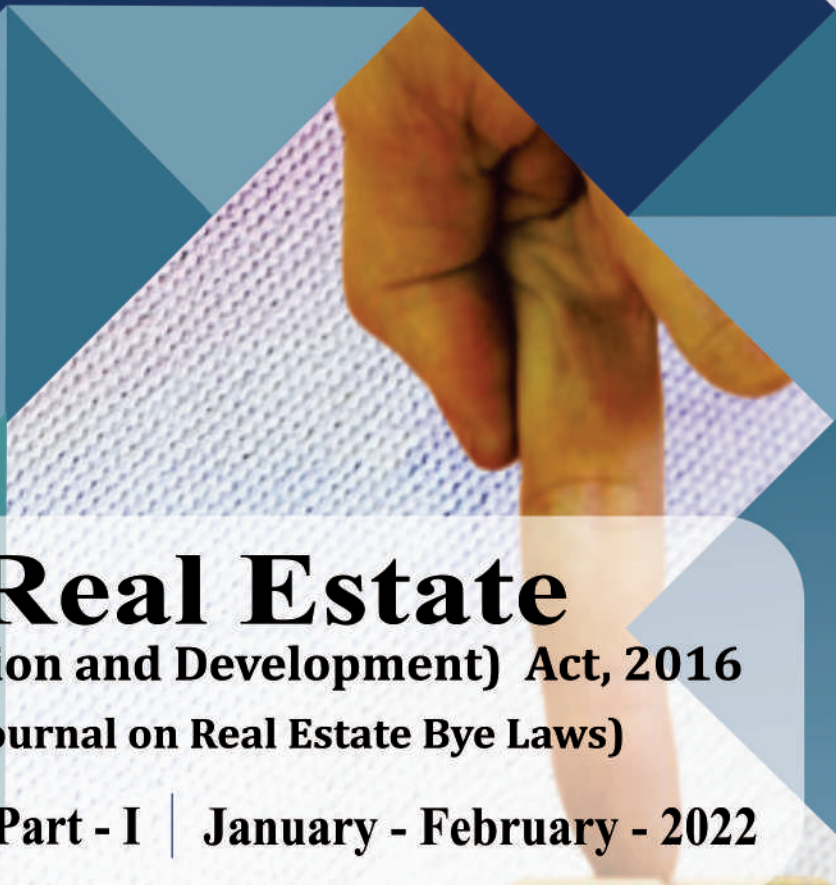
RERA TIMES



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,

Several countries have seen a decline in Omicron variant-led Covid surge. The decrease in cases has also led to lifting restrictions across globe. If there are no more major Covid outbreaks after Omicron, the pandemic may see an end in 2022 which will boost economic growth across globe.

President Vladimir V. Putin of Russia launched an invasion of Ukraine on 24th Feb 2022 just as diplomats at the United Nations Security Council were calling on him to refrain from war. It is not just Ukraine's 44 million people whose lives have been upended. In the coming days, many others far from the field of battle may find themselves buffeted by ripple effects. The fate of Ukraine has enormous implications for the rest of the continent and health of the global economy.

The Union Budget 2022-23 was presented by the Hon'ble Finance Minister, Smt. Nirmala Sitharaman on February 1st, 2022. Focusing mainly on the technology and infrastructure sectors, the 2022 budget also offered provisions for health and education. The Union Budget also gave a broad idea of India's GDP and stability during the time of COVID-19. It also proposed new allotments for almost every sector to cultivate growth in the sub-continent.

Also, Rajasthan government presented State Budget 2022-23. The state budget this time is particularly important because for the first time, the government is presenting the agriculture budget separately. Special focus of government was on employment, health, and education. The old pension scheme was reintroduced in the state benefiting lacs of employees.

2022 Legislative Assembly elections are being held in Uttar Pradesh from 10 February to 7 March 2022 in seven phases to elect all 403 members of the Uttar Pradesh Legislative Assembly. Also, The Legislative Assembly elections were held in Punjab on 20 February 2022 to elect the 117 members of the 16th Assembly of the Punjab Legislative Assembly. The votes will be counted and the results will be declared on 10 March 2022. The results of the election will witness a turnaround in the Indian politics over coming years, in particular of Uttar Pradesh.

The Supreme Court has directed the Ministry of Housing & Urban Affairs to undertake a detailed scrutiny of state-specific RERA general rules and agreement for sale regulations in a ruling that may drive significant changes in the implementation of the Real Estate (Regulation & Development) Act, 2016 across the states. Homebuyers have been raising concerns over the dilution of rules by the state governments for long, this is for the first time the apex court has intervened and directed a detailed review of these rules.

With lots of ups and down in the beginning two months of 2022, we hope and pray for the best in upcoming months.

Wish all of you a very happy and colorful Holi.

With Regards
CA Sanjay Ghiya
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Place: - Jaipur
Date: 28.02.202

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RAJASTHAN REAL ESTATE REGULATORY AUTHORITY & ORS. ETC. ETC…….Respondent(s)

O R D E R

Gist of Case: Interest of home buyers get priority over banks

We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the petitioner/Bank and Shri Ritin Rai, learned senior counsel appearing on behalf of one of the respondent/caveator /one of the home buyers.

Our conclusions can thus be summarised as under:-

1. Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid.

2. The delegation of powers in the single member of RERA to decide complaints filed under the Act even otherwise flows from Section 81 of the Act and such delegation can be made in absence of Regulation 9 also.

3. As held by the Supreme Court in the case of Bikram Chatterji (supra) in the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

4. RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.

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

PART-II
REPORTING OF CASE LAWS

RAJASTHAN REAL ESTATE APPEALLATE TRIBUNAL

APPELLEANT: Munish Ranjan Sahay
RESPONDENT Trehan Apna Ghar Buildwell Pvt. Ltd
CORAM: Hon'ble Justice Veerendr Singh
ORDER DATE : 28th January, 2022
Appellant Representative: None
Respondent Representative: CA Mitesh Rathore and Adv Shruti Rai

Gist of Case: Authority directed the allottee to take possession of the unit. Tribunal quashed order of authority and allowed refund of the amount paid by the allottee.

Aggrieved of the order dated 27th January 2021, made by Rajasthan Real Estate Regulatory Authority (for short the Authority), Jaipur, the appellant/complainant has instituted the present appeal under Section 44 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016).

The Authority decided the complaint of the appellant/complainant, holding thus

"Accordingly, it is ordered that the respondent promoter offers the possession of the flat to the complainant immediately along with compensation as provided for in clause 30(e) of the agreement for sale. The complainant is directed to take possession of the flat. The respondent promoter will offer the possession letter along with compensation as stated above, within a period of thirty days and that the complainant shall take over the possession of the flat within a period of thirty days from the date of offer of possession letter by the respondent promoter.

The matter stands disposed of in terms of the above directions."

Briefly, the essential material facts needs to be taken note of for adjudication of the controversy raised are that the non-appellant/respondent/promoter acquired a piece of land for development of Group Housing project in Village — Tapukara, Tijara Road, Tapukara, Alwar (Rajasthan). The appellant/complainant tempted with the advertisements and promises held out by the respondent/promoter with reference to the subject Group Housing Project, booked a flat bearing No.203, Tower D-2. Second Floor measuring 750 sq. ft. in the Housing Project named "Delight Residencies". Indisputably a sum of Rs.22, 56,562/- (Rupees twenty two thousand fifty six thousand five hundred sixty two only) including various applicable taxes. has been deposited by the appellant with the respondent/promoter (non-appellant). The unit/project was to be completed within 36 (thirty six) months from the date of signing of the Agreement that was entered in to between the parties (Builder Buyer) on 24th January, 2015 with a further Grace Period of Six Months, The project was registered with Rajasthan Real Estate Regulatory Authority vide Registration No. RAJ/P/2017/192 in view of enactment with effect from 1 May, 2016, of the Act of 2016, by the Parliament. For the project was not completed within the stipulated period of 36 (thirty six) months which concluded on 24'-' January, 2018, and even within the Grace Period of six months that ended on 24th July, 2018. **Hence, the appellant resorted to the remedy of complaint before the Authority with the prayer for refund of the amount deposited over the period of time along with interest and compensation to the tune of Rs.5,00,000/- (Rupees fixe lakh only) along with cost of Rs.51,000/- (Rupees fifty one thousand only).**

Learned counsel for the appellant. reiterating the pleaded facts and grounds of the appeal contended that the impugned order passed by the Authority is. Ex-facie bad in the eye of law and contrary to the settled principles of law. Further, the Authority has committed grave error of law and fact while making the impugned order dated 27'h January, 2021.

Referring to the text of Section 18 of the Act of 2016, learned counsel would submit that right of the appellant/complainant is unqualified under the Act of 2016 to claim refund of the amount deposited from the promoter in the event of promoter's failure to complete the project in time, as per terms and conditions of the (Builder Buyer) Agreement arrived at between the parties

According to the learned counsel for the appellant, the Authority fell in gross error of law and fact while making the impugned order dated 27th January, 2021, in the face of text of Section 18 (1 and (3) of the Act of 2016, which in no uncertain terms contemplates that an allottee would be entitled to withdraw from the project. if he so wishes, for any reason. However, in the instant case at hand the project has been inordinately delayed for more than two and half years.

