

# RERA TIMES

## **Real Estate** **(Regulation and Development) Act, 2016** **(A Journal on Real Estate Bye Laws)**

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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,

Indian economy is on track for a recovery in the next fiscal year beginning April 1, Consistent good performance of the farm sector, flattening COVID-19 infection curve, and a pickup in government spending are all supporting the economy. It is said that the budget for fiscal 2021-22 will also support the economy to recover at a faster rate. India's improving growth prospects are critical to its ability to sustain the higher deficits associated with its more aggressive fiscal stance.

Welcoming the Union Budget 2021-22 presented by honorable Finance Minister Nirmala Sitharaman and agreeing, that it provides a comprehensive response to the current situation. Budget 2021 stands out with its focus on Atmanirbhar Bharat and for its increased outlays for public funding to boost economic revival and job creation.

As per expectation, this was a positive investment oriented budget demonstrating fiscal responsibility. Investment in infrastructure and new labour codes are particularly noteworthy as it will result in more jobs. We appreciate the measures announced by the Finance Minister to improve ease of doing business, re-invigorating improving human capital and focusing on innovation and startups was much required at the moment and will help the fledgling startups with meager resources to continue with their business operations without worrying about the compliance with complex taxes.

Economy has been witnessing upward trend in GST revenues over past five months. The revenues for the month of February 2021 are 7 per cent higher than the GST revenues in the same month last year. This is a clear indication of the economic recovery and the impact of various measures taken by tax administration to improve compliance.

The Forum for People's Collective Efforts (FPCE), a pan-India homebuyers' body, has urged the Bharatiya Janata Party (BJP) to include a declaration to repeal the

West Bengal Housing Industry Regulation Act (WBHIRA), 2017 and instead, implement the Real Estate (Regulation & Development) Act (RERA), 2016 in the party's election manifesto for West Bengal. The minister has given a serious hearing, appreciated homebuyers' concern and has assured them of considering the appeal.

There is demand, property is being sold, property is being bought by customers who believe this is a good time to buy a property a) because interest rates are as low as they would probably go to; b) because fiscal concessions are available; c) because certain states have lowered various kinds of stamp duty and incidental cost of buying a house and d) because supply is not that large.

I would also like to take this opportunity to welcome **Honorable Justice Shri Veerender Singh Siradhana as Chairperson, Rajasthan Real Estate Appellate Tribunal, Jaipur**. I wish him all the best for his journey ahead in this arena as well as in his life ahead.

With Regards

CA Sanjay Ghiya

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Place: - Jaipur

Date: 12.03.2021



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#### **Disclaimer:**

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**PART-I**  
**SUPREME COURT JUDGEMENTS**

**SUPREME COURT OF INDIA**  
**PETITION(S) FOR SPECIAL LEAVE TO APPEAL**  
**(C) NO(S). 3155/2021**  
**DATED: 26-02-2021**

**M/S EMAAR INDIA LIMITED: Petitioners**

**VERSUS.**

**UNION OF INDIA & ORS.: Respondents**

**ORDER**

**SLP (C) No. 3338/2021 [ITEM NO. 32]**

**Gist of Case: Hon'ble Supreme Court stayed the order passed by High Court of Punjab and Haryana wherein it was ordered by Hon'ble High Court that pre-deposit before filing appeal is mandatory in nature**

**Issue notice**

In the meantime, there shall be stay of the operation of the impugned Judgment and order(s) passed by the High Court.

The execution cases filed pursuant to the order of the Regulatory Authority are also stayed until further orders.

## PART-II

### REPORTING OF CASE LAWS

#### **MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL**

**APPELLANT: Kotak Mahindra Bank Ltd**

**RESPONDENT: East & West Builders RNA Corporate Park**

**ORDER DATE: 11.01.2021**

Appellant Representative: Ms. Ankita Mannar

Respondent Representative: Adv. Chirag Kamdar

**Gist of Case: There must be a contravention of RERA provisions to claim relief under RERA Act, 2016 and the person must be aggrieved person as per section 31 of Act.**

As per facts of this case Appellant advanced loans to Respondent. Loans are secured by an exclusive charge over all receivables from Respondent's project, "RNA PALAZZO" to the extent of Rs. 15 Crores. As per arrangements between the parties, an Escrow account was opened for depositing all proceeds received from the project. On default in obligations by Respondent, Appellant declared and classified loan accounts of Respondent as non-performing assets (NPAs). Appellant further found MahaRERA portal showing that Respondent has opened another Escrow Account with SBI under RERA for directing customers to deposit receivables into the new account. As Respondent continued in default, Appellant approached the Debts Recovery Tribunal-II, Mumbai (DRT) which directed Respondent to deposit all receivables in Escrow Account maintained with Appellant. As Respondent failed to comply with this order Appellant filed complaint with MahaRERA and sought reliefs for directing the respondent to:

- (i) Revocation of Registration of the Respondent on account of engagement of Respondent in fraudulent practices.
- (ii) Respondent to close all accounts operated in respect of the project and to deposit all receivables in the Escrow account



- (iii) Respondent to immediately display order of DRT on website of RERA and communication thereof to all Allottees for depositing all receivables in the aforesaid Escrow account as per directions of the DRT.
- (iv) Respondent to provide statement of all receivables deposited by Allottees and amounts withdrawn by Respondent since inception of the project.
- (v) Disclose details of Bank accounts of Respondent in which the Allottees are required to deposit any amount towards

**After hearing the parties learned Member held that Appellant is neither a Promoter nor Allottee or real estate agent and therefore cannot be treated as an aggrieved party as per provisions of Section 31 of RERA. He therefore declined to grant reliefs prayed for by Appellant as above.**

Tribunal heard contention of both the parties.

**The authorized representative of Appellant submitted that learned Member has completely misinterpreted the Provisions of Section 31(1) of RERA while holding that only an aggrieved person in the project may file a complaint whereas there are no such words in the said section. She referred to the definition provided under Section 2(zg) as per which 'person' includes a company and argued that learned member failed to appreciate that Appellant, a company, being an aggrieved person can file a complaint against a Promoter, Allottee or real estate agent, as in terms of Section 31(1).**

Appellant further submitted that designated account already maintained with the Appellant could also have been operated as escrow account under RERA for depositing receivables from the project instead of opening a separate account in the SBI as declared on MahaRERA website. She further argued that there was no legal bar to withdrawing at least 30% amount from SBI account under RERA provisions and depositing the same in the designated account with the Promoter. However, she argued, Respondent is taking excuse of RERA provisions and no cash flows are deposited in the designated account in violation of terms of loans extended to Respondent. She therefore, pleaded to grant reliefs as sought by Appellant in the complaint by setting aside the impugned order.

In reply to the contentions raised, Promoter submitted that on registration of project, Promoter was obligated to open Escrow account as mandated under provisions of RERA for depositing the amount to be received from Allottees. However, he clarified that since the year 2015 Respondent has not received any monies in the said account towards the project. He further argued that for filing complaints under Section 31(1) of RERA two conditions are required to be satisfied. First, an aggrieved person. Second, violation of any provisions of RERA. He reasoned that since Respondent has not committed any violation of the provisions of RERA, no grievance is caused for terming Appellant as an aggrieved person under RERA.

**After having considered submissions of both the parties and documents on record in the light of relevant provisions of RERA, the only point that needs determination by us is whether Appellant can be regarded as an aggrieved person for filing complaint under Section 31(1) of RERA and for granting reliefs sought in the complaint. Our answer to the point is in the negative for the reasons detailed as below.**

Tribunal noted that RERA is enacted for regulation and promotion of the real estate sector. To meet the said objectives, RERA prescribes certain rights, obligations, functions, etc. for the Promoters, Allottees and the real estate agents. A grievance redressal mechanism is provided for enforcing respective obligations/rights of the aforesaid entities as per which the Authority and the AO are vested with the power and jurisdiction to deal with complaints received from aggrieved persons under Section 31(1) of RERA. Appellate powers under RERA are vested with this Tribunal and the Hon'ble High Court. Section 31(1) under which an aggrieved person may file complaint reads as under.

*"31, (1) Any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any Promoter, Allottee or real estate agent as the case may be, Explanation- For the purpose of this sub-section 'person' shall include the Association of Allottees or any consumer association registered under any law for the time being in force.*

**It may therefore be concluded from the above observations that mere grievance of any nature against a Promoter, Allottee or real estate agent would not entitle any person to file a complaint under Section 31(1) of RERA if the same does not**

arise on account of violation of any provisions of RERA. Thus, for entitling a person to earn the status of 'an aggrieved person' alleged violation or contravention has to be necessarily in respect of the provisions of RERA and nothing else. In the fact circumstances of this case, Appellant cannot be labelled as an aggrieved person for entitling under the provisions of RERA to file complaint under Section 31(1). The Authority or the AO have no jurisdiction to adjudicate such a complaint if filed by Appellant as it does not involve any violation of provisions of RERA. Appeal therefore deserves to be dismissed.

**APPELLANT: Survakant Yashwant Jadhav & Ors.**

**RESPONDENT: Bellissimo Hi-Rise Builders Pvt.Ltd. & Ors.**

**ORDER DATE: 12.01.2021**

Appellant Representative: Adv Harshad Bhadbhade

Respondent Representative: Adv Nitin Waghmare

### **Gist of Case: Grace period not allowed over and over actual period**

Allottees agreed to purchase and Promoters agreed to sell the flat Nos. 901-H & 902-H in the said project. Both the parties have executed and registered agreements for sale separately for two flats on 17th May, 2014 and on 16th May, 2014. Promoters agreed to handover possession of the flats on or before 28th February, 2017. Rights and liabilities of parties are governed by RERA. Allottees decided to withdraw from the project. Allottees demanded refund with interest and compensation as per Section 18 of RERA. Promoters did not pay any heed.

MahaRERA conducted enquiry and heard Allottees and Promoters. MahaRERA disposed of both the Complaints by common order dated 6th March, 2019 and held **that Section 18 of RERA does not apply to the present dispute. MahaRERA advised Allottees to take possession of their respective flats which is ready for occupation. Alternatively, MahaRERA observed that if the Allottees intend to withdraw from the project then such withdrawal shall be guided by terms and conditions of the agreement for sale.**

Following points arise for determination of tribunal.

#### **POINTS**

#### **FINDINGS**

- i) Whether Section 18 of RERA is

attracted to the dispute between Allottees and Promoters in the instant case?

Affirmative.

ii) Whether Promoters failed to handover possession of the flats as per agreed date mentioned in the agreements for sale?

Affirmative.

iii) Whether Allottees are entitled for refund with interest and compensation as prayed?

