)
(Promoter/ Developer)

GUJARAT REAL ESTATE REGULATORY AUTHORITY

Circular no: - 35

Date: - 23/09/2024

NOTIFICATION

Subject: - Direction to the Promoters to open the RERA Bank account in Bank branch of Schedule Bank operating in the state of Gujarat.

According to Section 37 of the Real Estate (Regulation and Development) Act, 2016 (RERA), "The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

As per section 4(2)(1)(D) the seventy percent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

Therefore, all the Promoters applying for project registration with the GujRERA Authority shall open their project's separate RERA bank account in a Scheduled Bank branch operating in the Gujarat state only.

It is hereby also directed that all the promoters whose projects are already registered with Gujarat Real Estate Authority and who have opened their separate RERA Bank account in bank branches operating outside Gujarat, are required to open their RERA bank account in the bank branches operating in Gujarat. All such Promoters are required to apply for the Bank change request as per RERA Bank Account Directions, 2018.

It is hereby also directed that all the promoters whose projects are already registered with Gujarat Real Estate Authority and who have opened their separate RERA Bank account in bank branches operating outside Gujarat, are required to open their RERA bank account in the bank branches operating in Gujarat. All such Promoters are required to apply for the Bank change request as per RERA Bank Account Directions, 2018.

Order No: GujRERA/Order – 96

Date: 30.09.2024

Due Date for Submission of Form-5 for FY 2023-24

Whereas, proviso to section 4(2) (1) (D) of the Act states that promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant;

Whereas, facility for submission of Form-5 by Chartered Accountants through digital signature on the Gujarat RERA portal is in place;

Whereas, representations have been received from various stakeholders requesting extending time limit for submission of Form-5 due to compliance due dates under CBDT and for better compliance of Annual Report;

Therefore, in exercise of the powers under section 37 read with Section 34(a), 34(f) and 34(g) of the Act, the following directions are issued with immediate effect:-

Order - 96

Last date for online submission of Form 5 for Financial Year 2023-24 is 31 October, 2024. Promoters and Chartered Accountants are required to comply with this requirement within the scheduled time period to avoid regulatory actions by the Authority.

PART-IV

RERA NEWS

THE HINDUSTAN TIMES

Date: 03.10.2024

'RERA 'toothless tiger' due to lack of enforcement powers

Rajender Kumar, the Haryana Real Estate (Regulation and Development) Act (RERA) adjudicating officer, has criticized the RERA Act of 2016 for lacking effective enforcement mechanisms. In an interview, he described the authority as a "toothless tiger," particularly due to the inability to enforce its orders against influential builders. Despite issuing over 700 arrest warrants, none have been executed, primarily due to non-cooperation from law enforcement agencies. Kumar emphasized the urgent need for stronger enforcement provisions within RERA to ensure its effectiveness in addressing violations in the real estate sector. He acknowledged the Supreme Court's concerns but pointed out that the absence of enforcement powers makes RERA's orders ineffective.

THE ECONOMIC TIMES

Date: 21.10.2024

MahaRERA order overturned by appellate tribunal; developer's concession claim rejected

The Maharashtra Real Estate Appellate Tribunal (MREAT) overturned a MahaRERA order regarding the delayed possession of homes in the Sai Sapphire project in Vikhroli. MREAT rejected the concessions given to ITMC developers and directed them to pay interest on Rs 94 lakh to the home buyers, Madhuri and Mahesh Lohia, from April 2019 until possession with the Occupancy Certificate (OC) is delivered. The interest rate was set at 2% above the SBI Highest MCLR.

The appellate tribunal found that the April 2022 MahaRERA order contradicted RERA provisions and Supreme Court rulings, particularly criticizing the six-month grace period for interest payment granted to the developers, which MREAT deemed unjustified. The buyers had initially paid Rs 75,00,000 in 2014 and received the agreement only in February 2018 after filing a complaint. The developers blamed delays on factors like slum dwellers refusing to vacate the land, but MREAT dismissed these reasons as non-force majeure.

MREAT reinforced that the right to claim interest under Section 18 of RERA for delayed possession is an "indefeasible" and "unqualified right," which cannot be overridden by the developers' reasons for delay.

TIMES OF INDIA

Date: 25.10.2024

MahaRERA issues new order on payments to agents

MahaRERA has issued an order requiring that real estate agreements facilitated by registered agents must include a clause detailing the commission to be paid to the agent. This aims to promote transparency, accountability, and recognition of agents' roles. Real estate agents expect that the order

will ensure timely payments and minimize commission disputes, holding developers accountable for their commitments.

The National Association of Realtors (NAR)-India played a key role in this development, advocating for better recognition of agents over the past one and a half years. Previously, MahaRERA had mandated developers to detail parking and provide comprehensive information about amenities and common areas in their projects to address consumer complaints and improve project transparency.

THE ECONOMIC TIMES

Date: 28.10.2024

New rule in Noida to safeguard homebuyers: Registering at with government now must during purchase of property

The Noida Authority board has mandated that all new housing developments in Noida require a tripartite 'sale agreement' between the builder, homebuyer, and Noida Authority. This change aims to increase transparency and prevent fraudulent real estate practices. Under the new system, the Authority will be informed of a flat's buyer when the first payment is made, not upon project completion as previously done.