Hence, the appellant/complainant is entitled to relief prayed for in the face of Section 18 of the Act of 2016. To fortify his arguments. learned counsel has placed reliance on the opinions of the Apex Court of the land and NCDRC, in the case of:

(1) Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.: (2021)3/SCC 241
(2) Imperia Structures Ltd. Vs. Anil Patni, (2020)10 SCC 783
(3) Kokoota West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 SCC Online SC 438
(4) Arifur Rahman Khan Vs. DLF Southern Homes (P) Ltd.. (2020)16 SCC 512
(5) Cognizance for Extension of Limitation, in re,(2020) 9 SCC 468
(6) Pioneer Urban Land and Infrastructure Ltd. Vs, Union of India, (2019)8 SCC 416; and
(7) Aloke Anand Vs. Ireo Pvt. Ltd. & Ors., NCRDC. MANU/CF/0304/2021.

Per contra, learned counsel appearing on behalf of the respondent/non-appellant/promoter while supporting the impugned order dated 27th January. 2021, in rejecting the complaint and claim of the appellant contended that the respondent/promoter despite of all odds owing to demonetization, ban on Bajri (sand) by the Apex Court of the land and orders passed by the Pollution Control Board, restraining ongoing construction activities in Delhi and NCR as well as consequent difficulties upon introduction of (Goods and Services Tax) GST: the respondent, promoter was able to complete the project and now is in a position to hand over possession of the subject flat. Moreover, a large number of applicants in the project have already taken possession and a good number are in the process of taking possession.

Learned counsel further added that there exists a park in the project as would be evident from the photographs of the project depicting a large garden area for use of the flat owners. According to the learned counsel, the complainant appellant is himself guilty of delay in institution of the complaint before the Authority for the complaint was lodged only on 21st November, 2019, after a delay of one year and three months from the agreed date of completion of the project.

It is further pointed out that an application for obtaining Completion Certificate from the Competent Authority was filed on 25lh April, 2019, but the Completion Certificate was not furnished for reasons best known to the concerned authorities. However, the respondent/promoter was furnished with a Completion Certificate by the Empanelled Architect on 20th March, 2020.

Tribunal heard the learned counsel for the parties and perused the materials available on record so also gave our thoughtful consideration to the rival submissions put forth.

From a glance of the terms and conditions of the Agreement, it is evident that the project was to be completed by the respondent/promoter within 36 (thirty six) months which concluded on 24t January, 2018. Adding the Grace Period of six months, the period for completion of the project ended on 24'h July, 2018 i.e. on completion of 42 months. Thus, delay in completion of the project is evident on the face of record. Moreover even the Authority below has also recorded specific finding on this issue stating that the project has been delayed.

The admitted facts are that the complainant had booked the subject property with the opposite party and the opposite party had failed to deliver the possession of the subject flat within the stipulated period and on account of this deficiency on the part of the opposite party, the complainant has filed this complaint, In the complaint, complainant has given his two residential addresses. He has also booked one more flat with the opposite pally in Victor Valley. **The question is does these facts take him out of the definition of 'Consumer' as defined under section 2 (1) (d) of the Consumer Protection Act, 1986 (in short. the Act)?**

Section 2 (1) (d) of the Ac defines the term 'consumer' as under:

"consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised. or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under system of deterred payment when such use is made with the approval of such person. but does not include a person who obtains such goods for resale or for any commercial purpose: or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes:

Explanation.-For the purposes of this clause. "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

Hon'ble Supreme Court in Laxmi Engineering Works Vs. P.S.G. Industrial Institute 1995 AIR 1428 while discussing the scope of Section 2 (1) (d) of the Act has held as under:

> *"12. Now coming back to the definition of the expression 'consumer' in Section 2(d). a consumer means in so far as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly*

promised, whither the payment of consideration is deferred: (ii) a person who uses such goods with the approval of the person who buys such goods for consideration (iii) but does not include a person who buys such goods for resale or for any commercial purpose The expression "resale" is clear enough. Controversy has however, arisen with respect to meaning of the expression 'commercial purpose" It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning, 'Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce- mercantile: having profit as the main aim"(Collins English Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods 'with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a "consumer' within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion the expression 'large-scale" is not a very precise expression the Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression "commercial purpose" - a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose' would not yet take the purchaser out of the definition of expression "consumer". If the commercial use is by the purchaser himself for the purpose of earing his livelihood by means of self-employment, such purchaser of goods is yet a "consumer". In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act The explanation reduces the question what is a

"commercial purpose' to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods are put to use. The several words employed in the explanation, viz., "uses them by himself", "exclusively for the purpose of earning his livelihood" and by means of self-employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself by employing himself for earning his livelihood A few more illustrations would serve to emphasis what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, it such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery. he does not cease to be a consumer.) As against this a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions "used by him" and "by means of self-employment" in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and clarified by the other two sets of words."

From the above, it is apparent that a person who buys a good ceases to be a consumer, if that person indulges itself in commercial activities qua the goods and in case of purchase of residential houses, it can be said that buyer is indulging into the activity of buying / selling the properties and purchased it for that purpose.

It is settled proposition that burden is upon the opposite party to prove that the complainant is indulging in commercial activities of sale and purchase of the flats and that he had booked the subject flat with the intention to sell it to earn profit as part of his commercial activities.

It is, therefore, clear that burden is squarely upon the opposite party to prove the fact that .non-complainant is indulging in the business of sale and purchase of the flats. There is no contention in the written version that the complainant

is indulging in the business of sale / purchase of the properties. Since the opposite party has failed to discharge this burden we hold that complainant is consumer within the meaning of Section 2 (1)(d) of the Act.

It is evident that the respondent/promoter failed to complete the construction and/or give possession as per the Agreement to Sale on completion of 42 months which ended on 24th July, 2018. Needless to observe that the terms and conditions of the Sale of Agreement are one-sided. Moreover, the appellant/complainant in the instant case at hand deposited an amount of Rs.22, 56,562/- (Rupees twenty two lakh fifty six thousand five hundred and sixty two only) including various applicable taxes between the period with effect from 30th June. 2014 to 09th August. 2018. Thus, an inordinate delay of two and half years is apparent on the face of record. Hence, the, appellant/complainant is entitled to return of the amount deposited by him with the respondent/promoter with interest in accordance with law, in addition any compensation or any loss caused to the appellant.

In the result, the appeal succeeds and is hereby allowed. The impugned order dated 27th January, 2021 made by the Rajasthan Real Estate Regulatory Authority. Jaipur in Complaint No, RAJ-RERA-C-2019-3297 is set aside.

The respondent/promoter is directed to refund amount of Rs .22, 56, 562/- (Rupees twenty two lakh fifty six thousand five hundred and sixty two only) deposited by the appellant along with simple interest @10% per annum.

APPELLEANT: Arunodaya Builders
RESPONDENT; Lata Chhugani and Ajay Chhugani
CORAM: Hon'ble Justice Veerendr Singh Siradhana
ORDER DATE: 04th February, 2022
Appellant Representative: None
Complainant Representative: Adv. R.B. Sharma

Gist of Case: Appeal dismissed due to non-compliance of section 43 (5) of RERA, 2016

The registry, on scrutiny of the appeal had recorded defects, including that of non-compliance of Section 43(5) of the Rajasthan Real Estate (Regulation and Development) Act, 2016. Section 43(5) specifically contemplates to the effect that while an aggrieved person with any direction or decision or order made by the RERA Authority or by an Adjudicating Officer under the Act of 2016; may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter, **but where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited, with the Appellate Tribunal, at least 30% of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed.**

Apex Court of the land in the case of M/s. Newtech Promoters and Developers Pvt. Ltd, Vs. State of UP & Ors., Appeal No(s),6745-6749 of 2021 decided on 1191 November, 2021 framed certain questions for determination. Question No.4 was determined, thus:

"Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?"

Answering the question (supra), after a survey of earlier opinions of the Apex Court of the land; held thus:

> *"137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers /allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(l)(g) of the Constitution of India, The obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/ allottees for refund and*

determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority is saved if the appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstances can be said to be onerous as prayed for or in violation of Article 14 or 19(1)(g) of the Constitution of India."

Tribunal allowed several opportunities to the appellant/counsel to make good the deficiencies with reference to defect pointed out by the registry in the face of text of Section 43(5) of the Act of 2016. Learned counsel appearing on behalf of the appellant prays for further time to complete her instructions as to the defect recorded by the registry in the face of text of Section 43(5) of the RERA Act, 2016. In view of the verdict of the Apex Court of the land, appeal of the promoter is not to be entertained unless the promoter first deposited with the Appellate Tribunal at least 30% of the penalty. In view of the above, we allow, as a matter of last indulgence, to the appellant to do the needful well before by the next date.

From a glance of the order sheets recorded on the dates aforesaid and more particularly making it clear to the counsel for the appellant to cure the defect without fail; the defect has not been cured.

For the reasons aforesaid and in view of authoritative determination of the issue with reference to the mandatory compliance of deposit of 30 percent amount in compliance with Section 43(5) of the Act of 2016; the appeal cannot be entertained.

In the result, the appeal is hereby dismissed for non-compliance of pre-deposit as contemplated under Section 43(5) of the Act.

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPELLANT: Govind Meghraj sarogi
NON-APPLICANT: HBS Realtors Pvt Ltd & Ors
CORAM: HOB'BLE INDIRA JAIN J And Dr. K. SHIVAJI
ORDER DATE: 06.01.2022
Appellant Representative: Ms Shilpa Nagori
Respondent Representative: Mr Nimay Dave

Gist of Case: Single member bench of REAT being without jurisdiction is nullity

The facts giving rise to the present Execution Application may be narrated in brief as follows:

1. Applicant/original complainant is one of the members of Wort Shivshahi CHS Ltd., a co-operative housing society under the Provisions of The Maharashtra Co-Operative Societies Act, 1960 (for short "Society").The Society had entered into a Development Agreement dated 28"' September 2009 granting development rights to non-applicant No.1 in respect of building of the Society.