Partly affirmative for relief of refund and interest

**As per the agreements for sale, subject to payment of all dues and amount by Allottees, Promoters agreed to give "fit out possession" on or before 28th February, 2017. It is further recited that Promoters shall obtain occupancy certificate within one year from the "date of fit out possession" and that it shall be final date of possession of the flat. Thus, Promoters agreed to give final possession on or before 28th February, 2018.**

So, the date of "fit out possession" has been treated as the date of offering possession for occupation. But Promoters agreed to give possession with occupancy certificate on or before 28th February, 2018. Under Section 19(10) of RERA, it is mandate to offer physical possession with occupancy certificate to Allottees and Allottees are under obligation to take such physical possession with occupancy certificate within two months. So, this date of final possession (28th February, 2018) as per agreement is the date of possession for consideration of Section 18 of RERA. In such circumstance, failure to handover possession of the flat as contemplated under Section 18 of RERA is failure to handover physical possession of the flat with occupancy certificate.

Occupancy certificate is issued by the Competent Authority on 10th May, 2018. Promoters offered possession with occupancy certificate to Allottees as per letter dated 21st June, 2018. In fact, possession with occupancy certificate ought to have given on or before 28th February, 2018 as per clause 11.1 of the agreement for sale. However, it is offered in June, 2018. Thus, there is delay in handing over possession of the flat with occupancy certificate to Allottees.

Clause 11.2 of the agreement for sale provides grace period of one year beyond the dates mentioned in the clause 11.1 i.e., date of "fit out possession" (28th February, 2017) and date of final possession (28th February, 2018). So, as per clause 11.2 of the agreement for sale, with grace period of one year, the date of fit out possession would be 28th February, 2018 and the date of final possession would be 28th February, 2019.

**Once, it is evident that Promoters failed to give possession by the "specified date as mentioned in the agreement", Promoters are not entitled for extension of such specified date on the basis of any clause regarding grace period in the agreement for sale. Section 18 of RERA is absolute on the point of "specified date" mentioned in the agreement for giving possession and not at all the extended date on the basis of grace period. In Neel Kamal Realtor Pvt, Ltd. V/s, Union of India (writ petition No.2737/77) the Hon'ble Bombay High Court has laid down that-**

*"the date of handing over possession as mentioned in the agreement is binding on both the parties and such date shall not stand extended even though Promoters may extend timeline of completing project at the time of registration with MahaRERA."*

**So, clause 11.2 of agreements providing grace period of one year and thereby extending "specified date of possession by one year" is against the spirit of Section 18 of RERA and consequently against the object of safeguarding interest of customers. Clause 11.2 of the agreements will not help Promoter to change "specified date of possession" as mentioned in the agreements.**

Once Promoters failed to handover possession with occupancy certificate as per agreed date in the agreement for sale, Allottees are entitled to claim refund with interest against Promoters. So, Promoters are under obligation to refund the amount with interest to Allottees who have withdrawn from the project. As far as claim of compensation is concerned Allottees are at liberty to file petition for compensation before Adjudicating Officer under Section 71 & 72 of RERA. Consequently, Allottees are entitled for refund with interest as Promoters failed to handover possession of the flats as per agreed date in the agreements for sale.



**APPELLANT: Mumbai Housing and Area Development Board (MHADA)**

**RESPONDENT: Nikhil Margi**

**ORDER DATE: 29.01.2021**

Appellant Representative: Adv. Poonam Gupta

Respondent Representative: Adv. Pratik Parmar

**Gist of Case: MAHADA increased price of the units with proper justification. MAHA RERA not gave proper attention to the grounds of MAHADA. Matter remanded back.**

In 2016, MHADA floated an advertisement inviting applications under MHADA lottery scheme for 28 tenements reserved for Lower Income Group applicants. Complainant was one of the winners under the said scheme and allotted tenement No.601 on 6th floor of 7 storied building. /-. Due to delay in completion of project, complainant could not get timely possession. It was alleged that construction of building was physically complete but since one year MHADA failed to procure Occupation Certificate and facilities of permanent water supply from competent authority. The main grievance of complainant was that MHADA has illegally charged additional payment and unilaterally made increase in consideration amount of the project. It was contended that complainant is not liable to pay amount than agreed upon between the parties.

**MHADA resisted the complaint and contended that it was not disputed that there was delay in completion of project. Possession could not be handed over within time due to the reasons beyond their control. An attempt was made to justify increase in construction cost of the project on the ground that under Regulation 22 of the Maharashtra Housing and Area Development Regulations, 1981, Board is empowered to increase price of tenements duly incorporated in the brochure uploaded at the time of advertisement. It was contended that allotment letter or agreement for sale was never executed between the parties and complainant is not an 'allottee' within the meaning of definition of 'allottee' under Section 2(d) of the Act of 2016. It is on these grounds MHADA prayed to dismiss the complaint.**

Order dated 27th June, 2019 has been passed by the learned Member, MahaRERA directing Mumbai Housing and Area Development Board to hand over possession of tenement to complainant within two months on receipt of Occupation Certificate and

on complainant making balance payment of principle (should be principal) only at the time of handing over possession.

Appellant has challenged the legality, propriety and correctness of the order on the grounds-

- a) Appellant received full Occupation Certificate on 29.06.2019 and offered possession of tenement to complainant upon payment of revised price as specified in booklet served upon complainant.
- (b) As per Regulation 22, MHADA has power to increase price of tenement and the same was incorporated in the booklet /broucher uploaded at the time of advertisement.
- (C) Despite written submissions filed by MHADA, placed before Authority, there is no whisper in the impugned order regarding powers of MHADA under Regulation 22 of MHADA Regulations.
- (d) In all 28 tenements have been constructed and except complainant, all other winners have paid revised amount and received possession of respective tenements under the Low Income Group Scheme

Based on the above, appellant prayed to quash and set aside the order to the extent of direction to complainant to make balance payment (principal only) at the time of handing over possession of tenement.

**In response, respondent has resisted the appeal and contended that Appellant is authorized to revise the price as stated in information booklet but increase in price is not justifiable. Also, Appellant has issued sale price tenement proforma IX wherein increase in price of tenement has been shown. It is apparent from this proforma that cost per tenement has been increased without any basis and justifiable cause.** Respondent also contended that Appellant is mis-using Regulation 22 by wrong interpretation.

Heard both the parties.

According to complainant as per contractual terms, he has to pay principal amount as directed by RERA; whereas according to MHADA due to increase in costs of building construction, extra items and amenities provided to LIG applicants, complainant is bound to pay Rs.37,88,000/- though agreed price for tenement was Rs.28,60,000/-.

Appellant has justified increase and in support thereof placed on record sale price per tenement proforma IX recapitulation sheet. Referring to clauses 7, 8 and 9 of recapitulation sheet, appellant contended that increase in costs to the tune of Rs.9, 28,000/-- is justifiable under Regulation 22 of MHADA Regulations 1981.

**In the present case, a bare look at the judgment in complaint would indicate that no reasons are recorded to show why and how the Authority comes to such conclusion and directs complainant to pay principal only, particularly when MHADA has categorically stated that under Regulation 22 such increase is justifiable and within the powers of the Board. Therefore matter is remanded back to authority for fresh hearing.**

**APPELLANT: M/s. Larsen & Toubro Ltd.**

**RESPONDENT: Mr. Mayank Agarwal & Ors.**

**ORDER DATE: 24.02.2021**

Appellant Representative: Adv. Nilesh Gala

Respondent Representative: Adv. Sheelang Shah

**Gist of Case: Amendment in appeal memo will not make a new case but it will avoid multiplicity of the proceedings.**

Reading the appeal memo, following points arise for consideration:

POINTS	FINDINGS
(1) Whether amendment sought in the Appeal memo is necessary for adjudication of the dispute between the parties?	Affirmative
(2) What order?	As per final order

Appellant has sought amendment in the Appeal memo as per schedule attached with application for amendment. It is revealed from the schedule that para I to IV are in respect of the record of the Appeal, as far as para-V is concerned Appellant has made averments on the point that impugned order is passed by the Authority in dual capacity i.e., Member and Adjudicating Officer. Appellant has pleaded to that effect.

Appellant intends to add some grounds in Appeal memo. Those grounds arise out of original pleadings which are sought to be amended.

Considering the nature of amendment sought in respect of pleadings and grounds of Appeal it is revealed that amendment is consistent and relevant with pleadings and grounds mentioned in original Appeal memo. In fact, amendment sought as per schedule is necessary for determination of the dispute between the parties. Moreover proposed amendment if allowed will not make out a new case which is inconsistent with the original pleadings in the Appeal memo. Multiplicity of the proceedings may be avoided by allowing the proposed amendment in the Appeal memo. There will be no prejudice caused to Respondents as they can be compensated by awarding reasonable costs for allowing the application for amendment. **Thus, proposed amendment assought by Appellant is necessary for determination of dispute between the parties. Tribunal answered the points accordingly.** Passing the following order:

- i. Subject to payment of costs of RS. 3000/- (Three Thousand) by Appellant to Respondents within two weeks i.e., on or before 10th March, 2021.
- ii. And Appellant shall amend the Appeal memo as per schedule attached with the application for amendment within two weeks.

## **TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL**

**APPELLANT: S. Rakesh Kumar**

**RESPONDENT: M/s Acolyte Infrastructure and Mining Ltd.**

**ORDER DATE: 10.02.2021**

Appellant Representative: M/s. Ralph V. Manohar & ors.

Respondent Representative: M/s. Sarvabhauman Associates & ors.

**Gist of Case: Plea of on-going project against promoter without proof leads to dismissal of appeal with costs of Rs.10,000/-.**

The appellant had entered into a sale agreement with the respondents on 28.12.2008 for the purchase of the flat measuring to 1377 sq. ft. of built up area along with 384 sq. ft of garden area and 575 sq. ft undivided share in the said land. The total sale

consideration of the flat was fixed at Rs. 36,47,800/- and the appellant paid a sum of Rs.6 lakhs as advance on various dates. The balance sale consideration was to be paid within 62 calendar dates i.e. by 20.02.2009. The appellant had applied for housing loan from HDFC bank. **The bank officials on inspecting the property found out that the built up area measuring 1377 sq. ft. was not available and available measurement is only to an extent of 1141 sq. ft. Hence the bank officials advised the appellant to rectify the sale agreement by reducing the built up area.** Immediately the appellant brought the above issue to the notice of the respondents and requested the respondents to reduce the cost of built up area and rectify the defect in the sale agreement. The respondents refused to rectify the same. While this being so, the respondents issued legal notice on 19.07.2010 by forfeiting the advance amount of Rs.6 lakhs on the ground that the appellant had not paid the balance sale consideration in terms of the agreement. Hence appellant replied on 02.08.2010 and specifically stated that he was ready and willing to pay the balance sale consideration immediately on measuring the flat with mutually appointed engineer only for the available built up area. On receipt of the above reply the respondents issued a rejoinder on 16.08.2010 and refused to comply.

