RERA TIMES

Real Estate

(Regulation and Development) Act , 2016
(A journal on Real Estate Bye Laws)

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REAL ESTATE
(REGULATION AND DEVELOPMENT) ACT, 2016
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FROM THE EDITOR'S DESK…..

Dear Readers,

Outbreak of Corona virus (COVID-19) has resulted in a lockdown across the world. The disease first identified in December 2019 in Wuhan, the capital of China's Hubei province, and has since spread globally, resulting in the ongoing 2019–20 corona virus pandemic. Global stock markets have suffered dramatic falls due to the outbreak. It is very much evident that the shock from the virus is already bigger than the 2007-2009 global financial crisis.

Corona virus has impacted India's economic growth "severely", as the corona virus lockdown is causing significant disruption across multiple sectors, including real estate, infrastructure, manufacturing, oil, financial, among others. In India, GDP growth is already at a decadal low and any further dent in economic output will bring more pain to workers who have seen their wages erode in recent times. In wake of the novel corona virus (Covid-19) outbreak, over 50 per cent of Indian companies see impact on their operations and nearly 80 per cent have witnessed decline in cash flows.

To mitigate the impact of corona virus outbreak on the economy various measures have been taken by the government. Hon'ble Finance Minister has already announced a package worth Rs 1.70 lakh crore to help the nation's poor tackle the financial difficulties arising from Covid-19 outbreak. Government has extended the income tax filing for the financial year 2018-19 to June 30, 2020. Deadlines under Goods and Service Tax for various compliance have been deferred by 3 months to support the business amid lockdown. Several compliance burdens were also relaxed for companies which have been forced to shut down key business operations. All banks and other lending institutions are asked to allow a three-month moratorium on all kinds of loans. The said moratorium on term loans and deferment of interest payment would not result in asset classification downgrade.

Real estate sector is also severely hit by the existing lockdown. Housing sales have already come to a standstill which would adversely impact the cash flow of the builders. There are high chances that the existing customers might delay the

payment of installment to the developers because of tough economic conditions. As all the construction sites are under lockdown which will result in delay of completion of the project which in turn will increase the interest cost for the developers. Deferment of EMI on loans is expected to provide some ease to the real estate sector.

However, there are clear indications from the Central Government that specific relaxations will be give to real estate sector which will be announced in near future shortly.

Before parting, I would request all the readers to follow all the directions of the Government amid lockdown as a responsible citizen.

STAY HOME, STAY SAFE

Thanking You
Yours Sincerely
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TABLE OF CONTENTS

PART-I

REPORTING OF CASE LAWS

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: ALLIANCE MALL DEVELOPERS CO. PVT. LTD
RESPONDENT: TAMIL NADU REAL ESTATE REGULATORY AUTHORITY
ORDER DATE: 10.02.2020

GIST OF CASE: RERA registration not granted beyond the permission granted by the competent authority.

The appellant obtained planning permission dated 22-02-2017 proposing to develop 540 apartments spread over three towers of basement, plus stilt + 18 storey each, Originally the planning permit was valid for 3 years. The validity of the planning permission has been extended up to 5 years from the date of issue. The appellant was granted permission by the Coimbatore Municipal Corporation on 12-03-2018. Though the permission was granted, the appellant could not commence the construction. According to him, GST, demonization and slump in the real estate market were the reasons for not commencing the construction. Under the Town & Country Planning Act, even after the 5 year period, on an application, he can get further extension of 3 years of the building plan approval subject to certain conditions. According to it, if that is obtained, the validity period would be up to 21-02-2025.

But the Learned Authority while granting the registration under RERA act, without considering this fact has granted registration of this project restricting the validity of registration only till 21-02-2022 in respect of the 1st project and 29-05-2019 in respect of the other project. According to the appellant, completion by the above dates is an impossible task. The appellant cannot complete any of the phases in the project within the said time stipulated by the Authority. As it is not in consonance with the declaration given by the appellant, the order passed by the Authority is legally not sustainable.

On a careful analysis of entire papers and the arguments of the counsel, the only grievance of the appellant is restriction by the registering authority up to 2022 only. According to section 4(2)(c) & 4(2)(l)(c) of the Act, the builder is entitled to fix a time as per his calculation and after coming in to force of the RERA Act, dehors any agreement even between the builder and the buyer, a fresh date can be fixed by the

builder for completing his project. When that right is exercised by the builder under normal circumstances, the authority would go only by the date as fixed by the builder. When we analyze this aspect, no doubt section 4(2)(l)(c) categorically states that in the declaration, the builder can stipulate within which time he undertakes to complete the project or phase thereof as the case may be.

As regards the power of the authority, they have very clearly stated that it is left to the wisdom of the concerned, which is expected to deal with facts of each case whilst discharging its obligation in implementing the provisions of RERA in letter and spirit". Therefore the authority definitely has got unfettered right to look into the matter independently, dehors the time as stipulated by the builder to strike the balance and pass an order. When dealing under Section 6, which is a provision which grants power to the authority even to extend the time beyond the period as stipulated by the builder, though subject to one year

From this it is very clear that the Judges have categorically pointed out that even in the case of the extension granted under section 6, if the promoter in exceptional cases without any fault of his, has not completed the construction, then the authority is empowered to continue the registration of the project by exercising the powers under sections 7(3), 8 or 37 of RERA, the only restriction is that the authority in those cases shall decide on a case to case basis after hearing all the parties concerned including the allottees. Here one thing is very clear that the authority on deciding the grant of registration of the project has got every right to go into the details as provided by the promoter and on a careful analysis of the entire submissions, the authority can either grant, reject or even modify or restrict the registration. But in so far as rejecting the application, they cannot do so without giving a hearing. Whereas for granting, even without a hearing, they can always grant it. Restriction is only a part of the grant.

The authority, at that point of time has thought it fit to grant time as per the request of the builder, but at the same time made sufficient restrictions/precautions by inserting the words "necessary approval/applications need be made after the expiry". Therefore the intention was clear even at that point of time that the registration could be valid only if there is a valid permit. In that view of the matter, the order by the then authority cannot be construed as wrong. In the present case, the authority taking into consideration of the legal nuances and with full authority considered the legal requirements of the Act, rightly have restricted the time limit. Hence the argument of the learned counsel is not accepted.

APPELLANT: DOMINIC SAVIO.S
RESPONDENT: PHOENIX SERENE SPACES PVT. LTD
ORDER DATE: 28.02.2020
Appellant Representative: In Person
Respondent Representative: Managing Director

GIST OF CASE: The appellants and respondent entered into agreements for purchase of a flat in the project of respondent. Respondent failed to provide possession on time. The appellant seeks to cancel the agreement and sought for refund of the amount. Respondent agrees for such cancellation by giving back the full amount paid by appellant but without interest as appellant is not entitled to claim interest or compensation from the respondent since the appellants waived their right. Therefore considering the doctrine of promissory estoppel Tribunal comes to a conclusion that this appeal is not deserve to be allowed.

The appellants and respondent entered into agreements for purchase of a flat in the project of respondent. Respondent agreed to complete the apartment by 31.12.2015 with a grace period of 6 months. The respondent failed to deliver the apartment agreed by him. During March 2015 on the suggestion of the respondent, the appellants opted for transfer of allotment to villa type of house in the project of the respondent which involved additional cost. The appellants paid the said amount to the respondent. The said amount was retained by the respondent towards advance for the villa. On 26.2.2016 both the appellants and respondent entered into agreements for villa. The respondent agreed to complete the villa within 18 months with a grace period 6 months. Again the respondent failed to deliver on time. The respondent by way of mail extended the delivery time. Hence the appellants frustrated over the delay and asked the respondent to cancel the agreement and sought for refund of the amount. The respondent failed to reply. The respondent agreed to cancel the allotment on 05.05.2018 and refunded the principal amount in three installments. In December 2018, the appellants approached the respondent for refund of interest, for which the respondent refused.

Learned Adjudicating Officer, by invoking promissory estoppel and waiver in favour of the respondent, dismissed the complaint.

The appellant submitted that the learned adjudicating officer erroneously found that complaint was filed several months after settlement and it is an afterthought. The appellants had intention to sought legal remedy even much earlier they approached RERA. They decided to present their case themselves and took some time to understand the law. This was the reason for delay caused.