2. The redevelopment of property comprised of Rehabilitation building as well as Sale building. Rehab building was to house the members of Society including applicant and Sale building was available to promoter for sale.

3. According to complainant promoter was not working as per-the terms and conditions of agreement and in collusion with Society, non-applicant No.1 put a revised date of completion as 31st December 2024 on MahaRERA Website contrary to the redevelopment agreement. Complainant therefore filed complaint making grievances regarding revised proposed date of completion and sought directions to Non-applicant No.1 to pay rent, compensation etc.

4. Considering the dispute amongst complainant, promoter, MHADA and Co-Operative Housing Society, MahaRERA held that such dispute cannot be resolved

before MahaRERA and dismissed the complaint vide order dated 29u1 January 2018.

Being aggrieved complainant preferred appeal against the order passed in complaint. The said appeal came to be disposed of by a Single Member Bench of this Tribunal vide order dated 29' August 2018. Relying upon paragraphs particularly 6, 7 and 9 of the Appellate Order, complainant has preferred instant Execution Application.

A simple point that arises for our determination is whether order dated 29th August 2018 passed in appeal by Single Member Bench of this Tribunal is executable in law and to this our finding is in the negative for the reasons to follow Member Bench to entertain, hear and decide the appeal revolves round Section 43(3) and Section 45 of the Act of 2016.

It has also been held by the Hon'ble Bombay High Court that an order passed by a Member of the Appellate Tribunal sitting singly is without jurisdiction and order passed by an improperly constituted Bench is void ab initio. Further order which is per-se void ab initio is nullity and objection regarding coram non judice can be legally raised even at the stage of execution particularly where decree is not enforceable being nullity.

Therefore, it is not a dispute that the execution order passed by Single member cannot be enforced or executed.

APPELLANT: **Mr. Rajesh M. Chhabria & Anr.**
RESPONDENT: Neelkamal Realtors Subarban Pvt. Ltd
CORAM: SHRIRAM R. JAGTAP, MEMBER and Dr. K SHIVAJI
ORDER DATE: 11.01.2022
Appellant Representative; Mr. Deepak Chhabria
Respondent Representative: Mr. Sushant Chavan

Gist of case: Amendment of the appeal memo & prayer to produce additional documents allowed subject to relevancy & admissibility of the Documents

Appellants moved this Misc. Application and prayed for amendment of the appeal memo and to produce additional documents on the grounds enumerated in the application.

Appellants simply want to make correction in the memorandum of Appeal. If proposed amendment is allowed no prejudice will cause to the Respondent. The Appellants are not seeking new relief by proposed amendment nor will the nature of the memorandum of Appeal change.

Also, Appellants want to produce some additional documents on record. According to Appellants, the documents are relevant to the matter and will help the Tribunal in determining the controversy between the parties. We are of the opinion that the production of documents can be allowed subject to relevancy and admissibility of the documents

Therefore, Tribunal opined that there is no impediment in allowing the Application.

APPELLANT: M/s. Dhodhade Construction
RESPONDENT: Mr. Pravin Shinde
CORAM: SHRIRAM R. JAGTAP, MEMBER
ORDER DATE: 27.01.2022
Appellant Representative; Mr. Harshad Bhadbhade
Respondent Representative: Mr. Ramesh Girme

Gist of Case: Land owner cannot be treated as allottee but is promoter

Appellant is the developer and Respondent, who is complainant. Both the parties will hereinafter be referred to as Complainant and Developer.

Brief facts that led to this Appeal are that Complainant, his mother Nalini Dashrath Shinde, brother Vitas Dashrath Shinde and two sisters namely Kavita Deepak Katbane and Vidya Santosh Mane are co-owners of property CTS Nos. 1125 to 1130 situated at Bopkhel Pune.

A registered development agreement and deed of power of attorney was executed by and between Complainant and Developer on 13.06.2013 for construction of flats on property CTS Nos. 1125 to 1130 situated at Bopkhel Pune. By agreement dated 02.07.2013 developer agreed to allot complainant 4 flats having a total area of 1600 Sq. Ft. It was further agreed between parties that developer alone is entitled to sell rest of the flats. The developer was supposed to complete construction of the flats within 3 years from the date of commencement certificate. The developer has agreed to execute agreements in favour of Complainant and will bear the expenses for the same and further agreed to form and register society of allottees. The Developer failed to complete project within stipulated period and further failed to execute agreement for flats of 1600 sq. ft. in favour of Complainant and his kins at his own costs. Therefore, one of the co-owners filed the complaint and sought following reliefs

- An enquiry to be made into fraudulent activities of promoter.
- Promoter be directed to complete the construction of flats of complainant and his kins within 6 months.
- Promoter be punished according to law for having committed flagrant violation and contravention of RERA and Rules and penalty and compensation may be levied on promoter according to law and paid to complainant.

The Developer appeared in the complaint and resisted the complaint contending that Developer had agreed to complete project within 3 years from the date of commencement certificate i.e., from 5th December, 2014. However, project got delayed because of the objection taken by the Ministry of Defence, India stating that the project land is within 500 mtrs from the defence establishments and construction activities got halted on this account for one and a half year. The learned Authority heard the parties and passed impugned order. It is recorded by learned Authority that as the Respondent has agreed to hand over flats as and when the project get completed, the same is taken on record and nothing else is required to be done in this Complaint.

From the pleadings, rival submissions and documents relied upon by the parties following points arise for determination.

1. Whether complainant is a promoter as defined Under Section 2 (zk) of RERA?

2. Whether impugned orders call for interference in this appeal?

REASONS

It is not in dispute that complainant, his family members and cousins are owners of property bearing CTS nos. 1125 to 1130. They have entered into a registered development agreement dated 13.06.2013 with the developer. The developer was supposed to complete the project "Arjun Heights" within 3 years from the date of commencement certificate, however developer could not complete project within stipulated period, as a result dispute arose between complainant and developer. **The complainant claims that he is an allottee within the meaning of definition of Allottee as per section 2 (d) of RERA and therefore dispute between complainant and developer is governed by RERA, Therefore, pivot question, which falls for our consideration, is: - what is the status of complainant and his family members, whether they are Promoters or Allottees. The whole case revolved around this issue only.**

There are some distinguishable factors between "Allottee" and "Promoter". These distinguishable factors determine the status of complainant. The transaction between an Allottee and a Promoter is executed via "Agreement for sale" as defined under section 2(c) of the RERA. Nature of instrumentalities and kinds of reliefs contemplated under "Agreement for sale" are also different from "Development Agreement" which fall within the purview of RERA. Under Section 13, it is mandatory for promoter to execute a written agreement for sale before accepting amount more than 10 % of the total price.

Section 18 of the RERA for grant of reliefs, such as: Refund of paid amount with interest and/or compensation on withdrawal from the project, Interest

and/or compensation on paid amount till actual possession, in case promoter failed to deliver possession as per terms of agreement for sale or by the date, specifically mentioned therein Sections 18 (1) and 19 (4) recognize right of Allottee to distinct remedies, viz. refund of the amount together with interest and/or compensation or interest for delayed handing over possession. Amount together with interest and/or compensation or interest for delayed handing over possession. Contrary to the above requirement specified under RERA, the element of sale is completely missing in the transaction between owners of the property and builder/developer. No advertisement, publicity or marketing etc. is required to be undertaken as no sale is contemplated in the transaction between owners of the property and builder/ developer. So naturally there is no agreement for sale for accruing any rights to Appellant under section 18 as prayed for. Instead, the parties have executed a development agreement and the transaction does not attract any reliefs under the provisions of RERA. Apart from that, the nature of instrumentalities and kinds of reliefs contemplated under agreement for sale and development agreement are also different.

Tribunal recorded that complainant, his family members and his cousins being owners of CTS nos, 1125 to 1130 decided to demolish old houses and to re-develop the property. Builder/developer offered new premises in new building in lieu of development of the property on the ownership basis to complainant and his family members.

Therefore, we are of the considered view that complainant, his family members and cousins, who are party to the development agreement, are not Allottees and they can only be termed or called as "promoters". Therefore, the dispute under consideration is between the promoters and thus falls within the domain of the civil court. As the dispute between promoters is not governed by the provisions of RERA, the MahaRERA has no jurisdiction to entertain the same. In the result we are of the opinion that impugned orders calls for interference in appeal.

APPELLANT: Mr. Rajeev Shivnath Sonkar
RESPONDENT: Mr. Mariano Francisco Rodrigues
CORAM: INDIRA JAIN J and DR. K. SHIVAJI, MEMBER
ORDER DATE: 03.02.2022
Appellant Representative; Mr., Vijay Upadhyay, Advocate
Respondent Representative: Mr. Mariano Francisco Rodrigues

Gist of Case: Refund, interest & penalty is within preview of Authority and compensation to be awarded by Adjudicating Officer

This appeal by promoter takes an exception to the order dated 28th June 2019 passed by learned Adjudicating Officer thereby directing promoter to pay interest on Rs.40,44,100/- at the rate of @10.75% p.a. from 1st April 2017 till 31st December 2018 to complainant. In addition, promoter is also directed by the said order to pay interest ® 10.75 p.a. on Rs.1, 00,000/- towards delay in providing amenities as per the agreement for sale. Costs of Rs.20, 000/- in complaint was also saddled on promoter.