After hectic steps taken by the appellant the respondents agreed to measure the property by a registered valuer and chartered engineer and after measuring the **same it was found that the built up area was only 1141 sq. ft. instead of 1377 sq. ft. Even then the respondents refused to accept the report of the registered valuer and refused to reduce the price.** Therefore, the appellant on 28.03.2013 had given a complaint to the Commissioner of Police, Coimbatore and the respondents assured before the police that they would reduce the cost of the flat proportionately and receive the amount from the appellant. But even after all of this the respondents refused. Hence the appellant again gave another complaint before the Commissioner of Police, Coimbatore. But the police refused to entertain the complaint stating that the issue is civil in nature and that the appropriate remedy would be before a civil court. In the mean time Real Estate (Regulation and Development) Act, 2016 was notified. Therefore the appellant on 28.09.2018 filed a complaint before the Regulatory Authority for the relief of not to sell or rent related property to anybody, to reduce the amount of corresponding to less area of 236 sq. ft. After contest the Regulatory Authority dismissed the complaint as not maintainable. Aggrieved upon the same the appellant preferred this appeal.



The real dispute between the appellant and the respondents is only with regard to the measurements. The respondents purposely avoided to accept the truth and prolong the dispute all these years from 2008 onwards. The appellant is always ready and willing to perform his part of contract by way of paying the balance sale consideration to the actual built up area. **Hence the appellant rightly approached the Regulatory Authority. But the Regulatory Authority without considering the real intention of the appellant and without going to the merits of the facts of the case and simply rejected the claim on the ground of maintainability and it is against the provisions of the RERA Act.**

The respondents would submit that the Regulatory Authority has rightly comes to a conclusion that the agreement was entered into between the appellant and the respondents in the year 2008 and advance paid by the appellant was forfeited by the respondents through the legal notice dated 19.07.2010. Even after the forfeiture of the advance amount the appellant has not taken any steps through court of law. After the RERA Act came into force in the year 2017, the appellant leisurely approached this Regulatory Authority, Hence the Authority has rightly negated the claim of the appellant since there are no merits. Therefore, this appeal is liable to be dismissed.

The points for consideration:

1. Whether the appellant is entitled to invoke the provisions of Real Estate (Regulation and Development) Act, 2016?
2. Whether the appeal deserves to be allowed or not?

According to the appellant, the respondents demanded amount for the entire 1377 sq. ft instead of actual constructed area of 1141 sq. ft. The appellant was always ready and willing to complete the sale transaction by paying the price for the actual constructed area but the respondents refused to accept the same hence the dispute arose between the appellant and the respondents. The reduction in the measurement was also proved by the appellant by measuring the same through a valuer/chartered engineer. Even then the respondents failed to accept the same. Hence the appellant came forward with the complaint before the Authority,

According to the respondents, the appellant and the respondents entered into sale agreement only on 28.12.2008 and the period of completion of sale was on

28.02.2009 i.e., within 62 calendar days. In the agreement itself, there is a specific provision regarding breach of contract the remedy under specific performance. **There is no agreement between the appellant and the respondents for any construction. The appellant and the respondents entered into the above said agreement with regard to the already constructed flat and not to beconstructed. Therefore, the Regulatory Authority rightly negated the claim of the appellant as the complaint is not maintainable.**

The appellant agreed to purchase from the respondents the built up area within 62 days from the date of agreement. The said 62 days ended on 28.02.2009. Within that period the appellant has not completed his part of contract. The respondents on 19.07.2010, through legal notice, cancelled the agreement and forfeited the advance amount of Rs.6 lakhs paid by the appellant to the respondents. The appellant on 02.08.2010 replied through legal notice that he is entitled to the relief of specific performance and to compel the respondents to sell the extent that he has promised and also stated that he would enforce his right before the court of law. Subsequent to the rejoinder both the appellant and the respondents measured the property through one S.Pitchaiah, Registered Valuer and Chartered Engineer.

After Commissioner of Police, Coimbatore on 28.03.2013, the appellant came forward with the complaint before the Regulatory Authority through Form 'M' on 28.09.2018. **In between 28.03.2013 to 28.09.2018 the appellant has not taken any steps to proceed with the agreement.** The request of the appellant was clearly refused by the respondents on 16.08.2010 itself even then the appellant has not taken any steps to proceed with the agreement. Even though the appellant gave a second complaint on 15.10.2015 and the police also refused to take action and advised to approach the civil court for the remedy. The appellant himself has categorically admitted that he is entitled to the relief of specific performance and compelled the respondent to sell the extent that he has promised. **The appellant has to take steps for the relief of specific performance within 3 years from the date of refusal by the respondent or within 3 years from the date of cause of action accrues as per some previous order by Hon'ble Madras High Court and Hon'ble Supreme Court.**

In this case the respondents refused to perform their part of contract on 16.08.2010 itself. **The refusal of the contract by the respondent was informed to the appellant through legal notice itself. The cause of action for the suit for specific**

**performance of contract accrues on 16.08.2010 itself.** Subsequently, at the instigation of the appellant the respondents agreed to measure the property in the presence of the appellant as well as the respondents' representative Mr. Ashish Kumar Kataruka, as per the report of the registered valuer. The appellant has not chosen to proceed with the civil suit to agitate for his right. Instead of that the appellant approached the Police Commissioner on 28.03.2013 by way of complaint. Again on 15.10.2015 the appellant approached the Commissioner of Police, Coimbatore with another complaint. **Even after the refusal by the police the appellant has not chosen to approach the civil court for the relief of specific performance, since as per the above verdicts of the Hon'ble High Court and Supreme Court, the claim is barred by limitation.** After the enactment of the Real Estate (Regulation and Development) Act, 2016, the appellant came forward with the complaint before the Regulatory Authority on 28.09.2018 for the relief of "direction to give flat on accepting reduced amount".

On the side of the appellant the learned counsel vehemently put forth the arguments on the ground of maintainability by invoking Section 3(2)(b) of the Real Estate (Regulation and Development) Act, 2016. On the side of **the respondents the learned counsel vehemently opposed the complaint on the ground that the disputed building was constructed in the year 1995-1996. Further the learned counsel for the respondents would submit that this complaint, which has been filed at this belated stage, only indicates the complainant's intention to misuse the scheme of the Act, to take advantage of his own wrong.** As mentioned above, the project was **completed** 20 years ago prior to the commencement of RERA and the dwelling units and shops have been handed over prior to the notification of the Rules.

**According to the appellant the respondents' project is an on-going project on the date of filing of the complaint before the Authority since the respondents have not obtained the completion certificate for their project. The appellant has relied on various orders of the RERA but none of them are connected with the present case.**

As per Section 3(2) (b) if the promoter has received completion certificate for his real estate project before the commencement of this Act he is exempted from registration under RERA. In this case, according to the respondent, he has completed the project during 1995-1996. The agreement entered into between the appellant and the respondents was in the year 2008. The property was also assessed for municipal tax.

On the side of the appellant he has produced various documents in the Typed set. Out of those documents, no proof is elicited to show that the property in dispute is an on-going project, but in contra the appellant himself entered into an agreement as document in which the description of property is mentioned as "built up area". Further the appellant has not stated in his reply notice dated 02.08.2010 and his complaint dated 28.03.2013 about the on-going project. **The appellant has not produced any piece of paper to show that it is an on-going project. Mere non-obtaining of completion certificate alone is not sufficient to construe as an on-going project.**

As above, it was decided that the complaint is not entitled to invoke the provisions of the Real Estate (Regulation and Development) Act, 2016. The Appellant miserably failed to prove that the respondents' project is an on-going project. But in contra the respondents has sufficiently proved that their project was completed in the year 1995-1996 and completed flats were sold to the allottees and the allottees assessed their flats for the property tax to the Coimbatore Municipal Corporation, to that effect they have also produced documents. **Hence, the Regulatory Authority rightly came to a conclusion that the complaint of the appellant is not maintainable. There is no infirmity in the findings of the Regulatory Authority.** Therefore, this Tribunal comes to a conclusion that this Appeal is not deserves to be allowed. The point is answered accordingly. **Hence the Appeal is dismissed with costs of Rs.10,000/-.**

## **HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**APPELLANT: Mrs. Manju Arya &Ors.**

**RESPONDENT: M/s TDI Infrastructure Ltd**

**ORDER DATE: 19.01.2021**

Appellant Representative: Shri Vikas Deep

Respondent Representative: Shri Ajay Ghangas

**Gist of Case: Statutory right to claim the compensation cannot be subsequently extinguished with the execution and registration of the conveyance-deed**

The appellants had got booked plots with the respondent in the year of 2005. They paid approximately 90% of the total basic sale price by the year, 2006. It was further pleaded that the respondent had assured to deliver the possession of the plots within

24 months from the date of booking, after completing all the development works and obtaining the completion certificate but the respondent issued the letters of offer of possession only on 24.05.2018 i.e., during the pendency of the complaints filed by the appellants before the Haryana Real Estate Regulatory Authority, Panchkula. The appellants alleged that there was inordinate delay of about 13 years in delivering the possession of the plots to the appellants.

Earlier, the appellants had approached the District Consumer Disputes Redressal Forum, New Delhi, but the said complaints were got dismissed as withdrawn. Thereafter, complaints were filed before the learned Haryana Real Estate Regulatory Authority, Panchkula for grant of relief of possession as well as compensation on account of delay. During the pendency of the said complaints, the possession letters dated 24.05.2018 were issued to the appellants and the said complaints were disposed of by the learned Authority directing to approach the learned Adjudicating Officer for claiming the compensation i.e., interest on amount deposited for delay in delivery of possession

The respondent contested that the learned Adjudicating Officer had no jurisdiction to entertain the complaints. In the written statement filed in Complaint, it was also pleaded that the provisions of the Act are not applicable as the project in question was not registered under the provisions of the Act. It was further pleaded that the project in question was not liable to be registered in terms of Section 3 of the Act.

Respondent contended that the offer of possession had already been sent to the appellants vide letters dated 24.05.2018. However, the respondent denied that it had ever promised to hand over the possession within 24 months from the date of booking of the units. So, there is no question of granting any compensation to the appellants.

The appellants contended that it is an admitted fact that the appellants have booked the plots in the year 2005. He contended that there was inordinate delay of more than 13 years in offer of possession, though the appellants have already made the payment of more than 90% of the basic sale price. Even though there is no stipulation in the allotment letter, the respondent was required to complete the development works within a reasonable period. But there is an inordinate and unreasonable delay of more than 13 years.



On the other hand, the respondent contended that there was no specific date of delivery of possession mentioned in the allotment letter. Thus, it cannot be stated that any delay has been caused in the delivery of possession. He further contended that as per Section 11(4)(a) of the Act, the promoter is only responsible for obligations, responsibilities and functions till the execution of the conveyance-deed. He contended that in this case, the conveyance-deed has already been executed, so the appellants are debarred to claim compensation by virtue of Section 11(4)(a) of the Act.

