

Refresher Course on MahaRERA Practice & Professional Opportunities - WIRC

ANALYSIS OF JUDGMENTS

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 ("RERA")

by

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NEELKAMAL REALTORS SUBURBAN PRIVATE LTD. & ANR. VS. UNION OF INDIA & ORS.

FINDING

- (A) Challenge to constitutional validity of first proviso to Section 3(1), Section 3(2)(a), explanation to Section 3, Section 4(2)(l)(C), Section 4(2)(l)(D), Section 5(3) and the first proviso to Section 6, Sections 7, 8, 18, 22, 38, 40, 59, 60, 61, 63, 64 of the Real Estate (Regulation and Development) Act, 2016 fails. These provisions are held to be constitutional, valid and legal;
- (B) One of the qualifications for appointment of a Judicial Member prescribed in Section 46(1)(b) as, “*or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post,*” is severed and struck down. We hold that two member Bench of the Tribunal shall always consist of a Judicial Member. The constitution of the Tribunal, majority of the members shall always be judicial members;
- (C) Section 3(1), Sections 18, 38, 59, 60, 61, 63 and 64 are retrospective/retroactive;

MOHD. ZAIN VS. STATE OF MAHARASHTRA

FINDING

1. Appellate Tribunal concurred with the order of MaharRERA that Project is admittedly an agricultural land and till date no N.A. permission or order is granted by competent Authority to develop the same. Consequently, held that the subject project is not a real estate project as defined under Section 2(zn) of the Act and the same cannot be registered under Section 3 of the Act.
2. Complainant has utterly failed to establish that the said land had all necessary N.A. or other permissions for its development and for undertaking its registration as real estate project under the Act.

IMPLICATION

Several projects are currently marketed townships/ gated communities wherein there are 2-3 sets of contracts (i) Sell of Agricultural Land (ii) Liaisoning contract for procurement of NA and (iii) Construction contract for construction of bungalow shall technically be beyond purview of RERA

LAVASA CORPORATION VS. JITENDRA TULSIANI AND ORS

QUESTION OF LAW

1. Whether the provisions of the RERA would apply in case of an 'Agreement to Lease'?
2. Whether the definition of the term "Promoter", as provided under Section 2(zk) in the RERA, would include a 'Lessor', and 'whether the remedy provided to the 'Allottees' under Section 18 of the RERA can be available only against the 'Promoter', or, in that sense, also against a 'Lessor'?

FINDINGS

1. Entire 'Agreement' is perused as such, then it becomes apparent on the face of it also, that it cannot be termed or treated as an 'Agreement of Lease', but, in its real purport, it is an 'Agreement of Sale. The law is well settled that the nomenclature of the document cannot be a true test of its real intent and the document has to be read as a whole to ascertain the intention of the parties. Exclusion of such long term lease from the purview of the Act would be defeating the very object of the Act.
2. The 'Agreement of Lease' also cannot be for such a long term for '999 years' it is as good as the transaction in perpetuity. This long period of lease in itself is sufficient to hold that, it is not an 'Agreement of Lease', but, in reality, an 'Agreement of Sale.
3. Appellant has registered the entire project with RERA. Appellant cannot, therefore, contend that, the Adjudicating Authority established under the RERA has no jurisdiction to entertain the complaints filed by the Respondents-Allottees under Section 18 of the said Act. The provisions of Section 115 of the Evidence Act definitely prevents, precludes and estopps the Appellant from doing so.

NAVNEET BAGGA VS. NEELKAMAL REALTORS

FACTS :

1. Original Allottee had acquired the suit Flat from Promoters in which date of handing over possession was 31.12.2015 (including 12months grace).
2. Complainant had purchased the Suit Flat from Original Allottee in 2013 with the consent of the Promoters.
3. Complainant filed complaint against Promoters claiming Interest under section 18 of RERA.

DEFENCE BY PROMOTERS

1. RERA has no jurisdiction since Complainant has acquired the Suit Flat under Second Sale and there is no privity of contract;
2. Due to Economic Downturn, Ban on Sand Mining and quarrying of stones and other Force Majeure reasons the Project got delayed.
3. Revised date of completion should be considered and not relief shall be granted to Complainant.

FINDING AND JUDGMENT

1. Rera has jurisdiction in present case, moreover the Promoter themselves have consented the re-sale.
2. Nations economy as a whole has shown consistent growth and in case of Ban on Sand Mining and quarrying of stones, Agreement was executed between the Respondent and the allottees in 2013 and the respondent was very well aware of all these constraints. Therefore, he cannot make this factor as an excuse for the delay in completion of his Project.
3. As clarified in Neelkamal case, the Complainant is entitled to reliefs as claimed.

SUDHIR KAUSHIK VS. AKRUTI AGM VENTURE

FINDING

1. Booking was done during MOFA regime in 2011 on basis of IOD and clause specifically providing that possession shall be provided within 42 months of receipt of all approvals
2. Undisputed fact that CC is not received and Complainant has not been able to produce valid CC.
3. Accordingly held no violation of under sec.18 of RERA and Complainants claim is dismissed.
4. If Complainant seeks refund that the respondent may refund the amount paid by the complainant along with the interest as offered to the complainant in the year 2014.