For the sake of convenience the parties in their original status as complainant and promoter as referred before Adjudicating Officer.

It is the case of the complainant that along with his wife he booked flat No.502 in "A" Building in the project "Dynamic Oasis situated at Undri, Taluka Haveli, District- Pune for total consideration of Rs.40, 44,100/- excluding stamp duty, registration charges and other charges. Agreement for sale was executed between the parties on 24th November 2015. As per agreement proposed date for delivery of possession was March 2017. Possession was handed over in January 2019. As agreed amenities were not provided, complainant received possession under protest .A complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 for refund of entire money paid together with interest, compensation and legal expenses was then filed.

Promoter appeared before learned Adjudicating Officer and resisted the complaint. In reply promoter contended that possession was in fact offered on 24th December

2018 but complainant accepted the same in January 2019. It was contended that parties mutually agreed by clause 14 of the agreement and extended period of possession by 12 months upto March 2018. It was submitted that complainant cannot take stand of delay for 19th months for receiving possession as possession was voluntarily accepted by complainant. Promoter submitted that possession is willingly accepted and so complainant is estoppel from claiming refund, interest and compensation. Promoter urged to dismiss the complaint with costs of Rs.25, 000/-.

Vide order dated 28th June 2019, learned Adjudicating Officer though awarded interest for delayed possession and failure to provide amenities despite agreement, rejected the claim for compensation of Rs.10,000/- per month from promised date of possession till providing amenities as claimed by complainant.

During pendency of appeal, promoter raised preliminary objection to the jurisdiction of Adjudicating Officer to decide complaint under the Act of 2016. Appellant placed reliance on the recent judgment of the Hon'ble Supreme Court dated 11th November 2021 in M/s Newtech Promoters And Developers Pvt. Ltd Vs. State of UP & Ors. [Civil Appeal Nos.6745-6749 of 2021] to submit that appointment of an Adjudicating Officer under Section 71 is for the limited purpose of adjudicating compensation under Sections 12, 14, 18 and 19 of the Act. It is contended that complaint under Section 31 with regard to reliefs other than compensation ought to have been heard and decided by the Authority and not by Adjudicating Officer.

On powers of Authority, the Hon'ble Supreme Court held that if the Adjudication is under Sections 12, 14, 18 and 19 other than compensation as envisaged, it is Regulatory Authority which has power to examine and determine the outcome of complaint.

Paragraphs 83 and 86 of the judgment in Newtech Promoters (supra) are reproduced here as follows for ready reference —

"83 So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections

12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

84.

85.

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund, 'interest' penalty and 'compensation' a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

In the light of the statutory framework under the Act of 2016, subject matter to be dealt with and judicial pronouncement of the Humble Supreme Court we are of the view that impugned order in respect of reliefs other than compensation is not sustainable in law.

TAMIL NADU REAL ESTATE APPEALLATE TRIBUNAL

APPELLEANT: M/s. Akshaya Pvt Ltd
RESPONDENT: N. Dinesh
CORAM: Ms. Leena Nair, Administrative Member
ORDER DATE: 19.01.2022
Appellant Representative: Shree Aahya S
Respondent representative:. N Vasant kumar

Gist of Case: The homebuyer claim is denied as it was barred by limitation.

The parties are called in this appeal, as per their original rankings as home buyer and promoter.

The appellant is the Real Estate promoter and has promoted a project named 'Today'. The respondent is the home buyer. Both of them entered into sale and construction agreement on 05.02.2013 through which undivided share of land to an extent of 225.06 sq. ft. was agreed to be conveyed to the home buyer for the construction of the residential apartment with a built up area measuring 617 sq. ft. and total sale consideration agreed between the parties is Rs, 19, 58,450/- the home buyer paid Rs.2, 00,000/- on 25.11.2012 and paid a sum of Rs.1, 91,690/ on 21.1.2013 towards booking advance. **After that no payment was made as per the payment schedule in spite of repeated reminders. Hence, the appellant was constrained to Issue notice for Cancellation on 24.6.2014 and email dated 25.6.2014. Since the respondent has not even responded to the notice of cancellation the appellant was constrained to issue a letter dated 16.7.2014 cancelling the allotment made to the home buyer.**

The respondent alleging that there was a delay in construction of the apartment, approached the Adjudicating Officer, for the relief of refund along with interest, compensation for mental agony and for litigation expenses. The Adjudicating Officer allowed the complaint in part and directed the promoter to refund Rs.4,16,690/ along with interest at 10.05% and litigation costs Rs.25,000/- and negatived the claim of compensation.

The appellant/promoter preferred this appeal on the following main grounds:

- **As per Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, Rule 4 Explanation I 'any agreement already entered between the promoter and the allottee before commencement of these rules shall not be affected.' In this case the promoter and the home buyer entered into an agreement on 5.2.2013 before this Act and Rules came into force. Hence the home buyer cannot invoke the provisions of real estate Act even though several reminders were sent to the home buyer for making stage wise payments**.

- **The period of three years would commence from the date of the breach of the contract itself i.e. in the year 2014 when the home buyer failed to adhere to the time schedule.**

The learned counsel for the appellant would submit that the learned Adjudicating Officer without considering the above said main ground simply accepted the claim of the home buyer. Further, the promoter has sent reminders through email on 12.4.2013, 13.5.2013 16.7.2013, 3.10.2013, 22.11.2013, 30.11.2013, 30.12.2013, 23.1.2014, 11.3.2014, 24.6.2017 and 29.9.2014 to which the home buyer had turned a blind eye. Hence the promoter was constrained to issue notice for cancellation on 24.6.2014 and email dated 25.6.2014 attaching the notice of cancellation. The above said facts was not properly appreciated by the learned Adjudicating officer. Hence the order of the Adjudicating Officer has to be set aside.

Point for consideration:

1. Whether the claim of the home buyer is barred by Limitation?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

On perusal the scope of this appeal is very limited. The home buyer paid booking advance only to the tune of Rs.3, 91,690/- along with Rs.25, 000/- referral bonus as

per the account statement produced by the promoter. The home buyer has not paid any further payment .**The promoter sent a letter as well as email by cancelling the allotment and offered to return the advance amount as per the agreement**. These are all admitted facts.

According to the home buyer since the project got stalled for a long time the home buyer asked the promoter to refund his booking advance Rs.3,91,690/- but the promoter continued to evade the requests of the home buyer. Hence he sought for return of money along with accumulated interest @ 12% p.a. and with referral bonus. But the promoter denied the allegations of the home buyer that the project got stalled is false and has stated that as per the agreement the home buyer is entitled to refund amount without interest after deducting 10% of cost of construction as liquidated damages and all refunds shall be made only after identifying an alternate purchaser and receipt of the sale consideration from the prospective purchaser and shall carry no interest for the interim period. These are the disputed facts.

Before going to discuss the merits of the case the relevant clause for the construction agreement have to be looked into. They are as follows:

> *"5.1. The first party shall make the payments on due dates without any demand from the second party... Any delay in payment on due dates will attract interest at the rate of 12% per annum from the date of default till the date of payment....*
>
> *5.2. In the event of the first party failing to pay the aforesaid sums, in the manner provided in the Annexure-I, the second party may at their discretion after due notice of 15 days to the first party cancel this agreement and dispose of the schedule c property of the first party shall thereafter no right, Interest or claim over the apartment and such proceeds. In such an event the second party shall refund such sums of money as received from the first party without interest under this agreement, however after deducting 10% of cost of constructions as liquidated damages apart from all expenses incurred to dispose of the schedule c property. All refunds shall he made only after*

identifying an alternate purchaser and receipt of the sale consideration from the prospective purchaser and shall carry no interest for the interim period".

As per the above said default clause the promoter is liable to refund the advance amount after deducting 10% towards liquidated damages and after deducting the expenses incurred to dispose the said property and after disposal to the third party the amount will be refunded without interest. Now the home buyer claimed 12% interest in the complaint. The learned Adjudicating Officer has awarded 10.05% interest for the refund of money.