Heard the contentions.

**The complaints filed by the appellants/allottees for grant of compensation have been dismissed on two grounds. Firstly, that the promoter shall be responsible for discharge of its obligations towards the allottees only till the conveyance of all the rights in the purchased property. Secondly, the complainants had not pleaded and proved as to what was the agreed dates of possession.**

**The conveyance deed were executed during the pendency of the present appeal. At the time of filing of complaint no conveyance deed was registered. So, the reasoning given by the learned Adjudicating Officer qua these complaints is factually incorrect.**

**But, in our view the execution and registration of the conveyance-deed will not absolve of the promoter of the liability which had accrued before the execution and registration of the conveyance-deed. The moment the delay has occurred in the delivery of possession, the statutory right to claim the compensation had occurred to the appellant which cannot be subsequently extinguished with the execution and registration of the conveyance-deed.**

It is an admitted fact that no agreement for sale was entered into between the parties wherein the date of delivery of possession might have been stipulated. But the promoter cannot indefinitely defer the delivery of possession after receiving the substantial sale price. The promoter is duty bound to deliver the possession within reasonable time.

The learned Adjudicating Officer has summarily disposed of the complaint by observing that the complaints filed by the appellants were not maintainable as the

conveyance-deed was already executed and there is no stipulated date of delivery of possession, but as discussed above said findings of the learned Adjudicating Officer are not legally sustainable.

Thus, keeping in view our aforesaid discussions, the present appeals are hereby allowed. The cases are remanded to the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula for adjudging the compensation by following the procedure as per rule 29 of the Rules and taking into consideration the factors provided in Section 72 of the Act.

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

**COMPLAINANT: Suo Moto**

**RESPONDENT: Rajasthan Housing Board**

**ORDER DATE: 25.01.2021**

Complainant Representative: None

Respondent Representative: CA Himanshu Goyal

**Gist of Case: Violation of section 61 read with section 11(2) of the Act, exercised with a penalty of Rs. 10,000.**

In the present matter, a show cause notice was issued to the respondent on 17.02.2020 under section 61 read with section 11(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') **for having issued an advertisement on its website in January, 2020 in respect of its project 'RHB Aatish Market', without mentioning therein the website address of the Authority.** Subsequently, another show cause notice was issued on 05.08.2020 for similar violation in respect of the advertisement of the project issued in various editions of 'Rajasthan Patrika' dated 26.02.2020.

In the reply submitted on 08.06.2020 and a supplementary reply submitted now, it has been stated that it was only an inadvertent lapse on their part, arising from a human error. Counsels of the respondent have also stated that the respondent has since appointed professional consultants to advise them on compliances and requirements of the Act and now the respondent is ensuring full compliance of the provisions of the Act.

Having heard the respondent and having perused record of the case, Authority found that, admittedly, the project was advertised by the respondent on various occasions without mentioning therein the website address of the Authority. Thus, there has been a clear violation of section 11(2) of the Act.

It is also noted here that the respondent has issued subsequent advertisements on 26.06.2020 and again on 20.08.2020 in 'Rajasthan Patrika' Jaipur edition, where also similar violation of the Act has been repeated.

**However, having regard to the fact that the alleged violation of section 11(2) of the Act has been admitted on behalf of the respondent and they have since made arrangements to ensure full compliance of the provisions of the Act, Authority inclined to believe that a token penalty will meet the ends of justice.**

In view of the above observations and findings, and in exercise of the powers conferred on the Authority under section 37 and section 38 of the Act, **a penalty of Rs. 10,000/- only is hereby imposed on the respondent under section 61 read with section 11(2) of the Act.** The respondent is directed to deposit the said penalty amount with the Authority within 45 days from the date of issue of this order and to file a compliance report with the Registrar of the Authority within 15 days thereafter. With these directions, all the matters stand disposed of.

**COMPLAINANT: Vikas Juneja**

**RESPONDENT: Radha Krishna Buildtech Pvt. Ltd.**

**ORDER DATE: 27.01.2021**

Complainant Representative: Adv Ankit Juneja and Nitesh Shrivastava

Respondent Representative: None

**Gist of Case: Case forwarded to collector for recovery of amount.**

In the present case, complainant booked a flat in the project by the name "Royal Studio 2", for which he had paid 95 per cent of the total sale proceeds of the said flat. He alleged that the respondent promoter had actually inappropriately utilised the funds for other real estate projects and the project, in fact, is nowhere nearing the completion. The case was heard in detail on 27.10.2020 and an order was passed by this Authority on 27.10.2020 directing the respondent promoter to refund paid amount along with interest at SBI Highest MCLR i.e., 9.30% per annum as provided

in the Rajasthan Real Estate (Regulation and Development) Rules, 2017. The said refund will be made by the respondent promoter within 45 days from the date of issue of this order and submit a compliance report within 15 days.

The complainant appeared before Bench stating that the case was listed on 15.12.2020 for noting compliance of the order passed by this Authority and due to non-appearance of the counsel on record, the case was consigned to record. Therefore, now he pleaded for restoration of the case for pursuing the compliance of the order dated 17.10.2020 and stated that the non-compliance of the said order demonstrated the malafide intention of the respondent promoter marking the contravention of section 63 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and prayed for payment of the ordered amount along with interest as ordered by this Authority on 27.10.2020. He further stated that Rule 26 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') provides for recovery of the amounts due as arrears of land revenue to be recovered in the manner as provided for in the Rajasthan Land Revenue Act and the Rules made thereunder.

None appeared before the Authority on behalf of the respondent. It may be noted that the respondent promoter had chosen not to appear before this Authority on earlier dates as well despite service of summons and service of the order dated 20.10.2020 through speed post and by email. Non-compliance of the order dated 27.10.2020 would attract provisions of section 40 (1) of the Act and Rule 25 of the Rules, which reads as under:

*“ Section 40. (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue”.*

*“Rule 25 - Manner of recovery of interest, penalty and compensation - Subject to the provisions of sub- section (1) of section 40, the recovery of the amounts due as arrears of land revenue shall be recovered in the*

*manner as provided in the Rajasthan Land Revenue Act, 1956 and rules made thereunder”.*

**Accordingly, the Registrar of the Authority is directed to forward the case to the Collector, Jaipur for recovery of the amount ordered as arrears of land revenue as provided under the Rajasthan Land Revenue Act, 1956 and the Rules made thereunder.**

**COMPLAINANT: Suo Moto**

**RESPONDENT: Goldenline Infrastructure Pvt. Ltd.**

**ORDER DATE: 27.01.2021**

Complainant Representative: None

Respondent Representative: None

**Gist of Case: Registration of the project lapsed, Authority to take the project in possession and initiate further development work with the assistance of a third party.**

In the present case by an order of the Authority dated 28.01.2020 “Archana Vasandani V/s Goldenline Infrastructure Pvt. Ltd.”, the respondents were, directed to work for and ensure the formation of an association of allottees for its registered project ‘Golden Tulip’, as visualized under clause (e) of sub-section (4) of section 11 of the Act, within two months from the date of issue of the said order and to file a compliance report with the Authority within one month next. It was also directed that, a notice shall separately be given to the respondents to explain as to why the provisions of section 8 of the Act be not invoked in the project.

In this context, in the present matter, a show cause notice was issued to the respondents on 11.06.2020 under various sections of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’) asking the respondents to explain as to:

- i. why a per-day penalty be not imposed on them under section 63 of the Act for violation of the aforesaid direction of the Authority dated 28.01.2020;
- ii. why a penalty equal to or upto 5 per cent of the estimated cost of the project be not imposed on them under section 61 for contravention of clause (e) of sub-section (4) of section 11 of the Act; and



- iii. why Block-A and Block-B of the said project be not taken over by the Authority under section 8 of the Act, for getting the said Block-A and Block-B completed with the help of a third party. The said notice was also sent to the Official Liquidator in his capacity as the Provisional Liquidator of Aerens Gold Souk International Ltd..

**A reply has been filed by the respondents stating that in the light of Hon'ble Delhi High Court's order dated 01.08.2019 passed, whereby a provisional liquidator has been appointed for the respondent company, the present proceedings deserved to be stayed as per the provisions of section 446 of the Companies Act, 1956 and can be proceeded with only by leave of the Company court.** And, in an OA pending before DRT II, Chandigarh, the respondent company has been restrained from transferring possession of its assets, and, therefore, the project is dumped.

Both the objections taken in the said reply have already been dealt with by this Authority and rejected in its order dated 28.01.2020 and cannot and need not be revisited.

**A perusal of the record shows that the respondents have indeed failed to comply with the aforesaid direction contained in this Authority's order dated 28.01.2020 inasmuch as they have neither formed the association of allottees nor submitted any compliance report to the Authority** setting out the actions taken by them towards the formation of such association. This failure on the part of the respondents to form the association of allottees is found to be a contravention of the provisions of clause (e) of sub-section (4) of section 11 of the Act.

**For this contravention of the Act, a penalty of Rs. 2.00 lakh is hereby imposed on the respondents under section 61 of the Act.** The respondents are directed to deposit the said penalty amount with the Authority within 45 days from the date of issue of this order. The respondents are further directed to file a compliance report with the Authority in respect of the aforesaid direction to form the association of allottees within a period of 45 days from the date of issue of this order and failure to comply with this direction within the time so extended will then attract a penalty under section 63 of the Act. For the present, instead of imposing a penalty under the

said section 63, authority have thus given another opportunity to the respondents to comply with the direction in question.

A perusal of the record further shows that the registration of the project in question 'Golden Tulip' has already expired on 01.08.2018 as the promoter has neither submitted an application for extension of registration of the project nor filed completion certificate of the project, while the project remains substantially incomplete. **Thus, registration of the project 'Golden Tulip', is held to have lapsed on 01.08.2018. Therefore, Registrar of the Authority is hereby directed to take the registered project in the possession of the Authority and initiate further action in terms of section 8 of the Act for getting the remaining development work of the project completed with the assistance of a third party.**

**COMPLAINANT: Vinod Kumar Yadav**

**RESPONDENT: ALD Infratech Pvt. Ltd.**

**ORDER DATE: 27.01.2021**

Complainant Representative: None

Respondent Representative: None

**Gist of Case: Appellant plea for refund of amount along with interest as project is not completed on time and option of buy back also not exercised by the respondent. Amount to be refunded with compensation.**

The applicant filed this application under Rule 36(2) made under the Rajasthan Real Estate (Regulation and Development) Rules, 2017 praying that applicant booked a 3BHK flat in M/s Beverly Towers Private Limited in residential project in October, 2012. The promoter developer invited applications for the purchase of flat on 02.10.2012. **The applicant deposited Rs. 14,00,000 till 18.10.2012 as advance. The said project was scrapped and BTPL issued a postdated cheque of amounting Rs.9,03,000/- dated 17.03.2015 against advance deposited by applicant and interest thereon.** The cheque issued by the BTPL bounced because of insufficient fund and the applicant afterwards filed a case against BTPL under section 138 of NI Act.