The learned counsel for the respondent submitted that the allotment of flat by the respondent to the appellant happened much prior to 1.5.2016. Hence the complaint itself is not maintainable. The appellant who got the full refund of the entire booking amount from the respondent after cancellation of the agreement on 7.5.2018 have chosen to file this complaint purely by way of afterthought. Due to cancellation, respondent had lost the business opportunity by having blocked the said unit No.105 for the appellant Anyhow, the respondent did not rose any issue at that point of time as a goodwill gesture and also did not resort to the forfeiture clause in the agreement entered into between the parties when that option was very well available to this respondent. The respondent further would submit that clause-4.8 of the said agreement clearly stipulates that the developer is entitled from the amount paid by the purchaser a sum equivalent to 20% for the consideration for the construction towards the liquidated damages in the event of the purchase by canceling the agreement. The appellant requested the respondent not to enforce the forfeiture clause on the specific understanding that there would be no claims between the complainants and the respondent. On 6.4.2017 a staff of the respondent has sent an e-mail to the appellant stating that the construction is going on in full swing and the respondent would be in a position to complete and handover by September 2017. While so even prior to the expiry of the 18 months period in addition to the grace period of 6 months, on a wrong assumption that there is going to be a delay in completing the project by the respondent, the appellant has sent a reply mail dated 9.4.2017 that he is looking to exit out of the investment and sought for the advise of the respondent on the same. It is for their personal reasons the appellants chose to terminate the said agreement even though the semi attached villa was ready for delivery. Hence in any event the appellants are not entitled to claim interest or compensation from the respondent since the appellants waived their right.

Points for consideration:

1. Whether the plea of the appellants that the respondent used his dominant position to put the appellant in severe mental stress and duress to undue influence their free will is true?
2. Whether the claim of the appellants is an afterthought?
3. Whether the appeal is deserves to be allowed?

Point No. 1

In the agreement clause-4.8 it has been specifically agreed that in case the purchaser cancel this agreement, the developer is entitled to forfeit 20% of the amount paid as liquidated damages and refund within one month from the date of termination of this

agreement. In the communications between both the parties, the appellants have not whispered any single word with the respondent by using undue influence obtained the free will of the appellant to forego the interest and compensation. The said communications reflect that, from 9.4.2017 to 10.2.2018, the appellants were seeking advice to quit from the project. Even then on 16.3.2018 he was voluntarily willing to forego the interest if complete refund is made. So in any angle the communication between the appellants and respondent does not reflect undue influence or duress and the appellants voluntarily asked the respondent to cancel the allotment, refund the money without any deduction, for which he promised to forego his claim of interest and compensation. So, the plea of the appellant with regard to undue influence, duress is not true.

Point No.2:

In this case the appellant and the respondent entered into a compromise for refund of money without deduction, for cancellation of the agreement and for which the appellant agreed to forego the interest and compensation. So the appellant waived his right due to agreement with the respondent and after completed the agreement the appellant is estoppels from claiming again. The appellant having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand. Therefore this Tribunal comes to conclusion that there is no infirmity in the finding of the learned Adjudicating Officer. So the claim of the appellant is certainly an afterthought.

Point No.3:

In Point No.1 it is decided that due to undue influence respondent forced to give the undertaking to forego the claims of interest and compensation is not true and in point No.2 it is decided that the claim of the appellants is an afterthought. In such circumstances there is no chance for interference in the findings of the learned Adjudicating Officer. Therefore this Tribunal comes to a conclusion that this appeal is not deserves to be allowed.

APPELLANT: SYLVANUS BUILDERS AND DEVELOPERS LIMITED & ORS
RESPONDENT: SHRI.K.SRIKAR REDDY
ORDER DATE: 16.03.2020
Appellant Representative: Director
Respondent Representative: Managing Director

GIST OF CASE: Tribunal directed to deposit 40% of amount as ordered by the authority. Appellant failed to deposit the same. Appeal dismissed.

The respondent booked a villa on 03.08.2012 with the appellants for the sale consideration of Rs.1, 47, 51,658/-. The appellants agreed to complete the construction and hand over the villa by 30.06.2015. But the appellants failed to complete the construction within the stipulated time. Hence the respondents sought for refund of amount with interest and compensation.

The appellants admitted the payments of Rs.1, 47, 98,470/- made by the respondent and denied the allegation that the project was not completed. On 27.03.2019 appellants informed that villa was ready and requested to clear the amount due but the respondent sent email on 20.04.2019 cancelling the booking of the villa and sought for refund of money.

After contest the Learned Adjudicating Officer found that the complaint is maintainable and ordered refund of the amount paid by the respondent and awarded compensation and interest with costs.

Aggrieved upon that the appellants preferred this appeal along with waiver petition in M.A.No.56/2020. In that petition this Tribunal ordered to deposit 40% of the entire amount as ordered by the Authority on or before 26.02.2020. In the mean time the appellants filed M.A.No.70 of 2020 for extension of time for compliance of order made in M.A.No.56/2020. Extension of time was granted for 15 days and directed to deposit on or before 13.03.2020 and posted the case for 16.03.2020.

On 16.03.2020 when the case was called both sides counsels were present and the appellants' counsel represented that they have not complied the order.

ORDER

The appellant was directed to deposit 40% of the amount due as ordered by the court below even as early as on 03.02.2020. The Learned Advocate for the appellant represents that they have not paid the amount as directed by this Tribunal on or before 13.03.2020.In that view of the matter, as the mandatory order for deposit of the amount as per Section 43(5) of the RERA Act has not been complied with, the appeal itself cannot be entertained. In view of the non compliance of the mandatory order under Section 43(5), the appeal is rejected.

HARYANA REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: MAGIC EYE DEVELOPERS PVT. LTD.
RESPONDENT:VARSHA JAIN& Ors
ORDER DATE: 17.12.2019
Appellant Representative: Adv SHRI TARUN SINGLA
Respondent Representative: In Person

GIST OF CASE: Pre-RERA agreement to sale valid. One –sided agreements not valid. Interest as per RERA act and not as per agreement to sale.

The respondent/allottee has filed the complaint regarding Flat in The Plaza. The builder buyer's agreement was executed on 25.02.2013 for the basic sale price of Rs.47,50,000/- (excluding EDC, IDC, one covered car parking, club membership charges and preferential charges). The allottee made a total payment of Rs.50,68,084/- out of the total sale price. As per the terms and conditions of the agreement, the possession of the unit was to be delivered to the respondent within a period of 36 months + 2 grace period of 6 months each. However, the appellant/promoter failed to deliver the possession of unit on time. Hence, the complaint wherein the respondent/allottee sought the refund the money paid by the allottee along with prescribed rate of interest from the date of payment till the actual realization of the amount.

The complaint was contested by the appellant/promoter on the grounds inter alia that the date of the completion of this project as per section 4(2)(1)(c) of the Act is 31st December 2021. The works at the project site is going at full swing as per schedule of the construction declared by the appellant/promoter at the time of taking registration under the Act. The appellant further pleaded that it will be able to offer the possession of respondent unit much before the above mentioned date of completion declared by it. It is further pleaded that the respondent is himself at default and had failed to make the payment as per the schedule. The appellant/promoter also raised certain legal and preliminary objections with respect to the jurisdiction of the Learned Authority to entertain the complaint, maintainability of the complaint in law and facts and the non-applicability of the provisions of the Act as the buyer's agreement was executed on 25.02.2013 before the Act came into operation. It was also pleaded that there is no provision in the Act to make it retrospective in operation. With these pleas, the appellant/promoter pleaded for dismissal of the complaint before authority.

After hearing Learned counsel for the parties the Learned Authority vide impugned

order dated 19.03.2019 issued the directions pay pat interest @ 10.75 % p.a to the allottee.

Contention of Appellant

Ld counsel for the appellant contended that the Ld. Authority has wrongly awarded the interest for delayed possession at the rate of 10.75% per annum, as no rate of interest has been prescribed in the Act or the rules framed thereunder for delayed possession. Rule 15 of the rules is only applicable in case of refund and not in cases of delay in offer of possession.

He further contended that it is clear from section 13 (2) of the Act that the provisions of the Act will apply to the prospective agreements which have been executed after coming into force the Act. The present agreement was executed before the Act came in force. The same cannot be considered to be the agreement for sale referred in the provisions of the Act. Thus, he contended that the provisions of the Act are not applicable to the buyer's agreement in this case. He further contended that the Hon'ble Minister of Housing and Urban Property made speech at the time of moving the Bill before both the houses of parliament and clarified that the provisions of the Act will apply to the future projects and whatever conditions have been stipulated in the pre RERA agreements, the parties have to implement those in toto. He contended that the debate in the Parliament can be taken into consideration in order to see the background of the statutory provisions.