The home buyer filed the complaint before the Adjudicating Officer only on 23.7.2019. The promoter has not chosen to refund the amount even though sold the apartment allotted to the home buyer reallocated to one Mr.KushaI Sengupta in the year 2015. As per the construction agreement the promoter shall refund after deducting 10% of the cost of construction as liquidated damages then returned the same without interest. Even though the promoter has resold the property in the year 2015 the promoter has not chosen to repay the amount. **But the learned counsel for the appellant submit that as per the provision of Limitation Act Article 5 the period of limitation three years would commences from the date of breach of contract itself. Hence the claim is barred by Limitation.**

In this regard our Apex Court has guided with regard to cancel of agreement is concerned which is reported in AIR 1993 SC 1120 which runs as follows:

"Supreme Court of India Smt Thakamma Mathew vs M. Azamathulla Khan And Others"

We find considerable force in the aforesaid contentions of the learned Counsel. in order that decree for specific performance of a contract may be passed it is necessary to consider whether such a relief can be granted in view of Section 16 of the Specific Relief Act , 1963 .In other words the person seeking such a decree has to satisfy that Section 16 of the Specific Relief Act does not bar the grant of such a relief and the person against whom the decree is passed can show the relief of specific performance cannot be granted in view of the provisions of section 16 of the Specific Relief Act. Clause (c} of

Section 16 postulates that the person seeking specific performance of the contract must file a suit wherein he must aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Moreover, in view of Article 54 of the Limitation Act , 1963, a suit for specific performance of contract has to be filed within three years of the date fixed for the performance or if no such date is fixed where plaintiff has notice that performance is refused. In the present case the appellant by his notice dated February10, 1975 had clearly indicated that he had cancelled the agreement and had forfeited the advance amount of Rs18, 0000 deposited by the defendant. By , the said notice it was clearly indicated that the appellant was no longer willing to perform the agreement to sell dated November12,1974.In the circumstances, it was incumbent upon the defendant to have filed a suit for specific performance of the contract within a period of three years from the date of the said notice dated February10,1975 and if such a suit had been filed by the defendant, it would have been open to the appellant to show that it was barred by the provision contained in Section 16 of the Specific Relief Act. The defendant did not choose to adopt that course and remained content with defending the suit filed by the appellant for cancellation of the agreement to sell dated November12, 1974 and for recovery of the possession of the property. Even it is found that the appellant was not entitled to succeed in the said suit and the said suit is liable to be dismissed, it would not entitle the defendant to obtain a decree for specific performance of the contract in those proceedings. The High Court, with due respect, was not right in invoking its discretionary power under Order7 Rule 7CPC to grant such a relief to the defendant. The said power conferred on the court does not enable it to override the statutory limitations contained in Section 16 of the Specific Relief Act, 1963 and Section54 of the Limitation Act, 1963 which preclude the grant of the relief of specific performance of a contract except within the period prescribed by the section.

As per the above verdict the home buyer ought to have taken steps to get the relief of the specific performance or refund of advance amount paid by him within three years from the date of cancellation. In this case admittedly the home buyer filed the complaint only on 23.07.2019. The promoter cancelled the

agreement on 16.07.2014. to within three years from 16.07.2014 this will be ended on 15.07.2017.

Within that period the home buyer ought to have taken steps to get back the amount but the home buyer miserably failed to do so and came forward with the plea of refund after the Real Estate Act came into force on 01.05.2017. Hence the claim of the home buyer has already barred by Limitation and the home buyer cannot invoke the provisions of the Real Estate Act. Therefore this Tribunal comes to a conclusion that the claim is barred by Limitation. The Point No.1 is answered accordingly.

Point to.2:

In Pont No.1 it was decided that the claim of the home buyer for refund is barred by Limitation. What the claimant cannot achieve through a civil court as it is barred by Limitation merely because of the advent of the new law viz. RERA which come into force on 01.05.2017 he has not applied the same immediately. He has further taken another two years even to seek for the refund. **Further as pointed out earlier he has never even sent any reply for the cancellation notice. Therefore he is not entitled for refund.** Hence the order of the Adjudicating Officer is not sustainable and liable to be set aside, Therefore this Tribunal comes to a conclusion that the order of the Adjudicating Officer is liable to be set aside. Hence this appeal deserves to be allowed. Point No.2 is answered accordingly.

APPELLEANT: M/s BBCL Properties Private Limited
RESPONDENT; A. Prashanth
CORAM: Mr Justice B. Rajendran, Chairperson
ORDER DATE: 21.01.2022
Appellant representative: Mr.Vummidi Barath
Respondent Representative: M. Sumitha

Gist of Case: 100 percent of the total amount ordered by court do be deposited before tribunal.

The respondent in this appeal has preferred complaint before the Adjudicating Officer for the relief of refund of sale consideration with interest and for compensation. After contest the Adjudicating Officer allowed the complaint in part and directed the appellant/promoter to refund the sale consideration Rs.19,68,363/- with interest @ 10.05% per annum under Rule 18 of TNRERA Rules. Further awarded Rs.25, 550/- towards registration charges and stamp duty and awarded Rs.2, 00,000/- towards compensation for mental agony hardship and litigation costs R.s.25,000/-. Aggrieved upon the same the appellant/promoter herein has preferred this appeal along with waiver application **in the waiver application this Tribunal ordered 100% of the total amount ordered by the court below. Since the appellant failed to comply the order this Tribunal delivered the following order:**

"This present application M.A. No.14/2022 has been filed seeking for extension of time. The original order was passed on 1.122021 in M.A,No.182/2021 the appellant was directed to deposit the entire amount as ordered by the court below pursuant to the Judgment of the Honble Supreme Court in M/S.Newtech Promoters and Developers Pert Ltd.-VsState of UP in that order itself it was very clearly stated the amount can be deposited by the appellant and or by the third respondent as they were jointly and severally liable to pay the amount as ordered by the court below. The time granted to pay was till 4,1,2022 and for compliance the matter was posted for hearing on 5.1.2022. On 5.1.2022 they came forward with an application In M.A.No.7/2022 seeking to further extension of time, they were granted further time up to 20.1.2022 for payment and posted for compliance on 21.1.2022, Even then they have not complied with the order and they have come forward with the present application for extension of time.

At this time it is pertinent to point out here the third respondent has filed a separate appeal in A.No.148/2021 on 5.1,2022 and both were directed to deposit the amount on or before 20.14,2022 who is jointly and severally liable to pay who has also not deposited the amount till date.

In that view of the matter, as both the matters have arisen out of the very same order and both are jointly and severally liable to pay and the present appeal

has been filed by this appellant belatedly and brought on the same day when they sought for time. Both the appellants in A.No.132/2021 and appellant in the present appeal A.No.148/2021 pursuant to their application in M.A.No.1/2022 was granted time till 20.1.2022 to pay the amount and for compliance both the cases were posted on 21.1.2022.

Since neither the appellant in AM: 4132/202i nor the appellant in A.No4, 148/2021 who were jointly and severally liable to pay have not chosen to deposit the amount and both has now come forward with respective applications for extension of time and as the original order passed by the adjudicating officer is early as on 11.3.2021 and as it is nearly one year from the date of that order no further time can be granted. Hence the present application M,A.No.14/2022 is dismissed seeking for extension of time. Consequently the A.No.132/2021 is dismissed for non-compliance of the deposit of the amount as ordered under Section 43(5)."

RAJASTHAN REAL ESATE REGULATORY AUTHORITY

COMPLAINANT: Suo Moto through Registrar of the Authority
RESPONDENT: Jodhpur Development Authority
CORAM: Shri Salvinder Singh Sohata, Member
ORDER DATE: 13.01.2022

Complainant Representative: Mr Gaurav Gidwani
Respondent Representative: Mr Amit Kedia

Gist of Case: Extension required till date of obtaining completion certificate.

The factual matrix of the case is that a project "Megha Avas Yojana Anganwa Jodhpur" bearing registration No. RAJ/P/2019/1094 being developed by the respondent. The aforesaid project is elapsed on 31.12.2019. Respondent promoter neither submitted a completion certificate of the project within stipulated period nor applied for extension prior to expiry of validity of the registration certificate. Therefore, a notice under section 8 & 61 of the Rajasthan Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') was issued against

the promoter respondent to explain his status why a penalty upto an extent of 5% of the project cost be imposed against him and after ousting from site why the work may not be assigned to any other agency for completion of the project.

Learned C.A., for the respondent informed that extension is sought but the copy of the same was not submitted. Completion Certificate was issued on 12.11.2020. It was found after examining the Completion Certificate, it is mentioned therein that the project was completed on 02.04.2020. The contention of respondent is not tenable that Completion Certificate be treated valid on the date of completion. It is pertinent to mention here that the promoter should apply for extension of validity upto 12.11.2020 i.e. date of issuance of completion certificate in prescribed manner in view of remittance of fee under direction dated. 28.06.2021 of the Authority.

In view of aforesaid discussions, notice issued against the respondent is conditionally discharged subject to an application for extension of validity of registration be filed (if not submitted earlier) within 30 days in prescribed.

COMPLAINANT: Trimurty Landcon
RESPONDENT: Vishal Jain & Ors
CORAM: Hon'ble N.C Goyal, Chairman
ORDER DATE: 24.01.2022
Complainant Representative: CA Ashish Ghiya and Adv Shubham Arora

Gist of case: Interim directions given to allottees and Association of Allottees.

Authority perused the complaint and heard counsels of the complainant on the interim relief prayed for.

Show cause notice be issued to all the respondents, along with a copy of the complaint and the documents attached therewith, for filing reply and appearance on 21.03.2022. Counsels of the complainant will provide a soft copy and 26 extra sets of the complaint and attached documents in hardcopy to the Registrar of the Authority by tomorrow.

For the meanwhile, in exercise of the powers conferred on the Authority under section 36 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), we do hereby issue the following interim directions for compliance by the respondents:

(i) Respondent Nos. 1 to 25, who are allottees in the project 'Trimurty's Ariana', are directed to comply with the provisions of sub-section (6) and sub-section (7) of section 19 of the Act and pay their overdue maintenance charges to the maintenance society 'Trimurty Ariana Mutual Welfare Society' before the next date of hearing, so that maintenance of common areas and facilities does not suffer and interest of the allottees in general is safeguarded.

(ii) Respondent Nos. 1 to 25 are restrained from doing any act which disturbs the peace and tranquillity in the project. They are also directed not to cause any hindrance in peaceful enjoyment of the property by the allottees in general. In particular, they are directed not to cause any hindrance in exercise of rights of the promoter to enjoy or sell the nine unsold flats in the project. They shall not put any flexes or posters in the project premises with a view to discourage prospective buyers of the unsold flats.

(iii) Respondent No. 26, Trimurty Ariana Mutual Welfare Society, is directed to ensure conduct of elections through Election Officer, for all office bearers of the society as per applicable byelaws/rules.