**After that the signatory to the cheque offered a commercial shop in M/s ALD Infratech Private Limited, i.e. respondent's upcoming project in Neemrana and applicant executed Buyer Builder Agreement with respondent on 24.02.2017 and**

as per terms of agreement the respondent is entitled to buyback the property anytime before 24 months of signing the agreement at the rate of 7,00,000 plus 12% interest from November, 2012 till the date of payment or transfer the property in applicant name after completion of 24 months at no additional charges except service tax and Government statutory expenses. If respondent does not buyback then he will offer transfer the property in applicant's name. Buy back option was expired on 24.02.2019. **The project not started till the filing of application and is not registered with Rajasthan Real Estate Regulatory Authority.** The respondent is liable to refund the deposited amount with interest along with compensation.

The notices of this application were sent to respondent, but he chooses not to respond. Neither any reply was filed nor did any one appear on his behalf.

Heard the applicant it is found that in support of statement made by applicant, he filed documents to support his contentions, market press release and rate in the new upcoming project, in which he originally booked a unit and deposited advance is produced. Therefore, it is proved that he deposited the advance on the basis of terms and conditions mentioned in market press release. The said new project was also not completed within time and the option of buy back with 12% interest per annum was also not exercised by respondent within time. Applicant wants to withdraw from the project; therefore, he is entitled for refund along with interest.

For deciding the quantum of compensation amount, section 72 of the Act has been taken into consideration. Therefore, this is a case where exemplary compensation should be awarded. Hence, it is ordered that respondent is liable to refund Rs.7,00,000/- with prescribed MCLR rate, i.e. 7.30%+2% from the date of deposit, i.e. 24.02.2017 till realization. Further he should also pay an additional interest at the rate of 5% per annum on this deposit of Rs.7, 00,000/- from the date of deposit till realization as compensation. This amount should be paid within 45 days from the date of this order.

**COMPLAINANT: G.G.Mundra HUF**

**RESPONDENT: Shree Ram Kripa Build Home Pvt.**

**ORDER DATE: 27.01.2021**

Complainant Representative: CA Amit Kedia

Respondent Representative: Adv. Abhilasha Sharma

**Gist of Case: Application is dismissed as Act does not provide any power to authority to review, amend substantive part of its order passed under the provision of this Act.**

In the present case, the respondent has submitted a recall application to recall the two orders passed on 03.11.2020 and on 23.12.2020. The respondent promoter stated that the show cause notice dated 14.10.2019 issued to the respondent seeking reply within thirty days, was served on them. She further claimed that the email address mentioned in the show cause notice was incorrect and did not belong to the respondent, as such there was no prior intimation of hearing because of which, the respondent could not represent himself either on 03.11.2020 or on 23.12.2020. Drawing her argument further, **she brought out a notification issued by the Hon'ble Rajasthan High Court dated 15.03.2020, whereby it has been directed the subordinate Courts not to insist on the presence of the parties unless the matter is essential and unavoidable and adverse orders are to be avoided for their absence.** She also brought out the order dated 13.05.2020 issued by this Authority, whereby it was notified that no coercive steps would be taken by the Authority for execution of refund orders upto 31.03.2021. Still further, she invoked section 35 (2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and section 151 CPC along with supporting case laws and prayed for allowing her application and recall the orders dated 03.11.2020 and 23.12.2020 passed by this Authority.

The complainant stated that the address of the respondent promoter on which the summons were sent, is the same as has been submitted by the respondent himself in ATS. Further, the claim of the respondent promoter about the email address cannot be accepted. **The admission by the respondent that the initial show cause notice was indeed served upon them and no reply was filed despite service of summons, is enough indication of the malafide intention of the respondent promoter to avoid the proceedings and delaying the matter.**

The arguments of both the sides were heard by the Bench. The application filed by the respondent, notifications issued by the Hon'ble High Court and this Authority mentioned by her, were examined and the case laws submitted by her were looked into. **In the first place, it is correct that the respondent has admitted receiving the copy of the show cause notice and not replying to the same.** No convincing explanation has been submitted by the respondent as to why the reply was not submitted despite admitting receipt of the hard copy of the show cause notice.

Secondly, the claim that the email address on which the email was sent was not correct also does not hold much water because the email address is the same as has been mentioned by the respondent in the registration documents or in the agreement for sale. Finally, as per track report of the speed post sent to the respondent, the notice of hearing has been served on both the parties and there is no reason to doubt the track report received from the post office in regard to these summons.

In the circumstances, this Bench is convinced beyond doubt that the notice of hearing was duly served on the respondent and the respondent has chosen not to appear before this Authority. **By her own admission, the respondent, a physical copy of the show cause notice was received by them but they chose to ignore it and not file any reply. This reflects the general demeanour of the Respondent towards the notices issued by this Authority.** As far as the notifications issued by the Hon'ble Rajasthan High Court dated 15.03.2020 and by this Authority dated 13.05.2020 are concerned, it could be granted to the respondent promoter that no coercive action will be taken by this Authority for execution of refund order passed on 03.11.2020 till 31.03.2021. Likewise, the order dated 23.12.2020 passed by this Authority will also be stayed from execution till 31.03.2021 and the Registrar of the Authority is directed to send the matter to the District Collector under section 40 (1) of the Act.

**Further, this Bench would like to highlight the fact that the Real Estate (Regulation and Development) Act, 2016, does not provide any power to this Authority to review its order.** Section 39 of the Act, does provide for an amendment in the order made under this Act only with a view to rectify any mistake apparent from the record and bars the rectification of such mistake apparent from record if it constitutes a substantive amendment in the order passed by the Authority. **In the present case, it is clear that the rectification sought is not a mistake apparent from record. It is also obvious that the consideration of this application could also amount to a substantive amendment in the order.** Accordingly, since the Act does not provide any power to this Bench to review, amend substantively, or restore a case, the application is liable to be dismissed.

The relief provided in the foregoing paragraph about granting time till 31.03.2021 for compliance of the order dated 03.11.2021 and staying of the proceedings of the order dated 23.12.2020 is well within the ambit of section 39 of the Act as this relaxation

does not constitute any substantive amendment in the order. Accordingly, the application for recalling the order dated 03.11.2020 and 23.12.2020 passed by this Authority, is dismissed.

**COMPLAINANT: Varsha Mittal**

**RESPONDENT: VN Buildtech Pvt. Ltd.**

**ORDER DATE: 16.02.2021**

Complainant Representative: Adv. Harsh Wardhwan Nandwana

Respondent Representative: CA Mitesh Rathore

**Gist of Case: Applicant seeking refund of deposited amount along with interest as project is not completed on time and same has been allowed by the authority.**

Applicants filed a complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'). In the impugned project 'Exclusive 444', a flat No.A-603 was booked against consideration of Rs.48.50 lac. As per terms and conditions enumerated in the aforesaid agreement, expected delivery of possession for the flat is after 36 months and grace period of 6 months was expected on 15.10.2017, not later on 15.04.2018. Applicants after booking deposited with the respondent Rs.33,46,592/- in various instalments irrespective of that possession of the flat is not offered. By mentioning a trail of E-Mails between the parties, applicant seek refund of the deposited amount with the respondent as delivery of possession for flat is not complied with as per the terms and conditions of the agreement for sale.

The respondent filed the reply and raised preliminary objection for jurisdiction of the Authority. Respondent accepted the deposited amount upto the tune of Rs.33,46,592/-, but against sales consideration for the flat as Rs.50,90,000/-. The respondent further mentioned in his reply that due to various factors of force majeure mentioned in the agreement for sale specifically due to non-availability of Bajri, the progress of the project was hampered and got delayed. Respondent cited the various judgments of Haryana Real Estate Regulatory Authority and the Authority put forth that respondent is having intention for seriously completing the project. Therefore, refund to the applicant is not to be allowed as it will encourage other buyers and project may get delayed due to paucity of funds which is against the objective of the Act.

After hearing arguments of both the parties, the following issues were raised by either of party:-

1. The case is to be pleaded only by the 'legal practitioner' before the Authority.

The Advocate Mr. Harsh WardhanNandwana referring section 37 of the Advocates Act, 1961 insisted that CAs or otherwise representatives are not to be allowed before the Authority to plead the case of either of the party. CA MiteshRathore objected that under the provisions of the Act, CAs or Company Secretaries are allowed to plead on behalf of party before the Authority. In this light legal provisions of the Advocates Act, 1961 and Real Estate Regulatory Authority Act, 2016 are required to be taken into consideration.

Further, in the aforesaid section explanation for Chartered Accountant, Company Secretary, Cost Accountant and Legal Practitioner is provided as per statutes applicable respectively for them.

Accordingly, section 32 of the Advocates Act and Section 56 of the RERA authorises the Authority to allow any of the C.A. or otherwise present to plead on behalf of the any party. In this regard, observation by Hon'ble Supreme Court (Constitutional Bench) in the case of Sant Ram Sharma V/s State of Rajasthan (AIR 1967 SC 1910) is imperative to mention as under:-

*“Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”*

The State Government through rules and Authority through the Regulations had filled up the gap in section 56 of RERA and provisions are applicable for either of the party.

The objection raised by the Advocate of the applicants was overruled during the course of hearing as the Authority has not restrained any of the CA or other persons to plead the case of either of the party comes for consideration before the Authority. As per legal proposition mentioned above, the objection raised by the Advocate for applicants is not sustainable in the eye of law.



2. Jurisdiction of the Authority – This issue was discussed at length in the case of P.L. Malhotra by the Bench. The respondent submitted that the case should be filed before the Adjudicating Officer and application should have been submitted in form ‘O’. The applicants prayed for refund of their deposited money. It was directed that claim for refund is to be taken into consideration by the Authority under section 12 or 18 of the Act. The applicants have claimed refund with interest under the provisions of Section 18 (1) of the Act, due to failure of the respondent for delivery of possession as stipulated in the agreement for sale dated 26.10.2015. Accordingly, application falls under the jurisdiction of the Authority.
3. Demand for refund – The Counsel for applicants invited attention of the Bench towards the trail of E-Mails by either of the party on various dates, specifically mentioned E-Mail dated 12.02.2020 in which it was mentioned by the applicant that possession is not offered to them, therefore, money deposited with the respondent be refunded to the applicant by 29.02.2020. Counsel for applicants submitted that as per the agreement, possession of the aforesaid flat was likely to be offered within 36+6 months grace period w.e.f. date of excavation i.e. 15.10.2014. Accordingly, by 15.04.2018 possession should have been invariably delivered. Applicants continuously contacted and persuaded to the respondent but all in vain. A meeting with the respondent was also held in this regard, but no fruitful results were visible. Therefore, under the provisions of the Act, builder has utterly failed to offer the possession on stipulated date. He claimed refund with interest.