He further contended that the Learned Authority gets the jurisdiction only from the registration of the project. Thereafter, the Learned Authority cannot jump the particulars of the registration to look at the pre RERA agreements to find the due date of offer of possession. He further contended that the jurisdiction to adjudicate unfair advantage vests with the Adjudicating Officer and not with the Learned Authority.

He further contended that the pre RERA agreements have to be read and interpreted "as it is" without any addition and subtraction and without any aid of any subsequent enactment. He contended that therefore, the respondent/allottee will be entitled for compensation for delay in the offer of possession at the rate of Rs. 5 per square feet per month in view of the clause 10.4 of the buyer's agreement.

Contention of Respondent

The Ld Counsel of respondent pleaded that the respondent/allottee has made the payment till 15.10.2015. After that there was 3 years of silence and there was no progress in work at site. The respondent/allottee wrote to the developer regarding the tardy progress in construction. On not receiving any satisfactory response he approached the Ld Authority. He contended that the Ld Authority vide impugned order dated 19.03.2019 has directed the appellant to pay the delayed possession charges w.e.f. 25.08.2016 till the offer of possession before 10th of every subsequent month as per the provisions of the Act.

He has further pleaded that the provisions of the Act is fully applicable to the agreement between the parties the rights of the respondent/allottee could not be defeated by taking shelter of technicalities of law. The project of the appellant was ongoing when the Act became applicable and was got registered with the Ld Authority. So, it cannot be stated that the Ld Authority was not competent to grant interest on delayed possession as per the provisions of the Act and the Rules framed there under. With these pleas he pleaded for dismissal of the present appeal.

Findings of Tribunal

The foremost question for consideration, which arises in this case is as to whether the provisions of the Act and the rules made there under shall be applicable to the builder buyer's agreement executed between the parties prior to the Act came into operation.

As per the definition agreement for sale means an agreement entered into between the promoter and allottee. This definition does not exclude the agreements entered into between the promoter and the allottee prior to the Act came into force. The definition of the agreement for sale as mentioned above will cover both the pre-RERA as well as the post-RERA agreements. The claim of the appellant is based on the remedies provided under section 18 of the Act. In this provision of law it is no where mentioned that it will only cover the agreements as provided in section 13(2) of the Act read with rule 8(1) of the Rules. **Meaning thereby the operation of the provisions of the Act cannot be restricted only to the post RERA agreements.**

The question regarding applicability of the Act and the Rules made thereunder to the pre-RERA agreements was taken note of by the Hon'ble Bombay High Court in Neelkamal's case (supra). As per the case the provisions of the Act are retroactive or quasi retroactive to some extent. The second concept of quasi-retroactivity occurs when a new rule of law is applied to an act or transaction in the process of completion. Thus,

the rule of quasi retroactivity will make the provisions of the Act or the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement, might have taken place before the Act and the Rules became applicable. In the case in hand also though the agreement for sale between the parties was executed prior to the Act came into force but the transactions was still in the process of completion when the Act became applicable. It is evident from the facts that even on the date of filing of the complaint the possession of the unit was not delivered to the respondent/allottee and conveyance deed was yet to be executed. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the Rules applicable to the agreement for sale entered into between the parties.

Thus even though the agreement for sale was entered into between the parties prior to the Act came into force but the transactions between the parties was still in the process of completion when the Act and the Rules became applicable. So, in view Tribunal the rights of the parties will be governed by the provisions of the Act and the Rules made there under. However, the terms and conditions of the agreement will still be taken into consideration with respect to the matters for which there is no specific provision in the Act or the Rules and the same are not in-consistent to the provisions of the Act or the Rules.

Tribunal do not find any substance in the plea raised by Ld counsel for the appellant that the respondent/allottee shall be entitled to claim possession as per the date declared by the appellant/promoter in the declaration under section 4(2)(1)(c) of the Act at the time of getting the project registered. This declaration is given unilaterally by the promoter to the Authority at the time of getting real estate project registered. The allottee had no opportunity to raise any objection at that stage, so this unilateral Act of mentioning the date of completion of project by the builder will not abrogate the rights of the allottee under the agreement for sale entered into by the parties.

Tribunal do not find any substance in the plea raised by Ld counsel for the appellant that the respondent/allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5 per square feet per month in view of clause 10.4 of the buyer's agreement. The function of the authority establish under the Act is to safeguard the interest of the aggrieved person may be allottee or the promoter. The rights of the parties are to be balanced and must be equitable. Thus Tribunal is duty bound to take into consideration the legislative intent i.e. to protect the interest of consumers/allottee in real estate sector. As per clause 10.4 of the agreement in case of failure of the developer to give the possession within the

stipulated period the respondent/allottee was only entitled to receive the compensation at the rate of Rs.5 per square feet of the super area per month for the period of delay. This will come to only 1.18% p.a. However, as per clause 7 of the agreement the appellant/promoter was entitled to charge the interest at the rate of 18% per annum on the delayed payment for the period of delay. The appellant/promoter as per clause 11 of the agreement has been given the vast powers even to cancel the allotments if the default is not cured within 30 days of the date of issue of the notice and to forfeit the entire earnest money paid by the allottee. As per clause 10.4 in case the developer abandon the project for any reason whatsoever the developer will be entitled to terminate the agreement and the allottee shall be refunded the amount paid by him only with 9% per annum simple interest for the period such amount was lying with the developer and to pay no other compensation whatsoever. Thus, the aforesaid terms of the agreement dated 20.03.2013 are ex-facie one sided, unfair and unreasonable, which constitute the unfair trade practice on the part of the appellant/promoter. There is no denial to the fact that appellant/promoter was in dominant position; the respondent/allottee was in the need of the house. He has already parted with his hard earned money, so he had no option but to sign the agreement on the dotted lines. The discriminatory terms and conditions of such agreement will not be final and binding.

Thus, keeping in view of aforesaid discussion, Tribunal opined that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored.

In the instant case also the Ld Authority has awarded the interest for delayed possession at the prescribed rate i.e. 10.75% for every month as provided in Rule 15 of the rules from the due date of possession till the actual date of handing over the possession. We do not find any illegality in the said award of interest by the Ld Authority.

The learned Authority has arbitrarily and wrongly taken only one grace period of six months and has wrongly substituted the deemed date of possession.

Tribunal has duly considered the aforesaid contention. As per Clause 9(1) of the Builder Buyer's Agreement, the construction of the building was contemplated to be completed within a period of three years from the date of execution of the agreement with two grace periods for six months each. There is no justification to have two grace periods of six months each and to further extend the period for completion of the construction by one year. Prescribing the two grace periods without any justification and sufficient cause again shows the terms and conditions of the agreement to be unfair and unreasonable. So, tribunal do not find any illegality in the deemed date of possession as determined by the learned Authority.

Finally, Ld counsel for the appellant has pleaded that the Ld Authority has not ordered for adjustment of the amount recoverable by the promoter from the allottee against the delayed possession charges/interest. He has requested that the Ld Authority should have ordered for the set off of the said amount. Tribunal found substance in this plea raised by the Ld. counsel for the appellant. The appellant/promoter shall be entitled for adjustment of the amount which became due or recoverable from the respondent/allottee as per the agreement for sale/payment schedule against the amount payable by the appellant/promoter to the allottee towards the interest/delayed possession charges imposed by the Ld Authority. With this clarification there is no merit in the present appeal and the same is hereby dismissed. Copy of this order be communicated to the Ld. Authority and the parties. The amount deposited by the appellant/promoter be remitted to the Ld Real Estate Regulatory Authority, Gurugram for disbursement to the respondent/allottee as per rules.

APPELLANT: OMAXE LIMITED.
RESPONDENT: Mr. ARJUN PRABHA
ORDER DATE: 19.12.2019
Appellant Representative: Adv Shri Sanjeev Sharma
Respondent Representative: Adv Shri R.P Arora

GIST OF CASE: Unregistered projects covered under RERA.