ANITA CASTELLION VS. GODREJ LANDMARK REDEVELOPMENT PVT. LTD

QUESTION OF LAW RAISED

Whether Section 12 & 18 of RERA operate at two different stages of the same transaction in two different spheres?

FINDING

1. Section 12 & 18 of RERA operate at two different stages of the same transaction in two different spheres
2. Agreement for sale supersedes and prevails over brochures, prospectus etc mentioned in section 12. The logical consequence being that parties are estopped from raising claims based on documents which had taken place prior AFS.
3. After execution of Agreement for Sale section 12 ceases to operate and such cases shall be governed by sec 18. The grievances pertaining to the stage of booking to be raised at Pre-agreement stage under Section 12 of the Act cannot be raised in the post agreement period.
4. The Complainant has prior execution of AFS has raised all grounds vide letter and thereafter entered into AFS, thereby deemed to have waived.

MITAL PADIA V/S. LARSEN & TUBRO LTD. AND 2 OTHERS

OBJECTION OF THE PROMOTER AND OBSERVATION OF AUTHORITY

Question Raised

1. *Upon completion of project (receipt of Occupation Certificate) the jurisdiction of the authority comes to an end.*
2. *The Agreement for sale was executed as per provisions of MOFA and therefore, the provisions of RERA are not applicable.*
3. *The complainants are investors; their investment is for better future returns. Hence, the authority had no jurisdiction.*
4. *S.18 is prospective in nature and not mandatory in nature and the authority can prevent the allottee from withdrawing from the project.*
5. *The date of completion was declared while registering the project u/s. 4 of RERA and that the Occupation Certificate has been received 10 days before the date so declared hence, the complaint being not maintainable.*
6. *They have been prevented by sufficient causes such as delay in receiving environmental clearances for further expansion and demobilisation of site due to stop work notice received from the Municipal Corporation which was challenged in Writ Petition before the Hon'ble High Court under which the Court directed the Municipal Corporation to not take any action in furtherance of the said notice.*

SUDHIR GURTOO & ANR. V/s. LARSEN & TUBRO LTD.

FACTS:

The complainant filed the complaint seeking interest on their investment made for purchasing a flat in the respondent's registered project from the agreed date of possession till when they took the actual possession of the flat. The Complaint was filed after taking possession

FINDING

- a) The offer of the promoters of soft possession in 2018 is illegal and irrelevant as the MOFA u/s. 3(i) prohibits the promoter from allowing any person to enter into possession until a completion certificate has been given by the local authority.
- b) S.89 of the RERA expressly provides that the provisions of RERA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force hence, overrides the S.55 of the Indian Contract Act. Hence, the allottee right to claim interest cannot be defeated only because the notice of protest is not given while accepting the performance of the contract as prescribed under sec 55 of ICA.
- c) The issue of waiver has been considered by the Maharashtra Real Estate Appellate Tribunal in ***Ms. Rekha Sinha V/s. L & T Ltd.*** and it must be express, categorical and in unequivocal terms.

Man Global Limited V/s. Bharat Prakash Joukani (Second Appeal, before the Hon'ble Bombay High Court)

- a. The key issue before the Hon'ble Bombay High Court in respect of the aforesaid matter was to determine the substantial question of law that is :-

"Whether a sole member of the Maharashtra Real Estate Appellate Tribunal can decide any appeal or application for condonation of delay or any application contemplated under the provisions of Real Estate Act, 2016 or the same has to be heard and can be disposed of only by the bench comprising of two members including one judicial member?"

- b. Hon'ble High Court was pleased to held that on perusal of the section 43(3) of the Act it clearly indicated that every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative member or technical member and while doing so, the Hon'ble High Court placed the reliance upon the ratio laid down by the judgment of the Division Bench in case of **Neelkamal Realtors Suburban Pvt. Ltd. and Anr (supra)**, wherein it was held that two member bench of the Tribunal shall always consist of a judicial member and in the constitution of the Tribunal, majority of the members shall always be judicial members.
- c. on plain reading of section 43(3) of the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. **(Para 6 & 7)** in view of such provisions the Hon'ble High Court quashed and set aside the orders passed by the Appellate Tribunal and remanded the matter back to the Appellate Tribunal which is to be heard by Tribunal comprising of one Judicial and one Technical member.