Respondent reiterated the facts mentioned in his reply that due to scarcity of Bajri/Sand, digitalization and various other reasons, the progress of construction was hampered. He submits that as per registration of the project with the Authority completion of the project was expected on 30th September, 2020 which is extended due to force majeure for Covid-19 upto 30th September, 2021. He contended accordingly that application is premature.

The representative of respondent Mr.MiteshRathore submitted that intention of the builder is to be looked into for completion of the project. In this regard, he referred the judgement passed by the learned Bench of the Authority in case of Ravikant Gupta, in which, Applicant drawn attention towards the judgment

passed by the Bench in case of Rohitash Kumar Saini and insisted for allow to refund. The order passed by the Bench in Rohitash Kumar Saini's case is ex-parte and views taken by the learned Full Bench in the case of Ravi Kant Gupta was not forwarded for consideration of the Bench.

Further, Bench discussed and made it clear that refund is to be ascertained depending upon the facts and circumstances of the case. It is not mandatory that if a refund is allowed in a particular case accordingly, refund should be allowed in the other cases also. The facts and specific circumstances are to be examined and particularly for case in hand. The Applicants tried their best to postpone the delivery of possession and sought revised agreement for sale. It is a sorry state of affairs that the applicants showing their leniency towards the promoter but builder miserably failed to execute fresh agreement for sale as envisaged in the meeting held on 08.06.2019. Therefore, it is a fit case to allow for refund with interest in the light of mentioned therein agreement.

Delayed delivery of possession as informed to the Authority while process for registration of the project, does not come in way for claiming refund or delivery of possession mentioned in the agreement for sale. The proposed date for completion mentioned in the application for registration never curtails the rights of buyers or the allottee, as it is an administrative process and the issue is involved only between the Authority and the promoter for information of completion of project registered with the Authority. Therefore, on the very ground, the proposed completion date mentioned in registration certificate is later one does not provide any legal basis to treat application as premature. The interest is applicable after adding 6 months grace period in 36 months w.e.f. the date of excavation i.e. 15.10.2014 (refer to clause 14 of the agreement).

In the light of the aforesaid discussions, the respondent is directed to refund the deposited money along with the interest w.e.f. 16.04.2018 as per rate applicable under rule 17 of Real Estate (Regulation and Development) Rules, 2017, to applicants within 45 days of passing of this order.

## **PART-III**

### **NOTIFICATION & CIRCULARS**

#### **KERALA REAL ESTATE REGULATORY AUTHORITY**

K-RERA/T3/102/2020(2)

Dated: 6<sup>th</sup> January, 2021

#### **ORDER**

#### **Sub: Expiry of Registration of Project and sale of units — clarification**

Section 3 of the Real Estate (Regulation and Development) Act, 2016 mandates that no promoter shall advertise, market, book, sell or offer for sale etc without registering the real estate project with the Real Estate Regulatory Authority. Section 5(3) of the said Act stipulates that the registration granted shall be valid for the time period within which the promoter undertakes to complete the project or the phase thereof. This implies that the registration certificate will be valid only till such date of completion of project, unless it is extended as per section 6 of the Act. Granting extension for a period not exceeding one year under section 6 of the Act, is solely at the discretion of the Authority and is limited only to circumstances of force majeure'.

This implies that the main intention for stipulating validity period for registration of project, is to ensure that the promoter completes the project within the completion period he undertook and assured to allottees. The activities such as advertisement, marketing, booking, sale or offer for sale etc as per section 3 of the Act can continue even after the project is completed. Hence the date of expiry of registration shall not be construed as a hindrance to the promoter in continuing with such activities even beyond the date of expiry of registration.

#### **KERALA REAL ESTATE REGULATORY AUTHORITY**

K-RERA/T3/102/2020(1)

Dated: 6<sup>th</sup> January, 2021

#### **ORDER**

**Sub:**Registration of Real Estate Projects — Streamlining of processing of applications -

(1) Extension/ Renewal of Permit :

There are applications pending registration of Projects for want of copies of documents for extension of period of permit or renewal of permit. In such cases, the applicant promoter / authorized signatory shall furnish an affidavit cum declaration to the effect as given under:

**"Affidavit cum Declaration**

I, Mr/Ms....., promoter / duly authorized signatory of the promoter.....(name of promoter) of the real estate project .....(name of project), located in.....(name of Municipality/corporation/ Grama Panchayat) do hereby solemnly declare, undertake and state as under:

That the period of validity of permit number..... dated.....of the said real estate project has expired and I / the promoter assure to get the said permit renewed or its period of validity get extended, and get all pending approvals if any required for the same in time.

(Name & Signature)

**Deponent**

**Verification**

The contents of the above affidavit cum declaration are true and correct and nothing material has been concealed by me therefrom,

Verified by me at..... on this..... day of.....

(Name & Signature)

**Deponent"**

Such Affidavit cum Declaration shall be prepared in non-judicial stamp paper worth Rs 100/- and shall be attested by an advocate. The affidavit shall be duly signed.

- (2) It is observed that in almost all cases of plot subdivision villa projects, the land development permit (for plot subdivision layout) and building permits (for villas/buildings therein) are procured separately by applicants. For the issue of Registration certificate of such plot subdivision layout villa projects, details of building permits (permit number, date of permit, issuing authority, date of expiry of permit etc) of individual villa buildings as separate Annexure is found to make the certificate too exhaustive in content. In this context, only the details of Development Permit in the registration certificate will be recorded in the registration certificate. Inclusion of building permit details of villas/buildings will henceforth be discontinued.

## **GUJARAT REAL ESTATE REGULATORY AUTHORITY**

No: GujRERA/Order-46  
2020

Date: 04<sup>th</sup> February,

### **Extension of Due Date for Submission of Form-5 for FY 2019-20**

As per the provision of section 4(2)(I)(D) of The Real Estate (Regulation and Development) Act, 2016 read with Regulation 4 of the Gujarat Real Estate Regulatory Authority (General) Regulation, 2017, every promoter is required to submit the annual report on statement of accounts in Form-5 within six months after the end of every financial year for every registered project.

Gujarat RERA Authority has made available the online facility of filing of Form-5 by Chartered Accountants on the Gujarat RERA portal for promoters of Registered Projects.

Keeping in view the COVID 19 pandemic, the country-wide lockdown, which affected all activities in the Real Estate Sector, Gujarat RERA has extended due date for submission of Form-5 for FY 2019-20 up to 15th February, 2021. Accordingly, Gujarat RERA has decided to publish the following order:

Order – 46 the last date for submission of Form 5 for financial year 2019-20 is extended up to 15th February, 2021. Promoters and Chartered Accountants are required to comply with the requirement of submission of Form 5 by the revised time period.

## **HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

### **Appeal regarding illegal sale**

It is for the general information to the public that a real estate project is being developed, advertised, marketed and plots are being sold by promoter through real estate agent without registration with the Haryana Real Estate Regulatory Authority, Gurugram as per details given below.

<b>S.No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of developer	Adani M2K Projects LLP
2.	Name of project	Adani M2K DDJAY
3.	Location of project	Sector-102A
4.	Nature of project	Affordable residential plotted colony (DDJAY)
5.	Area of project	14.99 acres
6.	No. of plots	288
7.	Name of real estate agent	Naveen Associates and other unknown real estate agents

In this connection it has been noticed by the Designated Officers of the Authority that above-mentioned developer is developing a real estate project named "Adani M2K" under DeenDayal Jan AwasYojna (DDJAY) and is indulging in marketing/ advertising/ selling/ assigning such plots without registering their project with the Authority, which is completely illegal and unlawful. Further, a canopy is placed outside the project location by real estate agent "Naveen Associates" for marketing and pre booking of plots in the project. This omission on behalf of developer is violation of Section 3 (1) of the Real Estate (Regulation and Development) Act, 2016 which states that "no promoter shall advertise, market, book, sell or offer for sale, or

invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it. in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act".

The Authority has taken a serious view on the promoter and real estate agent for advertising/marketing/selling the plots in above project and has taken suo motu cognizance of the matter and has decided to initiate penalty proceedings against defaulting promoter and real estate agent for violating the provisions of Real Estate (Regulation and Development) Act, 2016.

Therefore, an open appeal is being made to all the citizens, in their own interest, not to engage in sale/purchase of any plot in such unregistered project to avoid any loss and/or damage and to submit the complaint regarding these types of illegal activities in the real estate projects to the Authority.

This notice is being issued by the Haryana Real Estate Regulatory Authority, Gurugram, in public interest and for the information of all the citizens.

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

F1 (146)RJ/RERA/2020/478

Dated: 09/03/2021

### **REMINDER**

Subject: - Corona Extension

Dear Promoter,

This is to remind you that vide order no. F1(146)RJ/RERA/2020/848 dated 13.05.2020 (copy attached), this Authority had allowed the promoters to avail one year special extension on account of Corona pandemic, if they applied online for such extension upto 31.03.2021.



Therefore, if you need such extension for any of your projects and you have not already obtained it, you may apply online now as the special window created for this purpose on RERA web portal will get closed on 31.03.2021 (midnight).

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

F1(167)RJ/RERA/QPR/2020/ 479

Dated: 09/03/2021

### **REMINDER**

Subject: - Quarterly Progress Reports (QPRs)

Dear Promoter,

This is to remind you that 31.03.2021 is the last date for online submission of all pending QPRs (up to the quarter October-December, 2020) of all registered projects. Thereafter, as stated in this Authority's order no. F1(167)RJ/RERA/QPR2020/12 dated 01.01.2021 (copy attached), a delay processing charge of 5,000/- will be applicable for filing a delayed QPR, apart from penalties that it may invite under RERA Act.

Therefore, you are requested to submit all your pending QPRs online immediately and latest by 31.03.2021 to avoid delay charges and penalties under the provisions of RERA Act.

Here it is clarified that if a project has got completed, no QPRs need to be filed for any quarter beyond the quarter in which project has been completed, i.e., beyond the quarter in which completion certificate has been obtained.

It is also clarified that it is not necessary to obtain and upload Form R-1, R-2 or R-3 for submitting QPRs of earlier quarters (i.e., quarter up to September, 2020) and those can be submitted on the basis of whatever records or books of accounts the promoter has maintained or the QPRs he has already submitted in paper form or the Form R-1, R-2 and R-3 of any dates, he may have obtained near about the end of the relevant quarter for withdrawing money from the separate account.

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

No F 1(198) RJ/RERAIGMI20211477

Dated 09.03.2021

### **Order**

**Sub: New Online Service of "General Modification" for updation/ correction/ modification in Promoter Profile and Project Details of registered projects**

In its effort to make Rajasthan RERA a "No Paper No Footfall" office, the Authority has introduced a 'Do It Yourself' online service for the promoters to update/correct/modify their Promoter Profile and the Project Details of their registered projects.