The respondent booked a unit the project "Omaxe Heights", being developed by the appellant/promoter. The Buyer's Agreement was executed on 07.04.2010. As per the terms and conditions of the agreement, the possession of the unit was to be offered within a period of 30 months. The appellant/promoter offered possession of the apartment on 12.06.2013 without obtaining the Occupation Certificate and without actually completing the construction work. Ultimately, the physical possession of the

unit was delivered to the respondent/allottee in November, 2014. It was further pleaded that the respondent/allotted had to spent Rs.1,00,000 for rectification of defects in the building. **The respondent/complainant sought the relief of compensation for delay, reimbursement of the expenditure of Rs.1,00,000 and compensation for mental harassment.**

The appellant/promoter contested the complaint by raising preliminary objections that the complaint is not maintainable in the present form; that the appellant is not registered with the learned Authority as the project was not required to be registered. So, the Authority had no jurisdiction to entertain and try the complaint; that the issues/claims sought in the complaint are beyond the realm of the jurisdiction of the Authority. It was further pleaded that the respondent/allottee has leveled false allegations of defects in the flat as well as the amount spent by her on rectification of the alleged defects without any corroborative evidence. The possession of the flat has already been delivered to the respondent/allottee; that the claim for compensation for mental harassment is wrong as the respondent/allottee has already obtained the possession of the unit in pursuance of the Indemnity-bond signed by her. **The respondent/allottee has concealed the fact that she has obtained the possession of the unit for fit outs and had executed the Indemnity-bond. The respondent/allottee is bound by the Indemnity-bond signed and executed by her.**

It was further pleaded that as per Clause 48 of the Buyer's Agreement, in the event of any dispute, it was to be referred to the arbitration. Thus, the complaint filed by the respondent/allottee is not sustainable. Only the Adjudicating Officer was competent to entertain the complaint and award the reliefs claimed therein; the complaint filed by the respondent/allottee was not maintainable before the learned Authority in view of Section 71 of the Act. Also, the question of awarding compensation only arises if the possession is not delivered as per declaration given by the promoter under Section 4(2)(l)(c) of the Act. The Occupation Certificate of the project was already obtained in the year 2015; as such the project was not required to be registered with the Authority and the complaint against unregistered project is not maintainable before the Authority. With these pleas, the appellant/promoter pleaded for dismissal of the complaint.

After hearing learned counsel for both the parties and appreciating the material on record, the learned Authority disposed of the complaint filed by the respondent/allottee by awarding compensation for delay in handing over possession at the prescribed rate of interest provided in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 w.e.f. from April, 2013 to November, 2014. Aggrieved with

the, present appeal has been preferred.

Tribunal have heard both learned counsel and have carefully perused the record of the case. The respondent has also filed the written arguments.

Firstly, Tribunal took up the issue as to whether the provisions of the Act will be applicable to the present project or not. This fact is not disputed that the possession of the unit was delivered to the respondent allottee in November, 2014. Even the Occupation Certificate was issued on 26.11.2015. It is also an admitted fact that the disputed project is not registered with the learned Authority as required under Section 3 of the Act.

The preamble of the Act shows that the Real Estate Regulatory Authority has been established for regulation and promotion of the real estate sector and to protect the interest of the consumers in real estate sector.

The project has been defined in Section 2(zj). The definitions will cover all the projects where the development of a building or the land into plots is carried out for the purpose of sale of the said apartment or the plot or the building. There is no classification of registered or unregistered projects in the definition of the real estate projects.

Section 17 of the Act deals with the transfer of the title. It requires the promoter to execute the registered conveyance-deed in favour of the allottee. Again, there is no reference in this provision that it will apply only to the registered projects.

Section 18 grants the remedy to the allottee for return of the amount, compensation and interest for delayed possession in case the promoter fails to complete or is unable to deliver possession of an apartment, plot or building in terms of the agreement for sale. This section also nowhere states that the remedies provided therein will be applicable only to the allottees of the registered projects.

Section 31 entitles any aggrieved person to 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. In this provision also, there is no classification that the aggrieved person must be of the registered project. So, even if the allottee of an un-registered project has any grievance, he can avail the remedy provided under Section 31 of the Act.

The reference of the aforesaid provisions of the Act and the Rules shows the scheme of the Act and legislative intent. The Regulatory Authority has been burdened with the responsibilities to regulate the real estate projects within its territorial jurisdiction. To conclude that the Regulatory Authority shall only have control over the projects which have been registered with it and not over the projects which have not been deliberately or otherwise got registered with it, would be an interpretation nugatory to the objects sought to be achieved by the Act in its letter and spirit. As already mentioned, there is no distinction in the Act or the Rules made hereunder between the registered and unregistered projects. Moreover, such type of artificial classification to bring out the unregistered projects from the purview of the Act may violate the legislative intent and will not stand the touchstone of equality as provided under Article 14 of the Constitution of India qua the consumers in the registered and unregistered projects.

Thus, the plea raised by learned counsel for the appellant that the learned Authority had no jurisdiction as the project of the appellant was not registered with it, is without any substance.

Section 14(3) of the Act is reproduced as under: -

> "In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

As per the aforesaid provisions of law it shall be the duty of the promoter to rectify any structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale, which is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over of the possession. So, the responsibilities and obligations of the promoter do not come to an end just with the issuance of the occupancy certificate and handing over the possession. In the instant case, it is an admitted case that the conveyance-deed has not been executed so far in favour of the respondent/allottee. So, the plea raised by learned counsel

for the appellant that the complaint was not maintainable under the provisions of the Act due to issuance of the occupation certificate before the Act came into force, is also without any substance.

Therefore, tribunal does not find any illegality qua the interest for delayed possession awarded by the learned Authority as per Rule 15 of the Rules. The learned Authority has also rightly determined the period of delay in delivery of possession.

KERALA REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: SMT. SUDHA SOMAN &Ors
RESPONDENT: SRI.A. ABDUL RASHEED ALIAS DR. A.R BABU
ORDER DATE: 05.02.2020

GIST OF CASE: Respondent stated in reply to complaint that the company is undergoing Corporate Insolvency Resolution Processes. Held that authority has no jurisdiction.

The complainant on 28.11.2014 entered to an agreement for sale of flat in the project of the respondent's company namely Heera Construction company pvt Ltd. The date of completion of the Project was 36 months. The Company collected 80 lakhs from the complainant as price of the flat. Now it has been five years, but the project has not yet been completed or handed over by the respondent.

The respondent filed reply stating that the company is undergoing Corporate Insolvency Resolution Processes from 27.03.2019 as per the provisions of Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal Mumbai Bench in CP (IB)- 44471MB/2018, and NCLT appointed a Resolution Professional and the present complainant has submitted claims before the Resolution Professional. The complainant admitted the same.

As the matter is under consideration of NCLT, in view of the judgment of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd & Anr. Vs Union of India and Ors, authority has no jurisdiction to entertain these complaints.

Hence the complaints are hereby dismissed.

COMPLAINANT: SRI.C.R SUBASH
RESPONDENT: C.J'S HARITHA HOMES &ORS
ORDER DATE: 05.02.2020
Complainant Representative: Adv Ajay Mathew John
Respondent Representative: In person

GIST OF THE CASE: Complainant sought relief for completing the construction of the apartment as per agreement. Authority ordered to promoter to obtain the occupancy certificate and pay interest to allottee.

The complainant's case is that he entered into an agreement for sale with the respondents on 23.07.2014 for purchasing apartment to be constructed by the respondents for a total sale consideration of Rs. 51,74,300/-. As per the terms of the contract between the complainant and respondents, the respondents shall complete the construction of the above said apartment together with all facilities on or before 31.12.2016 and hand over possession to the complainant on receiving the balance amount. The respondents does not complete the construction and hand over the apartment till date. Hence the complainant filed this complaint. The relief sought by the complainant are to direct the respondents to complete the construction of the apartment as per the agreement dated 23/07/2014 including the lift facility and car parking facility within one month and to execute the sale deed and handover the possession of the apartment to the complainant, after getting electricity and water connections, within 30 days on receiving the balance amount to be paid to the respondents. In the case of default allow complainant to realize an amount of Rs. 49,50,000/- with 12% interest from 23.07.2014 till realization from the respondent jointly and severally along with an amount of Rs.10,00,000/- as damages from the respondents and to issue such other orders deemed fit by the Authority.