List the matter on 21.03.2022. A copy of this order shall be sent to the respondents, along with show cause notice and copy of the complaint, for necessary compliance. Any non-compliance of the interim directions contained in this order will attract penalty under section 38(1) and section 67 of the Act.

COMPLAINANT: Yashpal Singh Chouhan
RESPONDENT: JAI Infratech Pvt Ltd.
CORAM: Shri Shailendra Agawal, Hon'ble Member
ORDER DATE: 02.02.2022

Complainant representative: In Person
Respondent representative: CA Prateek Rawat

Gist of case: Amount refunded to the allottee as the area of the unit was less than actually promised.

The instant case pertains to a project under "Mukhyamantri Jan Awas Yojna" by the name "City Homes" in District Pali. The complainant Yashpal Singh Chauhan was present personally before the Authority and argued that he had booked a flat in December, 2017 by making a payment of Rs. 1.06 lakh on 30.12.2017, a copy of the receipt is on record. However, after booking the flat he was told that the size of the flat was only 400 to 420 sq. ft. instead of the initially promised 500 sq. ft. This was considered as misleading information by the complainant and accordingly, the complainant, within four months of the booking of the flat, wrote to the promoter that his booking of the flat might be cancelled. An application to this effect dated 10.04.2018 is on record. However, the respondent has neither cancelled the booking nor has he refunded the amount of Rs.1.06 lakh for the last several years despite several requests.

CA Prateek Rawat appearing on behalf of the respondent stated that the project was now complete and was ready for possession and the respondent was willing to give the possession of the flat without any further delay and requested for the complainant to be directed to take possession of the flat.
Authority examined the arguments of both the parties and perused the documents on record.

The receipt of an amount of Rs.1.06 lakh dated 30.12.2017 as well as the request of the complainant to cancel the booking of the flat in writing on 10.04.2018 is on record. The cancellation of the booking was sought by the complainant on the ground of less area being offered compared to what was promised at the time of booking. This is a genuine ground and the request for cancellation was sent within four months of the booking and no agreement was entered into by the respondent. Therefore, the contention of the respondent that the flat is now ready and the complainant could now take the possession of the flat is not valid since the complainant had already requested for the

cancellation of the booking more than three years back and the money deposited by the complainant is being used by the respondent without any reasonable ground. As a result, the request of the complainant for the refund is genuine and deserves to be accepted. Since the respondent has been using the money deposited by the complainant for the last several years, we do not think it appropriate for deduction of any cancellation charges by the respondent. At the same time, no interest is liable to be paid since no agreement was signed by the parties.

Accordingly, it is directed that the respondent refunds the amount of Rs.1,06,000/- to the complainant without any deduction of any administrative charges on account of the cancellation of the booking and the complainant would not be paid any interest since there was no agreement for sale executed between the parties.

COMPLAINANT: Manoj Kumar Soni
RESPONDENT: Auric Infratech private Ltd
CORAM: Hon'ble Shri Salvinder Singh Sohata, Member
ORDER DATE: 04.02.2022
Complainant representative: Mr. Manoj Kumar Soni
Respondent representative: Ms Shruti Rai, Advocate

Gist of case: Direction given to issue notice to the promoter not uploading the completion certificate on Web Page of the Authority and pursuing modification at his own level in statutory form 'G'

The brief facts of the case are that a complaint was lodged under section 31 of the Rajasthan Real Estate (Regulation and Development) Act, 2016alleging that a flat bearing No. C-27 in "Auric City Homes Project" (Registration No. RAJ/P/2017/139) was jointly booked by applicant and agreement to sale was executed on 06.02.2018. As per clause No.12 of the agreement, delivery of possession was expected within 3 years and 6 months. Applicant due to delay in completion of the project, claimed refund along with interest and pre-EMI interest along with compensation for mental and physical agony. **The application was submitted in statutory form 'O' of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'the Rules'). Learned**

Adjudicating Officer in view of the resolution passed in 9th Meeting of the Authority held on dt. 15.11.2021, transferred case to the Authority. Hence case was fixed for hearing before the Bench.

Respondent filed the preliminary reply and subsequently, detailed reply is filed and it is averred therein that completion certificate of the project is obtained on dated. 22.09.2021. Respondent also made averment in the reply that applicant was not successful to pay the installments against consideration of Rs. 10, 50,460/-. The project was likely to be completed on 06.07.2020, but in view of the pandemic situation, Authority itself has granted extension under the force majeure. Therefore, project is delayed and prayed for dismissal of the application.

Heard rival parties at length and perused the record of the case carefully.

Complainant submits that flat was booked on 06.07.2016 but the delivery of possession is not made till filing of the application. Therefore, he claimed refund and ancillary relief as mentioned in the application.

Learned Advocate on behalf of respondent claimed that impugned application is premature and extension was granted upto 30.06.2021 against original completion date i.e. 07.07.2020. A subsequent extension is granted upto 30.06.2022 while complainant filed his application on 24.02.2021. Due to pandemic outbreak, Authority under the provisions of force majeure with regard to section 6 of the Act extension already granted in favour of promoter. Therefore, application filed by applicant is liable to be dismissed.

Furthermore, completion certificate is already obtained on 22.09.2021; therefore, complainant is not having any entitlement for seeking refund after completion of the project. Learned Advocate on behalf of respondent vehemently contended that allottee himself is a defaulter. Allottee failed to deposit the due installments as per the Schedule of payment. Therefore, applicant does not deserve any relief from the Court.

After considering the aforesaid rival submissions, it is observed as under:-

Agreement to sale is executed on 06.02.2018 after promulgation of the Act. The aforesaid agreement is registered one but it does not appear in prescribed statutory form 'G' annexed to the rules. Promoter respondent is not having any right to modify it at his own level. Clause 12 of the agreement stipulates that delivery of possession of the flat shall be made within 3 years and 6 months. Accordingly, if we calculate the expected delivery. It is likely upto August, 2021 while the application is filed on 24.02.2021 & 02.03.2021. Although, at the time of registration expected completion date i.e. 07.07.2020 was reported. In view of the pandemic outbreak, Authority itself has extended the validity for one year under the provisions of Section 6 of the Act i.e. force majeure. Accordingly, the instant application filed on 02.03.2021 appears to be premature as filed before 30.06.2021. It is strange to note that on different dates of registration of application, same complaint number is depicted on online application. Registry may take appropriate steps to avoid confusion in this regard.

Once, project is completed in view of the observation made by the Hon'ble Supreme Court in the case of IREO Grace Realtech (P) Ltd. Vs. Abhishek Khanna (2021) 3 SCC 241, refund may not be allowed in the completed project. In the light of the aforesaid observations, after completion of the project refund is not allowed to the applicant.

It is observed that on the basis of the copy of completion certificate made available to the Authority, it is not uploaded on the Web Page upto 01.02.2022. Once a completion certificate is obtained by the promoter on dated. 22.09.2021, it is strange that certificate was not uploaded approximately after a gap of six months. A notice against the promoter be issued under section 11 (1) (e) and 61 of the Act.

It is also observed that against agreed consideration for Rs.10, 50,460/-, partly payment is made. Therefore, applicant himself is proved as defaulter. Hence, he is not entitled to claim refund accordingly due to non-payment of installments in the completed project.

In view of the aforesaid discussions, the application filed by co-applicant is liable to be dismissed. Hence, dismissed.

Registry may issue a notice against the promoter for not uploading the completion certificate on Web Page of the Authority and pursuing modification at his own level in statutory form 'G'.

BIHAR REAL ESATE REGULATORY AUTHORITY

COMPLAINT: Manju Devi
RESPONDENT; M/s Agrani Homes Real Marketing Pvt. Ltd
CORAM: Shri Naveen Verma, Chairman and Mrs Nupur Banerjee, Member
ORDER DATE: 20.01.2022

Gist of case: Refund of amount with interest to the allottee.

The complainant's case is that she had entered into an agreement for the booking of Flat bearing Flat No. 204, measuring 1300sq.ft. in project I.O.B. Nagar Block- 'K'. She has paid Rs.14, 63,000/- out of total consideration of Rs.16, 00,000/- . Since the work has not been started yet and flat is not handed over within stipulated time, she has requested for the refund of the deposited amount with interest.

The respondent has not filed any specific reply in this case Mr. Alok Kumar, MD of the respondent company had submitted that the respondent company is ready to offer plots to the complainants in Prakriti Vihar project. However his proposal was not accepted by the complainant who reiterated her request for refund.

The Bench observes that the registration of the Project- Prakriti Vihar has been rejected by the Authority. The Authority can consider the request for permission to sell the plots and arrange money to refund the amount to the complainants and other allottees only if the respondent submits a written application in this regard.

Mr. Alok Kumar has stated that registration of some flats are pending as it was restrained by an order of the Authority. Mr. Alok Kumar has given on oath to pay Rs. 63 lacs to the Authority after the ban on registration is revoked by the Authority.

Mr. Alok Kumar has also furnished list of vacant flats in different projects and has sought permission from the Authority to sell these flats and pay money to the aggrieved allottees.