In the recent past, this Authority has commissioned online services for extension of registration, Updation of revised approved maps, change of the separate bank account, Updation of encumbrances. And submission of Quarterly Progress Reports/Annual Progress Reports. In this series, the Authority has now launched another online service by the name of 'General Modification' whereby the promoters can update/ correct/ modify most of the other project details and promoter details, from the comfort of their office, using their dashboard on RERA web portal. This service has two sections:

- (1) Profile Summary
- (2) Project Summary

In this context, the following comprehensive directions are hereby issued for the promoters of registered projects:

1. For seeking extension of estimated finish date of the project, use Project Extension module.
2. For Updation of revised building plans/layout plans of the project and corresponding change of attributes including land cost and development cost, use Map Revision module.

3. For changing details of the separate bank account maintained under section 4(2)(I)(D) of the Act, use RERA Account Change module.
4. For Updation of encumbrances on the project, use Encumbrance Change module.
5. For uploading CC, OC, Certificate of insurance and Registration Certificate of RWA, use the Documents Upload button provided for each registered project.
6. For submission of quarterly updates, use QPR module.
7. For submission of annual report on statement of accounts of the project, use APR module.
8. For other Updation/corrections/modifications to be made in Project Details, use General Modification (Project Summary) module. Here, it may be noted that if there has been no revision of building plans/layout plans, any attributes of the project, including its land cost and development cost, that are incorrectly shown in Project Details or that undergo some change without any revision of building plans/ layout plans, those can be updated/corrected/modified, using this module, without having to go to the Map Revision module.
9. For any Updation/corrections/modifications to be made in Promoter Profile, use General Modification (Profile Summary) module.
10. General Modification online application form is a replica of registration form. So, to make any Updation/corrections/modifications, open the relevant section(s) of this form and edit accordingly. As soon as it is submitted, the updated/corrected/modified details will automatically reflect in the online Promoter Profile/ Project Details, Needless to say, if any false information is submitted, the promoter shall be liable for penalty under section 60 of the Real Estate (Regulation and Development) Act, 2016.
11. The item-wise chart annexed herewith shows the respective rights of the Authority and the promoter to update/correct/modify different items of Promoter Profile and Project Details.
12. As shown in the annexed item-wise chart, there are still some items of Promoter Profile and Project Details which cannot be modified or applied for modification online. Till such time the Authority is able to launch an online service for modification of these items, offline applications will continue to be submitted for making any Updation/correction/modification in these items. But no offline/paper applications will now be accepted for facility has been provided.
13. A fee of Rs. 5000/- only is to be deposited for making any or all the changes in Project Details at a time using General Modification (Project Summary) module. Similarly, a fee of Rs. 5000/- only is to be deposited for making any or all the

changes in PromoterProfile at a time using General Modification (Profile Summary)module. Here, it may be noted that earlier the promoter had to deposit a fee of Rs. 5,000/- for updating each item (such as projectname, litigation details, plot/khasra no., land cost and developmentcost, project professional details, etc.). Now, in terms of item No.2 of Authority's order No.1197 dated 12.04.2018, a fee of Rs.5,000/- only will be applicable for each online request (transaction),not for each item updated. This, for example, will mean that if aspart of one online transaction, 10 items of Project Details areupdated at any one time, a total fee of Rs. 5,000/- will be applicable, instead of Rs, 50,000/-. Thus, we hope, this newGenera! Modification module, apart from its convenience and fast delivery, will come as a big relief to the promoters in terms of fees well.

14. Therefore, it is expected that the promoters will make good use of this new online service of 'General Modification' to ensure timely Updation of their Promoter Profile and the Project Details of their registered project(s) so that the allotted and the potential buyers get correct updated information at all times. If there are any practical difficulties in using this service, Shri Arpit Sancheti, DTP cum-Joint Registrar (Projects) may be contacted on his mobile 9829872121, e-mail ID jointregistrar.rera@RAJASTHAN.GOV.IN

This issues with the approval of Hon'ble Chairman.

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

Notice No. F1(146)RJ/RERA/2020/486

Dated:10/03/2021

Subject: — Updation of revised maps/phase plan

Dear Promoter,

This is to remind you that as per Authority's order no. 848 dated 13.05.2020, it was decided that in the wake of Corona pandemic, this Authority will not insist upon the consent of two-thirds of the allottees upto 31.03.2021, for updation of revised maps if the revision did not adversely affect the allottees.

Therefore, if you have got the approved maps revised by the competent authority or if you want to increase, decrease or alter the phase area of any project, you are requested to apply online for the updation of revised maps/phase plan immediately and latest by 31.03.2021, since, thereafter, consent of allottees will be required as per usual practice.

It may be noted here that applications for updation of revised maps are required to be submitted online on RERA web portal. This Authority does not accept these in paper form any more.

It may also be noted that vide its order no. 465 dated 05.03.2021 (copy attached), the Authority has provided some relief in calculation of fee for updation of revised maps in respect of projects having a phase area of more than 5000 sq.mt.

## **RAJASTHAN REAL ESTATE REGULATORY AUTHORITY**

No F.1(31)RJ/RERA/2019/491

Dated 12<sup>th</sup> March, 2021

Order

### **Sub: Recall of Ex Parte Orders**

A question whether this Authority can and should allow its ex parte orders to be recalled has been engaging attention of the Authority for sometime past. The matter was discussed at length in the meeting of the Authority held on 24.02.2021, where the Authority took note of the following:

- (i) Speedy dispute redressal is a declared purpose of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and, under section 29@) of the Act, the Authority is expected to dispose of all complaints ordinarily within a period of sixty days.
- (ii) Section 38(2) of the Act states that the Authority shall be guided by the principles of natural justice and, subject to the other provisions of the Act and the rules made there under, the Authority shall have powers to regulate its own procedure.

- (iii) Under section 39 of the Act, the Authority has powers to rectify its order if there is a mistake apparent from the record. However, the Act has not given to the Authority the power to review its orders.
- (iv) But, in a matter of UP RERA (writ Petition No. 32301 of 2019 "M/s T.G.B. Realty Pvt. Ltd. versus State of UP and 7 Others"), Hon'ble Allahabad High court has observed that the power of substantive review alone can be exercised if such a power is conferred under the relevant Act or the Statute but this is not the position in regard to dealing with application(s) for procedural review. Recalling an order passed ex parte falls within the purview of procedural review rather than a substantive review; and every court/tribunal [which includes RERA] has an inherent power of procedural review. And, therefore, an application for recall of an ex parte order cannot be denied merely for the reason that there is no provision to that effect in the Act/Statute.
- (v) Section 35(2) of the Act has conferred on the Authority the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of certain matters examining them on oath", which, in the opinion of the Authority, covers Order IX of the Code of Civil Procedure, 1908 concerning appearance of parties and consequence of non-appearance. Thus, the Authority can lawfully use the provisions of Order IX of the Code of Civil Procedure, 1908 for admitting and deciding application(s) for recall of its ex parte orders. This view derives support also from section 88 of the Act, which provides that "The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."
- (vi) In cases where the affected party goes in appeal against an ex parte order on the ground that it was not actually heard before the order was passed, such matters get invariably remanded by appellate courts with a direction to decide the matter afresh after hearing the appellant. This only means an avoidable expense for the parties and delay in conclusion of the disputes,

Having considered the above, the Authority felt that given the purpose of speedy dispute redressal and the prescribed ordinary time limit of sixty days for the Authority to decide matters, it cannot allow an unlimited opportunity of hearing to the parties before it. Though the Authority takes care to ensure that ex parte orders are passed by

it only where notice for hearing is reported to have been served on the parties, it need not deny an opportunity of hearing to a party who can prove to the satisfaction of the Authority that actually the notice for hearing was not duly served and even otherwise it had no knowledge of the date of hearing or that it was prevented by any sufficient cause from attending the hearing on the scheduled date and time.

Therefore, in exercise of the powers conferred on it under section 35(2), 37 and section 3B(2) of the Act, and as resolved in its aforesaid meeting, the Authority hereby issues the following directions in the matter:

- (1) Party/parties to the complaint that is/are affected by an ex parte order passed by the Authority shall be allowed to apply for recall of such ex parte order. For this purpose, an ex parte order shall mean an order passed by the Authority, deciding a matter on merits or otherwise, in the absence of one of the parties to the complaint on the date and time fixed for hearing.
- (2) An application for recall of ex parte order shall be submitted online on the web portal of the Authority on payment of a standard fee of Rs. 5,000/- in each case. Facility for online submission of such applications shall be added to the Authority's web portal with immediate effect.
- (3) As part of the application, the applicant will have to declare and undertake that he is ready and prepared to argue the original matter on merits on the very date his application for recall is allowed and that he will not seek any adjournment of hearing if his application for recall is allowed and he is called upon to argue the matter on merits there and then. The Authority may, however, allow an adjournment for the sake of its own convenience or for the convenience of the opposite party.
- (4) Before allowing the application, notice thereof shall be issued to other parties to the ex parte order, but no such notice shall be necessary where the complaint was dismissed when neither party was present.
- (5) Except for the force majeure events like Corona pandemic of which the Authority can take judicial notice, the applicant will be put to strict test to prove that he had any sufficient cause for his absence from the hearing.



- (6) Applications for recall of ex parte orders will be allowed only in matters which were/are decided by the Authority without considering the oral or written arguments of the applicant and the applicant is able to establish to the satisfaction of the Authority that the notice for hearing was not duly served and even otherwise he had no knowledge of the date of hearing or that he was prevented by any sufficient cause from attending the hearing on the scheduled date and time.
- (7) No such application may be allowed in respect of any order against which an appeal has been preferred under the Act.

This issues with the approval of Hon'ble Chairman.

## **PART-IV**

### **RERA NEWS**

**THE ECONOMIC TIMES**  
**DATED: 07/01/2021**

#### **MAHARASHTRA CABINET APPROVES 50% REDUCTION IN PREMIUM FOR REAL ESTATE PROJECTS**

Maharashtra cabinet on Wednesday approved 50% reduction in premium for real estate projects under the new Development Control and Promotion Regulations (DCPR) rule 2034 across the board for on-going and new projects upto December 31, 2021. This also includes concessions in the premiums levied by all planning authorities/local administrations in the state.

This decision however comes with a condition that builders will have to pay premiums based on the 2019 ready Reckoner (RR) rates or the 2020 rates, whichever is higher.

Builders who opt for the 50% reduction in premiums will also have to pay the entire stamp duty when they sell flats to buyers by giving an undertaking to the local bodies.