The respondent stated that the complaint is not maintainable either in law or on fact. The cause of action accrued to the complainant on 23.07.2014. The Act in question, namely, the Real Estate (Regulation & Development) Act, 2016 came into force only with effect from 26.03.2016. The Authority itself was constituted only on 01.01.2020. The respondents further states that for the purpose of the project in question the respondent's firm purchased a parcel of land having an extent of 2.93 Ares made up of 2.53 Ares in Re survey No.63 and 0.40 Ares in Resurvey no. 15/2 Block No. 109 of Muttambalam Village and an old house therein of the complainant for a consideration of Rs.51,74,300/- and instead of taking the sale consideration in cash, the respondents allotted the said apartment in the project as per the request of the complainant. Accordingly, a sale deed was executed by the complainant in favour of respondent as

dated 23.07. 2014. The agreement for sale entered into between the complainant and the respondents dated 23.07.2014 is not really an agreement for construction of an apartment. It is an agreement entered into for the purpose towards the sale consideration of the property purchased by the respondent. The building permit for the project was obtained by the respondents only on 4.11.2014. All the remaining agreements executed between the other allottees of the project are later from the date of the agreement for sale of the complainant. In this view of the matter, the complainant is not an allottee as defined under section 2(d) of the Act and as such he is not competent to maintain the instant complaint. The respondents also stated that the project in question is nearing completion by the end of June 2020 and it will be completed in all respects and all genuine allottees would be put in possession of the completed apartment.

Upon hearing and on perusal of the documents submitted by the complainants and respondents the following points were raised for consideration.

1. Whether the Authority has jurisdiction to entertain the complaint?
2. If so whether the complainant is entitled to any relief as claimed?

The agreement for sale dated 23.07.2014 clearly shows that the complainant agrees to purchase the said apartment in the project of the respondent for a total consideration of Rs.51,74,300 and an amount of Rs. 49,50,000 paid on the date of agreement. As per this agreement the balance amount to be paid at the time of execution of sale deed. As per the agreement of sale the date of completion of the project is 31/12/2016 and possession be handed over within 90 days.

Building permit shows that the respondents applied for building permit on 27.05.2014 i.e. even before the date of sale agreement. The building permit of the project extended up to 31.10.2020. The respondents at the time of hearing admits that completion certificate of the project is not obtained till now. More over the respondents themselves in the reply statement admits that the project is nearing completion by the end on June 2020. Based on the above it is evidenced that the project in question is an ongoing project as per Section 3 of the Act and the complainant is an allottee of the project.

Based on the above findings the Authority passes the following Order.

1. The respondents shall register the project referred in the complaint as per provision of Section 3 of the Act within March 31st 2020.

2. The respondent shall complete the project and take occupancy certificate within 30.06.2020 without fail and hand over possession of the apartment to the complainant after receiving the balance amount of Rs.2,24,300/- and any other amount due to the respondent as per their agreement dated 23rd July 2014.
3. The respondent shall pay interest at the rate of 15.2% (SBI bench mark prime lending rate + 2%) for the amount of Rs. Rs.49,50,000/-from 01.03.2017 i.e., after 90 days from 31/12/2016, till the actual date of handing over the possession of the apartment as provided under Section 18 of the Act read with Rule 18 of the Kerala Real Estate (Regulation & Development) Rules, 2018.
4. The complainant is also at liberty to approach the Adjudicating Officer for compensation if any, related to his grievance as per section 71 of the Act.

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

COMPLAINANT: AMIT MEHTA AND ORS
RESPONDENT: PIYUSH BUILDWELL PVT LTD
ORDER DATE: 17.03.2020
Complainant Representative: Ms Aishwarya Dobhal
Respondent Representative:None

The authority observed that the promoters of the respondent firm are in jail and are facing various civil and criminal liabilities.

All the complainants have got possession of the flat. The complainant is being filed to get the conveyance deed registered in their favour. The complainant also stated that the respondent is also demanding additional amount from them to get the conveyance deed registered in their favour.

The respondent even after giving so many opportunities did not file a satisfactory reply to the complaints filed.

Having heard the complainants and perusing the material facts on record the authority held as under:

1. Sufficient opportunities have been given to the respondents in the first bunch of for submitting their reply. Despite receipt of notice the respondent have chosen not to file their reply. Proxy counsels of the respondent has been appearing but still the respondent has failed to comply with the requirements of submitting a reply. The Authority concludes that the respondents are not willing to submit their reply, therefore, now the matter is being decided on merits on the basis of the available facts.

2. Admittedly the project is complete. Occupation certificate has already been received. The complainants have paid the entire consideration amount and possession has also been handed over to them. From this, it is concluded that when the possession was handed over, all the accounts between the complainants and the respondents would have been settled. The respondent would not have handed over the possession without receipt of entire due amounts. The verbal statement of the proxy counsel that holding charges may be due against some of the complainants cannot be held against the complainants in the absence of a written reply by the respondent and citation of precise amount of alleged holding charges payable. **The holding charges is a concept which facilitates compensating the builders for the period during which an allottee had not taken the possession of an apartment after legal offer of possession had been made. The respondents have failed to cite any such period for which the complainants had delayed taking over the possession. More importantly once the possession has been handed over, it is to be presumed that on that date all the accounts were settled. Accordingly, the Authority will not take cognizance of mere verbal statement of the proxy counsel of the respondent that conveyance deeds are not being executed for the want of payment of holding charges.**

3. Regarding the charges such as stamp duty etc it is observed that all these charges essentially are payable to the State Government authorities. These amounts have to be paid by the complainants but they can he paid directly by the complainants in the office of Registrar. These need not be routed through the respondent. It is accordingly ordered that complainants shall pay all the dues charges towards stamp duty, registration fee, Red-cross society fee etc. to the office of Registrar at their own level. **The respondent does not have a right to demand the payment of these amounts to them directly.**

4. Accordingly, the complainants have a right to get the conveyance deed executed in their favour immediately. Complainants may take advice from

the office of Registrar and calculate the stamp duty and other charges payable for getting the registration deeds executed. The Registrar of relevant jurisdiction of District Faridabad is hereby directed to help the complainants in calculating the charges of stamp duty etc. payable by each of the complainants. The complainants shall produce requisite stamp papers and submit the same in the office of the Registrar for execution of the conveyance deeds.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

COMPLAINANT: KHUBRAM YADAV
NON-COMPLAINANT: NIMAI DEVELOPERS PVT. LTD
ORDER DATE: 06.02.2020
Complainant Representative : In Preson
Non-Complainant Representative : Adv Paramjeet Saini

GIST OF CASE: Unit of complainant shifted in other tower. Not accepted by complainant. Authority ordered refund of amount but without interest since project is complete.

The complainant has sought the relief of refund of money with interest, monthly rental for the delay period, compensation for mental harassment and costs of litigation.

The case of the complainant is that he had booked a residential apartment (flat) bearing No.F-001 and measuring 1234 sq. ft. for a total consideration of Rs.32,35,088/- in the non-complainant's project "Nimai Greens" located at Highway No.25, Bhiwadi, Rajasthan.

The complainant entered into an agreement with the non-complainant on 16.05.2013 which details out the obligations of both the parties. As per the agreement, the non-complainant was to handover possession of the flat within 42 months from the date of agreement. The complainant opted for construction-linked payment plan and has accordingly paid a total sum of Rs.31, 22,267/- without any default.

As per the agreement, the non-complainant was to hand over the possession latest by November, 2016, but there was an inordinate delay in completion of the project. In December, 2017, a letter offering possession of the allotted flat was sent by the non-complainant, that too without obtaining occupancy certificate, fire clearance,

environmental clearance, etc., from the competent authorities. **The complainant on receipt of the said offer of possession visited the site and found, to his surprise, that though he had opted for a PLC unit, i.e., a corner and park facing flat, but the non-complainant has built a tower on the park land, which is a clear case of fraud**. The complainant approached the non-complainant to resolve his grievance or cancel the allotment, but they refused to discuss the matter or return the money.

The non-complainant has in its reply stated that the complainant has been staying in one of the flats of the project from April, 2017 and his averment that the project is not completed yet is not correct. Further, the flat offered is in accordance with the agreement signed by the complainant, the clearances have been obtained from the competent authority and there is no deviation. In support of its reply, the non-complainant has enclosed a copy of Fire NOC dated 27.03.2017, Rajasthan Pollution Control Board letter dated 21.02.2018 for consent to operate for a period from 01.01.2018 to 31.12.2027, Completion Certificate dated 04.08.2017 given by the Architect, along with receipt of Rs.28,98,698/- deposited with UIT Bhiwadi.