This agreement, in line with Section 13 of RERA, limits promoters to demanding no more than 10% of a property's cost upfront without a written sale agreement. It ensures the buyer's name is registered with the stamp and registry department when the initial 10% payment is made, providing legal proof of ownership and preventing developers from reselling units or canceling sales unjustly.

Additionally, 2% of the stamp duty will be paid initially, with the remainder due at final registration. The measure also stops units from being sold under the radar without paying stamp duty, thus safeguarding buyers and increasing government revenue. The policy addresses past issues of fraudulent sales, ensuring buyers are protected and developers are held accountable

THE ECONOMIC TIMES

Date: 28.10.2024

No RERA registration unless a property meets this eligibility in Maharashtra, clarifies MahaRERA

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has issued a circular clarifying which real estate projects must be registered under RERA. According to the circular dated October 22, 2024, a project in Maharashtra requires RERA registration only if it has a land area greater than 500 square meters and includes at least nine apartments.

The circular explains:

- Projects on land of 500 square meters or less do not need RERA registration, even if they have more than eight apartments.
- Projects with eight or fewer apartments do not need RERA registration, even if the land area exceeds 500 square meters.

Thus, to qualify for RERA registration, a project must exceed both the land area and apartment count thresholds. Consequently, consumers buying into projects that don't meet these criteria will not have RERA protection.

THE ECONOMIC TIMES**Date: 29.10.2024****Builder asked to pay Rs 5.14 lakh to homebuyer by NCDRC for occupancy certificate delay and other violations**

In 2006, an 81-year-old retired Indian Army Major purchased an under-construction 3BHK property in Bhiwadi, Rajasthan. Despite the builder's prompt requests for payments, they failed to provide the Completion Certificate (CC) and Occupancy Certificate (OC). The Major made several efforts to secure these documents, sending letters in 2009, 2011, 2013, and 2015, but received no satisfactory response. Frustrated by the lack of action, the homebuyer filed a case against the builder with the State Consumer Commission. The case eventually escalated to the National Consumer Disputes Redressal Commission (NCDRC), lasting for seven years. Ultimately, the decision favored the homebuyer. Throughout this lengthy legal struggle, significant legal insights were gained, offering valuable lessons for others who may face similar challenges with property developers.

THE HINDUSTAN TIMES**Date: 30.10.2024****MahaRERA issues 5 orders to safeguard interests of real estate agents, landlords and homebuyers**

MahaRERA (Maharashtra Real Estate Regulatory Authority) has recently issued several key orders aimed at protecting the interests of homebuyers, landlords, and real estate agents in Maharashtra:

1. **Brokerage Payment in Agreements:** MahaRERA has mandated that the commission, brokerage, and charges payable to a registered real estate agent must be specified in the sale agreement between the developer and purchaser. This aims to ensure timely payment to agents and reduce disputes over commission.
2. **Exemption for Small Projects:** Projects on plots of land equal to or less than 500 sq. meters are exempt from RERA registration, regardless of the number of apartments. However, this may limit buyer remedies, especially concerning completion timelines.
3. **Commencement and Completion Certificates:** MahaRERA has clarified what constitutes a commencement and completion certificate for plotted development projects, ensuring clarity for investors in such projects.
4. **Bank Account Requirements for Landlords:** Landlords who are not considered developers are not required to maintain three separate bank accounts for each project, addressing earlier confusion around financial requirements.
5. **Parking Details in Agreements:** MahaRERA has instructed developers to include specific details about parking spaces in sale agreements and allotment letters to prevent disputes regarding parking arrangements.

These measures are part of MahaRERA's ongoing efforts to streamline processes and enhance transparency in the real estate sector.

THE HINDUSTAN TIMES**Date: 30.10.2024**

Real estate projects - execute sale, purchase only through registered agents: UPRERA

The Uttar Pradesh Real Estate Regulatory Authority (UPRERA) has mandated that real estate transactions should only be conducted through agents registered with the authority to protect the interests of all parties involved. This decision comes in response to complaints of misleading information and fraud by unregistered agents.

Key points of the new guidelines include:

1. **Registration of Agents:** UPRERA requires that only registered agents handle sales and purchases of properties. Agents providing false information can face penalties, and homebuyers can lodge complaints with UPRERA.
2. **Professionalism in Real Estate:** UPRERA aims to introduce professionalism in the sector, with mandatory training and certification for agents. This is intended to ensure transparency and credibility in real estate transactions.
3. **Verification of Agents:** Homebuyers are encouraged to verify the registration details of agents through the UPRERA portal before making any investments. If a property transaction is not conducted through a registered agent, UPRERA will not provide relief in case of any issues.
4. **Promoter's Responsibility:** Promoters must provide a list of approved agents for their projects, and buyers can verify these agents' registration details on the UPRERA portal.
5. **Mandatory Training:** UPRERA has made short-term training and certification mandatory for agents to obtain and renew their registration.

These measures are designed to ensure that homebuyers receive accurate information and protection from fraudulent activities in the real estate market.



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