**TNN**  
**DATED: 15/01/2021**

#### **REALTORS SAY PARALLEL RUNWAY AT SURAT WILL HALT REAL ESTATE PROJECTS**

At a time when the Airports Authority of India (AAI) is pushing for the parallel runway at Surat airport, the real estate players want the government to drop the proposal on the grounds that it will hamper development of new commercial and residential projects in the vicinity.

Realtors said that about 198 buildings are identified as obstructions and the new projects are facing building height restriction due to the existing runway. The parallel runway will further restrict the growth of the real estate projects in key areas of Surat, which is forecast to be the 9th fastest growing city in the world by World Economic Forum (WEF).

According to the CREDAI Surat chapter, a resolution was passed to postpone the acquisition of land for the parallel runway at Surat airport on February 23, 2018. In a letter written to the Khajod Urban Development Authority (KHUDA) and Gujarat's civil aviation ministry, CREDAI has stated that many high-rise building projects have been held up due to the building height restrictions in wake of the proposed parallel runway.

### **THE ECONOMIC TIMES**

**DATED: 30/01/2021**

### **UP-RERA ALLOWS JAL TO COMPLETE JAYPEE GREENS KNIGHT COURT WITH BUYERS' SUPPORT**

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has allowed Jaiprakash Associates to complete the long-stalled work of the project Jaypee Greens Knight Court in co-operation with Association of Allottees namely, 'Knight Court Social Welfare Association' within 15 months. The promoter will contribute Rs 10 crore upfront within two weeks and start the project within 15 days of this order.

The project had been stalled since 2014 and registration date of the project had lapsed in December 2020. The project has 8 towers and there are 310 allottees. Not more than 60% of the project work had been completed before it got stalled for a variety of reasons. The authority has also established a project monitoring committee and that will review the progress on monthly basis and report to the authority.

The authority is rigorously pursuing this approach especially in such cases where the registration has already been lapsed. It further proposes to expedite the redemption activity for revival of about a dozen delayed or stalled projects in very near future. Previously the authority had instituted a co-operative model to complete the Kalypso

Court Project of Jaypee Associates and the association of allottees of the Sampada Livia project to complete the remaining work of this project.

**TNN**

**DATED: 31/01/2021**

### **MAHARASHTRA SET TO GET WEBSITE TO TRACK CONVEYANCE DEED APPLICATIONS**

Commissioner of cooperation and registrar of cooperative societies Anil Kawade has confirmed that a website is being planned to boost the process of acquiring the conveyance deed for registered societies in the state. It will help track the applications with the help of the registration, revenue and our own department can ease the process further. The website is expected to be ready within two months.

The conveyance deed is required to be executed on non-judicial stamp paper. Once that is done it needs to be registered at the registrar's office, and remittance of the registration fee. After the registration is done, the transfer of the property moves into the public domain. Stamp duty and registration fee is obtained by the government as revenue. When this happens, the process of conveyance deed is complete.

The state has 1.15 lakh registered housing societies of which 85,013 need to complete the conveyance process, only 14,376 societies have obtained deemed conveyance. There are 70,637 societies that must carry out deemed conveyance and the department will help these societies.

**ET BUREAU**

**DATED: 01/02/2021**

### **HARYANA RERA ISSUES NOTICE TO ADANI M2K PROJECTS, MAY IMPOSE PENALTY**

The Haryana Real Estate Regulatory Authority (RERA) has issued notices to Adani M2K Projects, a joint venture of Adani Realty and the M2K group, and property agent Naveen Associates for advertising a project without getting it registered with the authority. The Haryana RERA has also initiated penal proceedings against the

companies wherein the penalty of violations may go up to Rs 12 crore against the promoter and Rs 2.7 crore against the real estate agent.

The authority has served a show cause notice to the promoter of the project and directed it to produce records pertaining to the property they have sold before the authority. It has also been observed that not only the promoters but real estate agents are also getting involved in such unscrupulous activities. They not only try to sell the unregistered projects but also do not get themselves registered with the authority.

The Act mandates that no real estate agent can participate in advertisement/market/sale of any project without getting himself or his association registered with the RERA.

**THE HINDU**  
**DATED: 02/02/2021**

### **BUDGET REINFORCE GOVT. FOCUS ON AFFORDABLE HOUSING**

From an overall macro-economic perspective, the Finance Minister has delivered a 'get well soon' type of Budget. If we were to look at the 'V' shaped economic recovery and its future progress, it is powered by the Covid-19 vaccination programme.

Affordable Housing remains the Government of India's favoured segment in real estate, going by the Budget proposals. As the Indian economy slowly but surely makes its way out from the challenged scenario, the Budget has the potential to accelerate the recovery — and economic growth will power enhanced offtake in real estate.

The reaction of the equity markets to India's first such digital Budget having 'no major direct taxation enhancement' is welcoming. Similarly, the aggressive investment in infrastructure and enhanced public spend for infrastructure will not just reinvigorate employment and investment, but also fulfil the need for sustainable economic revival.

**ET REALTY**  
**DATED: 02/02/2021**

## **BUDGET 2021: DISAPPOINTING FOR REAL ESTATE SECTOR**

Real estate industry experts feel that the Union Budget 2021 presented on Monday was largely disappointing as it failed to address most of the expectations the sector had especially after the impact of Covid-19. Budget 2021 didn't offer much other than the extension of incentives for interest payment on affordable homes by another year, tax incentives for notified affordable rental housing and some tax relief for dividends received from REITS.

The budget was largely disappointing for real estate industry which was expecting major boost from this budget by way of some major relief in personal income tax or input credit under GST for the real estate projects.

As the industry is going competitive, it would have been good if the rate of TDS on co-working services was reduced. It would have been enabled us to provide real estate solutions to clients at economical rates and helped in better flow of working capital. Apart from these, input tax credit under GST is an important issue that concerns the sector. The government has not enabled co-working firms to claim input credits on work contract and construction services supplied, as detailed under GST provisions. This would have checked the increased outflow of cash that co-working firms are currently experiencing.

**THE ECONOMICS TIMES**

**DATED: 06/02/2021**

## **UP-RERA PENALIZES SUPERTECH, PARSVNATH, LOGIX INFRASTRUCTURE, OTHERS**

The Uttar Pradesh Real Estate Regulatory Authority has levied a cumulative penalty of over Rs 1.93 crore to 14 promoters over non-compliance of its orders under Section 63 of the RERA Act which empowers the authority to impose penalties up to 5 percent of the cost of the project for non-compliance of its orders.

Supertech, ParthInfrabuild, Radicon Infrastructure & Housing and some other promoters have been penalised. The said promoters have been ordered by the authority to ensure that the penalty amount is deposited through a demand draft drawn in

favor of the authority within 30 days. It was also decided by the Authority that if the concerned promoter does not pay the penalty within the stipulated period, then the recovery certificate will be issued and District Magistrate will be commissioned to recover the amount as arrears of land revenue.

So far, a total of Rs. 5.86 crore worth of penalty has been imposed on 24 promoters. The authority has previously sent Recovery Certificates against two promoters for a cumulative sum of Rs 1.47 crore which have already been sent to District Magistrate, Lucknow for recovery. This decision has been taken by the authority to punish the promoters who are continuously failing to comply with the orders, result of which the allottees are being denied their dues.

## **THE ECONOMICS TIMES**

**DATED: 12/02/2021**

### **CREDAI, IPPB INK PACT TO OPEN BANK ACCOUNTS FOR CONSTRUCTION WORKERS**

Realty developers' body, the Confederation of Real Estate Developers' Associations of India (CREDAI) has entered into a memorandum of understanding with Indian Payments and Postal Bank (IPPB) to facilitate opening of bank accounts for construction workers.

This labour welfare initiative is aimed at ensuring financial literacy and digital inclusion of construction workers in the long run and would make financial services accessible to them.

At present, around 3 crore workers are engaged in construction activities across real estate projects in the country. The pact aims to cover around 10 lakh workers under this initiative in a year.

All CREDAI chapters across various states will be covered under this agreement. The real estate developers' body will coordinate with contractors to ensure effective implementation of this programme.

## **MAGIC BRICKS**

**DATED: 15/02/2021**



## **NAREDCO WELCOMES APPROVAL OF GREEN DEVELOPMENT AREA POLICY**

National Real Estate Development Council (NAREDCO) on February 12 welcomed and appreciated the central government's decision for the Delhi Development Authority (DDA) approval of a Green Development Area (GDA) Policy. The policy aims to regulate development in designated rural areas and green belts in the city. The draft policy seeks to incorporate the Low Density Residential Areas (LDRA) of the capital where most of the farmhouses are located.

The draft policy was approved on February 10 and will be now put in public domain for suggestions. This policy will also ensure seamless development of infrastructure and road network.

**ET BUREAU**  
**DATED: 16/02/2021**

## **DEVELOPERS IN RAJASTHAN REQUEST TAX EXEMPTIONS IN BUDGET**

Realtors' apex body Confederation of Real Estate Developers Association (CREDAI) has suggested the government to increase tax exemptions in the upcoming budget to boost the realty sector, which is reeling under crisis since long.

The association has demanded to reduce the stamp duty on housing units in multi-storied buildings on the similar lines like it was done in Maharashtra.

**TNN**  
**DATED:16/02/2021**

## **GOVERNMENT TO DEVELOP SMART TOWNSHIPS ACROSS ANDHRA PRADESH**

Chief minister on Monday directed officials to develop smart townships in all towns in the state. After reviewing the development of townships and solid waste

management at his Tadepalli camp office, the chief minister told officials to identify suitable lands in urban areas to be developed as smart townships. He also wanted them to distribute house sites in these townships to middle class people as per their eligibility.

He further asked officials to plan outer ring roads in every town and plan the townships along these roads. The officials were told to acquire lands and develop a land bank for every town in the state. The chief minister wanted them to acquire at least 25 acres on the lower side to 200 acres on the higher side in every town.

The officials, who gave a presentation on similar schemes in other states, also proposed development of 18 layouts in 12 towns in the state in the first phase. The CM asked them to prepare the layouts and keep the title documents ready in the next 18 months.

## **THE PIONEER**

**DATED:03/03/2021**

### **PANCHKULA TO WOO REAL ESTATE INVESTORS WITH REDUCED TAXES**

To ensure holistic development of Panchkula and in a bid to woo Real Estate Investors for making potential investment in Panchkula district, Haryana Chief Minister announced that various developmental charges and taxes have been reduced by almost one-third in Panchkula district, bringing them at par with Mohali and Zirakpur.

As per the decision, EDC/IDC rates for the Residential Plots Colony have now been reduced from Rs.1.24 crore per acre to Rs. 43.72 lakh per acre. Likewise, EDC/IDC rates for the Residential Group Housing Colony are reduced from Rs. 3.46 crore per acre to Rs. 1.17 crore per acre.

The Chief Minister further announced that EDC/IDC rates for Affordable Group Housing Colony have been reduced from Rs. 89.11 lakh per acre to Rs. 38.87 lakh per acre.



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