Authority heard the parties.

The non-complainant company was asked to furnish the as-built plans of the project so as to ascertain whether the flat has been constructed in accordance with the agreement. On perusal of the approved building plans submitted by the non-complainant, we find that it is at variance from the plan incorporated in the agreement for sale; and because of changed location of Tower-G with reference to Tower F, the flat allotted and offered for possession to the complainant is not facing the park, whereas as per the plan given in the agreement, it was supposed to be facing the park. The complainant is not willing to accept an alternative flat and we cannot compel the allottee to take possession of the allotted flat. Thus, we have no option but to order refund.

In so far as interest on the amount of refund is concerned, in order dated 31.05.2019 in the matter of Ravi Kant Gupta V/s GRJ Distributors and Developers Pvt. Ltd. (Complaint No. RAJ-RERA-C-2017-2030) and 6 other connected matters, it was held as under:-

> "Thus, if the flat is ready for possession, or is near completion, and still refund is allowed, it may usually be without interest. If the flat is not ready for possession, and is not likely to be so ready in near future and refund is allowed, it may usually be with interest at prescribed rate for the period starting from the stipulated date of possession under the agreement or from any other date the Authority may deem

fit in the facts and circumstances of the case, upto the date amount so due is refunded."

The complainant has not been offered possession of the flat in accordance with the agreement and within the time stipulated therein; and, therefore, he is entitled to refund under section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). But since the project has been completed, the refund should be without interest.

In view of the above observations and findings, we, in exercise of the powers conferred on the Authority under section 37 and section 38 of the Act and in the interest of justice, do hereby issue the following directions:-

1. The non-complainant shall refund the deposited amount of Rs.31,22,267/-, without any deduction and without any interest, within 45 days from the date of issue of this order.

2. The Registrar of the Authority shall separately issue a notice to the non-complainant company for not getting the project registered with the Authority, even though it was an ongoing project as on 01.05.2017 and required to be registered under section 3 of the Act.

COMPLAINANT: SUO MOTO BY RAJ RERA
NON-COMPLAINANT: GOVINDKRIPA BUILDHEIGHTS LLP
ORDER DATE: 06.02.2020
Non-Complainant Representative : CA Himanshu Vijay

GIST OF CASE: Penalty of Rs 10,000 imposed due to non-mentioning of web site address of the authority on the advertisement.

The project "Jaypore",situated in Sector-3, Vidhyadhar Nagar Scheme, Jaipur-302023 (Rajasthan),of the promoter firm, is registered with the Authority vide registration No.RAJ/P/2017/203.

Section 11 (2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') states that "the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein

all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto".

It had come to the notice of the Authority that the promoter firm had published an advertisement for the project in the newspaper "Times of India" dated 27.10.2019 without mentioning therein the website address of the Authority; and thereby committed violation of the aforesaid provisions of section 11 (2) of the Act.

Taking suo moto cognizance of the matter, the promoter firm was issued a notice on 26.12.2019 and was called upon to explain as to why a penalty equal to or upto five per cent of the estimated cost of the project be not imposed on it under section 61 for the said contravention of the provisions of section 11 (2) of the Act. In the notice, the promoter firm was also given the choice of appearing for a personal hearing on 06.02.2020.

Ld Counsel of promoter has stated that inadvertently the website address of the Authority was missed out in the impugned advertisement and there was no malafide intention. He admitted the mistake and apologized for the same.

Having gone through record of the case and looking to the fact that the promoter firm has admitted its default, authority accept the contention of the promoter firm that the alleged violation has happened unintentionally.

Therefore, authority choose to take a lenient view of the matter and, in exercise of the powers conferred on the Authority under section 61 read with section 11 (2) of the Act, do hereby impose a penalty of Rs.10, 000/- only and direct the promoter firm to deposit the said penalty amount with the Authority within 45 days from today and submit a compliance report to the Authority within 15 days thereafter. The promoter firm is also directed to ensure that no violation of the Act, or the rules or regulations made there under, is made by it in future.

PART-II

NOTIFICATION & CIRCULARS

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO-
DATE:

Notice

All the court cases scheduled for hearing before RERA Authority in the month of May 2020 have been adjourned. Fresh date of hearing will be intimated later via email.

KERALA REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO- K-RERA/T1/29/2020
DATE: 03/02/2020

Subject: Registration of Ongoing Real Estate Projects- submission of application - checklist of enclosures — reg:

Ref: Order no: K-RERA/T3/102/2020 date 14/01/2020

In exercise of the powers conferred under section 37 of the Real Estate (Regulation and Development) Act 2016 and in continuation to order cited under reference, promoters of all on-going projects shall, along with the application for registration of the project, furnish photographs of the project site to show evidence that the construction is on-going.

Such photographs shall, on its reverse side, carry dated certificate of the promoter/his authorised representative to the effect that "This is the photograph of the site of the …… *(name of project)* Project by the Promoters …… *(name of promoter)* at …… *(location and name of Grama Panchayat/ Municipality/ Corporation)*." The certified photographs shall be kept immediately under the duly filled application form A 1.

Urgent attention of promoters of ongoing projects are also invited to section 60 of the Real Estate (Regulation & Development) Act, 2016, which stipulates that any false information given or any contravention of provisions of section 4 by the promoter will

attract a penalty, which may extend up to 5% (five percent) of the estimated cost of the real estate project.

KERALA REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO- K-RERAJT3/102/2020

DATE:13/02/2020

Subject: Registration of Real Estate Projects – submission of application - further orders - reg:

Ref: (1) Order no: K-RERA/T3/102/2020 dated 14/01/2020

(2) Order no: K-RERA/T3/140/2020 dated 20/01/2020

(3) Order no: K-RERA/T1/ 29/2020 dated 03/02/2020

(4) Public notices dated 26/12/2019, 27/12/2019, 22/01/2020

In exercise of the powers conferred under section 37 of the Real Estate (Regulation and Development) Act 2016 and in continuation of the orders and public notices cited above, the Kerala Real Estate Regulatory Authority here by issue orders for compliance by promoters of real estate projects which require registration by K-RERA:

a) Applicants, who are henceforth communicated from K-RERA to rectify anomalies in their application for registration of real estate projects, shall resubmit application after rectification of defects within 7 days from the date of such communication, failing which the Authority will take appropriate action as per provision of the Act and Rules.

b) Applicants, who have already been directed to rectify anomalies in their application for registration of real estate projects, but not rectified yet, shall resubmit application after rectification of the defects within 7 days from the date of this order, failing which the Authority will take appropriate action as per provision of the Act and Rules.

c) If Promoters of ongoing projects which require registration as per the Real Estate (Regulation & Development) Act 2016, have not applied for registration on or before 31.03.2020, they shall be liable to punishment as stipulated in

Section 59 of the Real Estate (Regulation and Development) Act, 2016. The promoters are also hereby informed to follow the orders of the Authority issued from time to time, while preparing application for registration of project.

d) Declaration of the promoter supported by an affidavit as prescribed in section 4(2)(1) of the Act (Form B as per Rules) shall be prepared in a non-judicial stamp paper worth Rs 100/- and shall be attested by an Advocate.

GOA REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO- F.N0:3/RERA/Off. Matters/2019/114
DATE: 14/02/2020

Subject: Registration of Real Estate Agents and their Obligations.

1. As per Section 9 of Real Estate (Regulation and Development) Act, 2016 and Rules there off, prior registration of Real Estate Agents with Goa Real Estate Regulatory Authority (Goa RERA) is mandatory for facilitating sale or purchase of a plot or apartment in a real estate project in any planning area registered with Goa RERA.

2. Therefore, all real estate agents who desire to facilitate sale or purchase of plot or apartment in a registered real estate project should have a registration number issued by the Goa RERA.

3. All promoters/builders/co-owners/ are hereby directed to ensure sale or purchase of plot or apartment in a real estate project registered with Goa RERA only through a registered real estate agent.

4. Similarly, all prospective buyers or purchasers or allotees are hereby advised to enter into any business transaction with only registered real estate agents with RERA for sale or purchase of plot or a flat in a registered project under Goa RERA.

5. Further, the real estate agents as provided under section 10 of Real Estate (Regulation and Development) Act, 2016 and rules there off should ensure the following:-

   a) not to facilitate sale or purchase of any plot or apartment or building other than the real estate project in any planning area registered with Goa RERA.

b) maintain book of accounts, records etc.

c) (i)not involve himself in any unfair trade practices either in oral or in writing or by visible representation, such as, false representation of a standard service or grade.