The Authority notes that it is the responsibility of the Directors of the respondent company to arrange the necessary resources to enable refund to the complainant and other aggrieved allottees. Taking into consideration the prayer of Mr. Alok Kumar regarding lifting of ban on registration, the Authority decides to consider the matter on case to case basis, only in respect of projects where there are no complaint cases pending, on the condition that the amount received after registration would be deposited in RERA for making further payments to the aggrieved allottees. In so far as sale of vacant flats are concerned, the lien taken by the Authority can be lifted on case to case basis, but such sale shall be duly monitored by the Authority, and would be considered only in respect of projects where there are no complaint cases pending, on the condition that the amount received after registration would be deposited in RERA for making further payments to the aggrieved allottees. The respondent company shall initially receive the consideration amount of the flats and will then transfer the same to the Authority for purpose of releasing it to the aggrieved allottees.

After considering the documents filed and submissions made, the Bench hereby directs the Respondent Company and their Directors to refund the principal amount of Rs.14.63 lakh to the complainant along with interest at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years from the date of taking the booking within sixty days of issue of this order.

COMPLAINANT: Arvind Kumar
RESPONDENT: Agrani Infra Developers Pvt. Ltd
CORAM: Shri Naveen Verma, Chairman
ORDER DATE: 21.01.2022

Gist of case: Promoter directed to handover the possession of the allotted flat to the buyer.

The present case has been filed by the complainant to direct the respondent company to provide the physical possession of plot area measuring 13610 sq. ft. vide company Plot No. PD – 14 under the Project named "Agrani Woods".

The complainant has submitted that an agreement for sale dated 15.11.2012 was executed in favour of complainant against area 13610 sq. ft. with total consideration amount of Rs. 42,00,000/-. The complainant has stated that the complainant has deposited Rs. 21, 70,000/ out of the total consideration amount. That it has also been stated that the respondent company gave assurances to provide well planned society with the facilities of road, good drainage system, electricity, etc. but the respondent company has failed to do so. The complainant approached the respondent company to inquire about the latest development regarding his plot in question but no satisfactory response was received. That the complainant gave several reminders to the respondent company but no step was taken by the respondent company for redressal of his grievance. Therefore, the complainant has filed the complaint praying for physical possession of the land with demarcated boundary according to survey number, provision of all the amenities as per the agreement, to execute absolute sale deed in favour of the complainant, compensation as interest@10% on the total value of the land on account of delay in handing over of the possession, Rs. 25,000/- as compensation for inconvenience, mental torture and harassment and Rs. 25,000/- as litigation cost.

The respondent company, while delivering oral submissions, has objected to the contention of the complainant with respect to the payment of Rs.21,70,000/- and has stated that the complainant has paid only Rs. 14,70,000/- and the receipts attached to the complaint pertains to a different plot. However, this fact has been denied by the complainant who has stated that plot no. P.D-14 and plot no. 25 are same. The respondent company has further stated that the complainant should have approached the appropriate court for specific performance of the contract in the year 2015 but the complainant has cooked up a false cause of action and filed the case before the Bench in the year 2021 which is not maintainable.

The Bench had observed that the instant case is maintainable as the Act aims to basically protect the interest of home buyers and has a retroactive effect as recently settled by the Hon'ble Supreme Court.

During the course of hearing, the MD of the respondent company submitted that the payment was supposed to be made within 30 months of agreement but the complainant failed to make the payment and after several reminders, the complainant made some payment in 2018 through cheques. It has been submitted that the cheques issued got bounced. The respondent company further informed that they will not be able to give the possession of the flat and would instead refund the paid amount.

The Bench notes that the matter was posted for orders on 30- 12-2021. **An Interim Order was passed as the Bench observed that there was a dispute with respect to the payment of amount by the complainant and the amount received by the respondent company and ambiguity on whether plots P.D.-14 and Plot 25 are same or not**. The respondent company was also directed to clarify whether the allotment was cancelled and if so, submit a copy of the cancellation letter. Therefore, in the interim order opportunity was given to the parties to clarify the aforementioned points.

The Bench also notes that the complainant has admittedly not paid the entire consideration amount for the agreement executed in 2012 and is now ready to make the payments of the dues amount, but however the respondent company is ready to give the refund.

The purpose of the Act is to protect the interest of homebuyers and promote the growth of the real estate sector and the obligations of both the promoter and allottees have been clearly spelt out. The respondent ought to have written to the allottee of the instalments due to be paid by the allottee before cancelling his allotment. The allottee ought to have made the entire payment as mentioned in the agreement to sale.

The Bench can certainly give directions to the respondent to refund the principal amount paid by the complainant and interest thereon. However, since

the prayer is for possession of the plot, and the model agreement to sale annexed with the Bihar RERA Rules 2017, provide for the promoter to charge interest from the allottee for delayed payment, it urges the respondent company to accept payment of the remaining dues from the complainant with interest if the particular plot has not been allotted to another buyer. The Bench further directs that if it is unable to handover the plot in question, the respondent company would refund the principal amount received by it along with interest calculated at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years or more plus four per cent, from the date of taking the booking within sixty days of issue of this order.

COMPLAINT: Ganesh Kumar
RESPONDENT; M/s R.R. Builders Pvt Ltd
CORAM: Mr. Naveen Verma, Chairman
ORDER DATE: 21-01-2022

Gist of Case: Promoter directed to provide the specifications as mentioned in schedule to the agreement.

The case of the complainant is that he has booked flat no. 609 in Block 9 of the project but the construction of the flat is not as per the agreement and is in violation of condition mentioned in Point no. 7 of Schedule-D, "Standard Specifications of "Sanchar Nagar"- Phase-1. **The complainant's grievance is that the respondent company could have created a window in the room as the status of flat was still incomplete. Apart from levelling several other allegations, the complainant has alleged that the width of the door provided in the room is more than the usual and both the rooms are attached directly with the balcony affecting the privacy of the complainant. The complainant has therefore filed the complaint praying for issuing instructions to the respondent company to provide a window in both the rooms as per the agreement or alternatively 3 channel sliding door in lieu of 2 channel sliding. The complainant has placed on record photographs of the flat especially room and the window and also a copy of Schedule D of the agreement.**

In its reply, the respondent company denying the allegations of the complainant has stated that alterations have been done within the purview of clause 19 of the agreement for sale. The respondent company referred to section 14(2) (ii) of the Real Estate (Regulation & Development) Act, 2016 and stated that the builder, herein the respondent company, can make alterations after due recommendations and verifications of the authorised architect. **The respondent company also made reference to section 8(1) (i) of the Bihar Building Bye Laws, 2014 which states that no permission or notice is required to be given for alteration in "opening and closing of a window or door or ventilator". The respondent company further stated that the request of the complainant to replace 2 channel sliding door with 3 channel sliding door could be met only if the complainant is ready to pay the extra cost that would be incurred.**

The Bench took note of the documents on record and the submission made by the parties. Section 14(1) (ii) as referred by the respondent company mandates that the consent of the allottee, herein the complainant, has to be obtained before making any additions or alterations. In the instant case, the Bench has noted that the consent of the complainant has not been obtained. The Bench also observes that there is no clarity as whether the plan of the flat submitted by the respondent company by an authorised architect was shared with the allottees including the complainant.

Since the complainant is not willing to accept the modification in the approved plan for windows and doors, and the respondent has not taken his consent, taking into consideration the purpose of the Real Estate (Regulation & Development) Act, 2016, the Bench. hereby directs the respondent company to provide 3 channel sliding door in lieu of 2 channel sliding as per the agreement at their own expense. The above directions are to be complied immediately and not later than a period of 60 days.

PART-III
NOTIFICATION & CIRCULARS

URBAN DEVELOPMENT AND HOUSING DEPARTMENT

Date: 11th November,2021

In exercise of the powers conferred by. section 84 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016), the State Government hereby makes the following rules further to amend the Rajasthan Real Estate (Regulation and Development) Rules, 2017, namely:-

1. Short title and commencement.-

(1) These rules may be called the Rajasthan Real Estate (Regulation and Development) (Amendment) Rules, 2021.

(2) They shall come into force at once.

2. Amendment of rule 10.- In sub-rule (1) of rule 10 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017, hereinafter referred to as the said rules, for the existing expression "in Form-H to the Authority", the expression "electronically in Form-H to the Authority through the official website of the Authority" shall be substituted.

3. Amendment of rule 12.- In rule 12 of the said rules,—

(i) in sub-rule (1), for the existing expression "in Form-K", the expression "electronically in Form-K to the Authority through the official website of the Authority" shall be substituted; and

(ii) in sub-rule (2), for the existing expression "being an individual or rupees twenty five thousand in case of the real estate agent being anyone other than an individual", the expression “being an

individual or a sole proprietorship firm and rupees twenty five thousand in case of the real estate agent being anyone other than an individual or a sole proprietorship firm" shall be substituted.

4. Substitution of rule 15.- The existing rule 15 of the said rules shall be substituted by the following, namely:-

"15. Functions and duties of the real estate agent.-

(1) The real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be.

(2) The real estate agent, in the advertisement and prospectus issued by him, shall mention prominently his name and registration number and also the name and registration number of the project issued by the Authority along with the website address of the Authority wherein all details of the registered real estate agents and the registered projects have been entered."

5. Amendment of FORM-I.- In FORM-I appended to the said rules, in paragraph 2, after the existing item (ii) and before the existing item (iii), the following new item (ii-a) shall be inserted, namely.—

"(ii-a) The real estate agent, in the advertisement and prospectus issued by him, shall mention prominently his name and registration number and also the name and registration number of the project issued by the Authority along with the website address of the Authority wherein all details of the registered real estate agents and the registered projects have been entered."