(ii) false representation of a promoter which he actually not.

(iii) makes false or misleading representation regarding services.

(iv) misleading advertisements which are not intended to be offered.

d) to facilitate allottees to have all information and documents at the time of booking of any plot, apartment or building.

This is issued with approval of the Authority

KARNATAKA REAL ESTATE REGULATORY AUTHORITY
CIRCULAR NO- Ref No: Admin/CR-119/2019-20
DATE: 15/02/2020

Subject: Revised charges for various services rendered by the K-RERA.

Ref.: Circular No. RERA/ ADM/CR-119/2019-20 dated 13-12-2019

Under Section 34(e) of the Real Estate (Regulation and Development) Act, 2016, the Karnataka Real Estate Regulatory Authority is vested with the power to fix the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be for various services carried out by the Authority, pertaining to operationalise a web based online system for as is in www.rera.karnataka.gov.in

Under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the Karnataka Real Estate Regulatory Authority is vested with the power to issue directions from time to time to the promoters, allottees or real estate agents' as it considers necessary from time to time.

In order to provide services on transactional basis for updating registration of project, technical clearance and permission etc., rendered by the Authority and to state that it has been decided to levy the charges, which shall be over and above the charges of the Authority as prescribed in the Rules, which also includes updating website, database

management and maintenance of website etc., But bank charges and taxes shall be charged extra on actual basis to be paid by the user.

The Circular No. RERA/ADM/CR-119/2019-20 dated 13-12-2019 laying down the charges for various services rendered by Karnataka Real Estate Regulatory Authority (K-RERA) stands revised. It is felt necessary to issue further directions on the charges for the specific services. Hence, the charges for the following services rendered by K-RERA are as bellow:

SI No.	Type of transaction	Fee per transaction excluding taxes and bank charges
1.	Correction of project name	Rs.10,000/-
2.	Correction of project Address	Rs.10,000/-
3.	Change of promoter name	Rs.10,000/-
4.	Correction of promoter address	Rs.10,000/-
5.	Correction of email address	Rs.10,000/-
6.	Correction of mobile number	Rs.10,000/-
7.	Change of RERA Bank Account details	Rs.10,000/-
8.	Third party transfer	50% of the cost registration of project.

Charges for inspection of documents and certified copies of the documents shall be applicable under RTI Act and Rules there under as amended from time to time.

It is to be also noted that the levy of the above prescribed charges will be effective commencing from this day irrespective of the date of submitting of application and approval thereof, till further revision.

KERALA REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO- K-RERA/T3/102/2020
DATE: 22/02/2020

PUBLIC NOTICE TO PROMOTERS OF REAL ESTATE PROJECTS

(1) Clarification on ongoing project.

Chapter II of the Real Estate (Regulation and Development) Act 2016 mandates that all ongoing real estate projects for which completion certificate has not been issued have to be registered with the Real Estate Regulatory Authority. However, neither the Act nor the Kerala Real Estate (Regulation and Development) Rules 2018 define an 'ongoing project'. In this context, projects that have already received permit from the local authority prior to 01.01.2020 (date of official launching of K-RERA), but has not obtained occupancy certificate shall be considered as '**ongoing project**'.

(2) Clarification on allottable parking spaces.

As per section 2(n)(iii) of the Act, open parking areas shall be considered as 'common areas' and hence the promoter shall not allot such areas to individual allottees. Enquiries are also being received on the applicability of stilt parking, mechanised parking and basement parking which are covered. The Kerala Real Estate (Regulation and Development) Rules 2018 though uses terminologies like 'enclosed parking' and 'covered parking', does not define these terms. As per rule 17(1)(e)(ii) of the Kerala Real Estate (Regulation and Development) Rules 2018, the promoter is also asked to upload details of garages/covered parking booked. Hence, in the interest of the allottees, in addition to garage, other covered parking spaces such as basement parking, stilt parking and mechanised parking arrangements will also be considered as parking space allottable to allottees by the promoter.

(3) Clarification on registration of projects that have obtained occupancy certificate based on partial completion certificate.

The authority, vide public notice dated 27th December 2019, clarified that the real estate projects that have obtained Occupancy Certificates do not require registration under RERA. The Kerala Municipality Building Rules / Kerala Panchayat Building Rules have provisions for partial completion certificate and to occupy a building before its completion. In the context of real estate projects requiring registration With K-RERA, so as to protect the interest of the allottees, it is also clarified that partially completed building, which have obtained occupancy certificate based on partial completion certificate as per the provisions in the Kerala Municipality Building Rules Kerala Panchayat Building Rules are registrable under the Real Estate (Regulation and Development) Act, 2016.

PUNJAB REAL ESTATE REGULATORY AUTHORITY

CIRCULAR NO- RERA/Pb/FIN/2020/ 16 41 —1666
DATE: 02/03/2020

Subject: Composite Web Maintenance Fee

The Authority had earlier issued order on levying of RERA Online Convenience Fee' on the promoters/real estate agents vide Endst. No. RERA-2018/4958 dated 11.06.2018. The said convenience fee has been decided in exercise of the powers vested under para 33 of the Punjab Real Estate Regulatory Authority (General) Regulations, 2017.

The matter has been further reviewed considering practical convenience to the promoters and agents and it has been decided by the Authority that instead of taking the said fee annually at the beginning of each financial year, it will now be taken for the entire duration of the validity .of the Registration Certificate, at the time of registration, as tabulated below,

Sr.	Type of Transaction	Duration for chargeability of Fee at the time of Registration.	Composite Web Maintenance Fee
1.	Real Estate Agents at the time of application for Registration or Renewal.	5Years	Rs. 5000.00 for 5 years (@ Rs. 1000/- p.a.)
2.	Promoters of New/Ongoing projects at the time of application for Registration or Extension.	From the date of registration, till the date of completion of project.	@ Rs.5000/- p.a. for each financial year or part thereof.

All Projects and Real Estate Agents which have already been registered with the Authority, as on date, shall be liable to pay the Composite Web Maintenance Fee for entire period of validity of Registration Certificate as above, excluding the web maintenance fee already paid by the Promoters/Real Estate Agents.

The above fee will be payable in the same mode as the payment of Registration Fee payable under the Rules, under the heading "Composite Web Maintenance Fee".

The Authority accordingly calls upon all the Promoters and Real estate agents to pay the said fees on or before 31st March, 2020 and avoid any punitive action under the law.This Order is issued in suppression of earlier order no RERA-2018/4958 published on 31-08-2018.

PART-III

FAQS FROM REAL ESTATE AGENT'S PERSPECTIVE

1. Who needs to apply for Registration for broking business in Real Estate?

``Ans: Every Real Estate Agent who intends to facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a registered real estate project being sold by the promoter shall have to apply for registration under RERA.

2. What are the duties and responsibilities of the real estate agents?

``Ans: Section 10 of the Act provides for detailed functions and duties of real estate agents, which are as under:-

(a) He shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;

(b) He shall maintain and preserve such books of account, records and documents as may prescribed;

(c) He shall not involve himself in any unfair trade practices, namely:—

- the practice of making any statement, whether orally or in writing or by visible representation which—
    a) falsely represents that the services are of a particular standard or grade;
    b) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
    c) makes a false or misleading representation concerning the services;
- permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

(d)He shall facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;

3. What is the procedure to obtain registration to operate as Real Estate Agents? What are documents required to get real estate agent's license?

``Ans: It will be through an easy online process which is prescribed in the respective Rules of State RERA authorities.

4. Will the registration of one state be operated in other states?

``Ans: No. The registration is valid only for particular state only.

5. Is this registration transferable to another agent or to other state where agents intend to shift his office?

Ans: No

6. Even if real estate agent has not taken any commission from client and taken it from promoter, can the agent still be responsible and liable for builder's default?

Ans: The agent's liability is in accordance with Section 10 of the Act. He is not held liable for the promoter's default.

7. If real estate agent is not listed with promoter's registration at RERA website, still can he sell in this project?

Ans: No. If the promoter has not included the real estate agent's name at the time of registration, it will have to be included by the promoter and then only the real estate agent can operate in the project.

8. Will RERA protect Agents for their commissions not paid by builder or by parties to the deal?

Ans: No, these will be guided by the agreements that real estate agents have with the concerned promoters or allottees.

9. Whether registration of a real estate agent can be revoked?

Ans: Where any real estate agent who has been granted registration under this Act Commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made there under, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without

prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit.

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

10. Is Agent authorized to sign on behalf of his promoter / builder?

Ans: No.

PART-IV
RERA NEWS

BLOOMBERG
DATED : 21.02.2020

INDIA REAL ESTATE FUND HAS DISBURSED MONEY TO TWO STRESSED PROJECTS: SBICAP VENTURES

The government's alternative investment fund worth Rs 25,000 crore has started disbursing money to two stressed real estate projects, according to the firm managing the corpus."These two projects are located in Mumbai and Bengaluru," said Irfan Kazi, chief investment officer at SBICAP Ventures Ltd., the government-appointed manager for the India AIF. "With the completion of these projects, 1,800 homebuyers are going to benefit," he said, without revealing names.

According to government estimates, projects with about 4.58 lakh housing units and requiring Rs 55,000 crore were stalled. In November, the cabinet decided to set up a 'special window' in the form of the AIF to provide priority debt financing for completing stalled housing projects. Housing Development Finance Corp. Ltd. and State Bank of India have agreed to contribute to the fund.

ET REALTY
DATED: 21.02.2020

RAJASTHAN'S APARTMENT OWNERSHIP ACT TO GET FINAL NOD SOON

The Apartment Ownership Act has finally reached the implementation stage. After receiving and redressing objections and suggestions, the Urban Development Housing (UDH) department will issue the go-ahead notification in the next 15 days.

As only one objection was received against the Act, the department held a workshop for builders and residents' welfare association where suggestions were sought. A senior official at UDH said, "After rules were framed, we sought objections and suggestions. As only one objection was received, a workshop was held. After detailed discussions, notification of the rules will be issued."

THE INDIAN EXPRESS
DATED: 26.02.2020

PROMOTERS HAVE TO PUSH GOVT TO PROVIDE EXTERNAL DEVELOPMENT SERVICES: HRERA

"Promoters putting pressure on the right authorities" is critical for completion of projects in Gurugram, and for ensuring basic infrastructure is available to people purchasing houses in the city, Chairman of Haryana Real Estate Regulatory Authority (HRERA) KK Khandelwal noted Claiming that the Real Estate Regulatory Act (RERA) and the regulatory authority created to implement it had led to the city maintaining a "steady pace of sales volume in 2019", the HRERA Chairman said Gurugram saw a 125 per cent rise in launch of new units in the second quarter of 2019, compared to the same period the year before. Similarly, he claimed sales rose by "around 5 per cent" and prices fell marginally by 4 per cent, and unsold inventory reduced by 14 per cent.

"Large number of irregularities which were in practice are now more or less absent. Earlier also, there were very good promoters. They launched projects & there was no difference between commitment and delivery. Some of the people, who may not be in real sense imbibing the principles of real estate got into this business and gave bad name to the total industry. After coming into force of RERA, confidence of buyers has been restored," said Khandelwal, warning, however, that "bad promoters" should be "taught a lesson" so as to prevent a "perilous" impact on real estate growth.

THE TIMES OF INDIA
DATED: 03.03.2020

TAMIL NADU: BUILDERS NEEDN'T WAIT ENDLESSLY FOR NOC

Individuals and developers planning housing projects may no longer have to run from pillar to post of multiple departments seeking no objection certificates (NoC) as the government would fix deadlines for each agency for issuing the certificate. The initiative would be part of ensuing a single-window clearance system which will be the lone online platform to apply for planning permissions across the state. Presently, there is no deadline for issuing NoCs in the manual process.

Housing and urban development department sources said a list of departments that would issue NOCs would be displayed after a user logs onto the portal to file their applications for planning permission. “They need to just click and apply for NoCs to the respective departments. Then, the application would be sent to departments concerned for processing. If there is no response within a specific period, the application would be considered deemed-to-be approved,” a senior housing and urban development official told TOI.

THE TIMES OF INDIA
DATED: 09.03.2020

MAHARASHTRA: ‘1 PER CENT STAMP DUTY CUT LIKELY TO PUSH UP PROPERTY SALES’

In his maiden budget on Friday, finance minister Ajit Pawar announced 1% concession for the next two years in stamp duty and registration of documents to 5% from 6%. The concession will be applicable in Mumbai Metropolitan Region and civic corporation areas of Pune, Pimpri-Chinchwad and Nagpur.

The decision, which will result in a Rs 1,800 crore decline in revenue for the state government. While the government had set a target of Rs 27,000 crore for 2019-20, it managed to collect Rs 29,500 crore—a jump of Rs 2,500 crore. The increase is despite the slowdown in real estate. Pawar said the cut would encourage citizens to buy property and the government may collect more revenue through increase in sales.

ET REALTY
DATED: 16.03.2020

LIC HOUSING FINANCE IDENTIFIES 14 PROJECTS FOR ALTERNATIVE INVESTMENT FUND

Mortgage lender LIC Housing Finance on Friday said it has identified 14 projects to be referred to the alternative investment fund (AIF), set up by the government for last-mile funding, a top company official said. The housing finance company is the sole lender to these 14 real estate projects and has a total exposure of Rs 1,400 crore to them.

"We have some 14 projects (eligible) for the alternate investment fund created last year. We have advised those developers to be in touch with SBI Caps and the process has started," LICHFL's managing director and CEO Siddhartha Mohanty said.

ET REALTY
DATED: 25.03.2020

REAL ESTATE BODY ASKS FOR DEFERMENT OF HOME LOAN EMI

Real estate developers body are asking for deferment of housing loan installments for 12 months, moratorium on project loans for 2 years, release of building plans and other approvals which are being help-up due to payment of fees among other measures to support the real estate industry in UP and Haryana.

The National Real Estate Development Council (NAREDCO-UP) has written to Nirmala Sitharaman, Finance Minister, asking them for relief for the sector in this tough time.

"Due to Covid-19 impact, Housing sales are almost nil. There are no buyers in the market, naturally value of housing prices is zero. We have asked for certain relief package from Finance minister," said Supertech Chairman RK Arora, who is also as the presidents of Naredco- UP.

In order to overcome the impact of the pandemic, NAREDCO has said that it is essential that all the project loans disbursed by the banks, are allowed unconditional moratorium of 2 years during which period, no project account should be treated as NPA and no recovery proceedings should be initiated against any developer. It has also requested that All NCLT/DRT cases against the developers are withdrawn. To ease liquidity to retail home buyers who have taken home loans but due to pandemic situation needs liquidity support, the body has asked for 12 months deferment for payment of EMI towards home loan installments. During this period waiver of additional interest, penal interest may be allowed.

MONEYCONTROL.COM
DATED: 03.04.2020

MAHARERA EXTENDS COMPLETION DEADLINE FOR PROJECTS BY THREE MONTHS

Maharashtra Real Estate Regulatory Authority (MahaRERA) extended the period of validity for registration of all registered projects where completion date, revised completion date or extended completion date expires on or after March 15, 2020 by 3 months, MahaRERA has also announced extension of time limits for all statutory compliances in accordance with the Real Estate (Regulation and Development Act

2016) and the rules and regulations made thereunder, which were due in March, April and May 2020 to June 30, 2020.

The authority's order read that in view of the partial lockdown in the state earlier and the eventual nation-wide lockdown, the construction work in MahaRERA registered projects has been severely affected and supply chains for obtaining construction material have been disrupted. Labour work force may also have migrated back to their home states.

ET REALTY
DATED: 06.04.2020

KARNATAKA RERA EXTENDS PROJECTS DEADLINE BY 3 MONTHS

Due to the lockdown, the supply chains for construction material have been disrupted and the labour workforce may have migrated back to their home states. Under these circumstances, it will take some time to restart work for real estate projects across Karnataka," the circular issued by KS Latha Kumari, Secretary at K-RERA, stated.

All RERA registered projects whose completion date (including revised completion date) expires on or after March 15, the authority has extended the deadline by three months. The time limit of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act 2016 and the rules and regulations -- which were due in March, April and May -- has been extended till June 30, 2020."All complaints cases listed for hearing up to April 14 before the K-RERA and the adjudicating officer have been adjourned except for the urgent cases. This is to avoid gathering of litigators, lawyers and visitors. The next date of hearing in each case will be posted on the authority's website,".