6. Amendment of FORM-L.- In FORM-L appended to the said rules, in paragraph 2, after the existing item (ii) and before the existing item (iii), the following new item (ii-a) shall be inserted, namely.—

"(ii-a) The real estate agent, in the advertisement and prospectus issued by him, shall mention prominently his name and registration number and also the

name and registration number of the project issued by the Authority along with the website address of the Authority wherein all details of the registered real estate agents and the registered projects have been entered."

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/ Secy/ File No. 27/ 05 /2022 Date – 14th January, 2022

Sub: - Disclosure of information in public domain.

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2021. And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority (MahaRERA Authority)

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

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

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

And whereas, MahaRERA Authority has been established so as to ensure that transactions between promoters and allottees are governed by the norms of efficiency, transparency and accountability, to bring about symmetry of information between promoters and allottees and to significantly reduce frauds and delays.

In view of the above the following documents uploaded by the promoter irrespective of their real estate project shall be made available in public domain, namely:

1. Form 1, being the certificate issued by the project architect at the time of registration of an ongoing project and for withdrawal of money from RERA designated account.
2. Form2, being the certificate issued by the project engineer, at the time of registration of an ongoing project and for withdrawal of money from RERA designated account.
3. Form 2 A, being the certificate issued by the engineer i.e. the site supervisor, which is be submitted at the end of every financial year till the completion of the project.
4. Form 4, being the certificate issued by the architect on completion of the project.
5. Form 5, being the certificate containing the annual report on statement of accounts issued on the letter head of the chartered accountant who is the annual auditor of the promoters' company / firm.
6. Disclosure of sold / booked inventory (building wise) in the project.
7. Report from CERSAI on security interest created in the real estate Project that is available on CERSAI website at w ww.cersai.ore.in
8. Declaration about commencement certificate.

PART-IV
RERA NEWS

THE ECONOMIC TIMES
Dated: 11.01.2022

Guwahati HC issues notice to chairperson of Assam RERA

The Guwahati High Court issued notice to Chairperson of Assam Real Estate Regulatory Authority following a PIL that the Assam Real Estate Regulatory Authority is not functioning in accordance with law. It was observed the issue which has been raised in this PIL is that the Assam Real Estate Regulatory Authority, which is a statutory authority created under the Real Estate (Regulation and Development) Act, 2016 is not functioning in accordance with law. Moreover, it has also been stated that even a website has not been created by the Assam Real Estate Regulatory Authority, although it is a requirement under Section 34 (b), (c) and (d) of the Act.

THE ECONOMIC TIMES
Dated: 17.01.2022

Homebuyer fails to get possession, given Rs 2 crore

In a recent order, MahaRERA member Vijay Satbir Singh directed promoters of Shreepati Jewels to refund a sum of Rs 2 crore that a homebuyer had paid, while booking a flat measuring about 1,200 in the developer's project at Girgaum, along with interest rate, as the promoter had failed to hand over possession of his flat within the stipulated period of two years and had also sold the flat to a third party.

The home buyer alleged that the promoter had fraudulently created third party interest in the said new flat by selling it to another person by registering an agreement. However, the promoter claimed that the complainant has not yet been

sold/ allotted the flat under the allotment letter/MOU and that it was merely an agreement to enter into a further agreement and as such not specifically enforceable.

MahaRERA member Vijay Satbir Singh observed that the said MOU clearly provides that the home buyer agreed to purchase the said flat and the respondent agreed to sell the said flat to the complainant. Since there is the clear intention of allotment /sell of the flat, there is no question of lack of any concluded contract. The MahaRERA, therefore, holds that the complainant is an allottee of this project.

THE TIMES OF INDIA
Dated: 21.01.2022

Builders upload progress information after Rajasthan RERA warning

Around 72 developers across the state have finally uploaded the mandatory Quarterly Progress Report (QRP) online after a stern RERA warning. To provide transparent records to buyers as per the mandatory provision, the promoters must upload the project updates on apartments/flats, status update of each building, floor, internal infrastructure and common area constructions on the RERA website at the end of each quarter. Other details including information on approvals, bank account details and revision in plans, license issues, permits or approvals for the projects must also be displayed on the public forum.

However, total of 75 developers failed to deposit the records following which RERA issued the final notice for imposing penalties and revocation of registration. Following this, majority have developers uploaded the records. RERA registrar informed that majority of developers abide by the directions and 72 of 75 matters were disposed of. An official said the notices were issued to the developers under Sections 35, 36, 37 and Section 38 read with Section t7, 11(1), 61 and Section 63 of the Real Estate (Regulation and Development) Act, 2016 for imposition of penalties and revocation of registration due to non-submission of QRPs on RERA web portal.

THE TIMES OF INDIA
Dated: 02.02.2022

Budget 2022: Real estate sector welcomes Rs 48,000 crore allocation for affordable housing; homebuyers disappointed

The real estate sector welcomed the government's decision to allocate Rs 48,000 crore in Budget under the Pradhan Mantri Awas Yojana and faster approvals for affordable housing in urban areas but homebuyers expressed unhappiness over the absence of any additional tax deduction on interest paid on home loans or relief for buyers stuck with incomplete projects.

Budget 2022 allocation and the construction of 80 lakh homes will facilitate affordable housing and will further boost the affordable housing segment. However, there were no incentives for homebuyers in the lower and middle-income groups.

Finance Minister Nirmala Sitharaman in Budget 2022 also said that the Central Government will work with the state governments for reduction of time required for all land and construction related approvals, for promoting affordable housing for middle class and Economically Weaker Sections in urban areas.

PTI
Dated: 06.02.2022

Uttar Pradesh RERA revives Noida project stuck for four years

Uttar Pradesh Real Estate Regulatory Authority (UPRera) exercised powers under section 15 of the Real Estate (Regulation and Development) Act, 2016, to revive a stalled project in Sector 62, Noida. Allocated in December 2005 for institutional purposes, the site got transferred to a new party after taking the consent of more than two-thirds of the buyers.

UP-Rera in the order issued on January 4, allowed the transfer of a plot covering 20,000 square metres that belonged to Proplarity Infratech Pvt Ltd to Urbanac Building Technologies. Proplarity had offered mixed-use development at the site through its project BizLife. Apart from having retail spaces, offices and commercial components, a certain number of service apartments were supposed to come up at

the site. The project, however, has remained stranded for more than four years, with only some construction activity taking place.

BUSINESS STANDARD
Dated: 15.02.2022

Interest of homebuyers gets priority over banks: SC

Putting the interest of homebuyers above that of banks when a real estate company defaults in repaying bank loans and handing over possession, the Supreme Court held that in case of conflict between the Real Estate (Regulation and Development) Act and recovery proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, the former will prevail. The ruling will provide relief to millions of homebuyers awaiting delivery. The government had amended the Insolvency & Bankruptcy Code making homebuyer's part of the committee of creditors deciding the fate of the company but they had not been given precedence in payment of dues in case of liquidation.

A bench of Justices MR Shah and BV Nagarathna dismissed an appeal by Union Bank Of India against a Rajasthan HC order which said complaints against banks can be filed before the Real Estate Regulatory Authority (Rera) if they have taken possession as a secured creditor, following default by the promoter.

TNN
Dated: 15.02.2022

MahaRERA issues warrants for Rs 633 crore against errant builders

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has, over the past four years, issued recovery warrants worth Rs 633 crore against errant developers, with Mumbai's suburbs accounting for the highest value. The action, taken in coordination with 13 collectorates, including those in Mumbai and Pune, involved 717 such warrants to expedite refunds to flat purchasers.

Mumbai suburban area led the pack with 302 such recoveries, followed by Pune (162) and Thane (99). The warrants were issued in relation to 256 projects, of which 83 are in Pune, followed by 63 in Mumbai suburban and 41 in Thane.

As per sources, MahaRERA chairman Ajoy Mehta has initiated talks with the revenue secretary and collectors of districts to execute the orders as early as possible to help homebuyers retrieve their investments. MahaRERA's adjudicating officers issue the recovery warrants against the errant developers under the Real Estate (Regulation and Development) Act. They are forwarded to the collectors for attachment of properties and recovery of dues.

TIMES OF INDIA
Dated: 16.02.2022

UP RERA imposes penalty of over Rs 1 crore 40 lakh on nine developers.

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has imposed Rs 1.4 crore penalty against nine developers for not complying with its order. The penalty has been imposed against AIMS Promoters Pvt ltd, Wave Mega City Centre Pvt ltd, Ansal Housing Ltd and Ansal Properties & Infrastructure Ltd, Antriksh Realtech Pvt. Ltd, AVP

The authority noted with displeasure that some of the promoters have indulged in non-compliance of its orders besides the authority granting them sufficient time for the same. The authority is making constant efforts to ensure enforcement of its orders and provide speedy justice to the agreed allottees. The action of penalty against the guilty promoters is an important step towards compelling them to comply with the orders of the Authority.

BUSINESS STANDARD
Dated: 17.02.2022

Do states' rules conform to central Rera? SC seeks info

The Supreme Court ordered scrutiny of all state notified rules modelled under the Real Estate Regulation and Development Act, 2016, to identify the provisions which did not conform to the central model law and put flat buyers at the mercy of builders.

Hearing a PIL by Ashwini Upadhyay seeking a uniform model builder-buyer agreement across India, a bench of Justices and Surya Kant directed the Union ministry of housing and urban poverty alleviation to coordinate with amicus curiae in examination of the state Rera provisions, especially focussing on the general rules and agreement for sale rules.

It asked the Union housing ministry to complete the exercise of comparing the provisions of all state Rera rules with that of the central Rera regulations within two months and file a detailed report before the court. It posted the matter for hearing in May first week.

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