IMPLICATION :-

- a. All orders passed by Appellate tribunal sitting in single bench held invalid.
- b. Orders passed by Judicial Member sitting single held to be invalid
- c. All such matters were referred back for re-hearing afresh;

ROHIT CHAWLA & 11 OTHERS v/s. BOMBAY REALTY (ONE ICC) (before the Appellate Tribunal)

FINDING

- a. Appellate Tribunal took into consideration the fact that in booking Application form, confirmation letter and Allotment letter no possession date was given and no Agreement for Sale was executed between the Allottees. However, Allottees had relied on the brochure wherein possession date was mentioned that of 2017.
- b. Appellate Tribunal after taking consideration of **Fortune Infrastructure vs Travor Delima 2018 (5) SCC 442**, in the Judgment Apex Court has upheld that it is settled position of law that in absence of specific date of handing over the possession a reasonable 3 years should be considered in respect of transactions between promoters and the Allottees. **(para 35 and 39)**
- c. In **2019 (5) SC 725 Pioneer Urban Land vs. Govindan Raghvan, Apex Court** has held that once builder fail to fulfil its contractual obligation of obtaining the OC and offering possession of the Flat to Purchasers within the time stipulated in the Agreement or within a reasonable time thereunder, the Purchaser could not be compelled to take possession

Conclusion

- (i) It was concluded that Promoter has committed breach of S.12 and S.18 of RERA and Allottees are entitled to withdraw from the project and get refund with interest from the Promoter and charge of the amount will be kept on the respective flats till receipt of interest;
- (ii) Allotment of flats stood cancelled;
- (iii) Promoter were directed to refund the Amount received from the respective Allottees;

OBEROI CONSTRUCTION LTD (Promoter) VS. ASSET AUTO (Allottee)

Findings and Reasoning

1. As per Explanatory Note provided under Model Agreement it is provided that the same can be modified and adapted in each case. Further as per First Proviso and second Proviso of clause 4.2 of the model form of agreement, the Promoter is entitled to make adjustment and recovery of any agreed liquidated damages while refunding the amount to the Allottee.
2. Clause 18 (Binding Effect) of Model Agreement is not applicable in present facts and circumstances.
3. Draft of model agreement was accepted between the parties in consent terms. The said order has not been challenged by Allottees. The said agreement had clause for forfeiture. As per settled position in law in Ram Narang Vs. Ramesh Narang, a consent terms between the parties operates as a contract and now allottee cannot challenge the same on the basis that the same was unexecuted.
4. As per ration in Hanuman Cotton Mills vs. Tata Aircrafts Limited and Satish Batra vs. Sudhir Rao the right of seller to forfeit the earnest money in case of non-fulfillment of the contract by buyer is valid and legal and the same can be exercised by the seller against the buyer.
5. Allottees argument of forfeiture of 5 % as per executed Allotment letter was rejected.

AMRITA KAUR VS. EAST AND WEST BUILDERS

FINDING

1. No date of possession is mentioned either in the allotment letter or in any of the communications exchanged between the parties. But, this should not act as disadvantage to the Appellants. It may be noted that transaction between the parties pertains to the pre-RERA period when the Maharashtra Ownership of Flats Act, 1963(MOFA) was in vogue. Section 4(1A) (ii) of the MOFA mandates that a developer shall execute a written agreement for sale before receiving 20 % amount of the total sale price of the flat and also mention a date of possession therein. Section 13(2) of the RERA also provides for execution of similar agreement prior to receipt of 10% of the total value of the flat.
2. Respondents have committed violation of the said provisions of MOFA and also of RERA by not executing the requisite agreement for sale. Therefore, Respondent cannot take advantage of their own wrong.
3. As per law laid by Hon'ble Supreme Court in **M/s Fortune Infrastructure V.s Trevor D'lima (2018) 5 SCC 442** it has been held that where no date of possession is mentioned in the agreement, the possession shall be handed over within a reasonable period of 3 years.
4. Accordingly since the Respondent has failed to hand over possession in reasonable period and the Appellants are entitled to refund with interest.

SAMAJ KALYAN CHS VS. SIROYA DEVELOPERS

Preliminary question of law framed :

Whether a co-operative society which enters into a development agreement of its land on area share basis comes under the definition of 'allottee' or it comes under definition of 'promoter' defined in The Real Estate (Regulation and Development) Act, 2016, (RERA) ?

FINDINGS

1. The members of society/tenants are not allottees but they are promoters for following reasons :-
 - a. The societies have entered into the development agreement on area share basis;
 - b. The societies are also going to share the profits in the sense that their members shall get new apartments of bigger size in rehab component of the new project than they had in old buildings.
 - c. The respondents are going to raise funds from selling the additional floors/ FSI (sale component) and those funds will be used for the construction of the new buildings and for making profit which they may retain.

- d. When a purchaser books flat in the sale component, the booked apartment is allotted to him by promoter. Members of societies are going to get their apartments in rehab component of the building which is earmarked to accommodate them.
 - e. Society is the collective body consisting of its members. Its decision is in fact is the decision of members. Hence even if separate agreements are executed in their favour, they cannot become allottees.
 - f. Developer and land owner come under the definition of promoter.
 - g. In case of redevelopment of property, society causes the construction and development of its property which brings it under the definition of promoter.
 - h. In view of above facts the word "allotted" appearing in the definition of allottee cannot be construed in a sense that the apartments are allotted to the members, on the contrary they retain them.
 - i. Since Society is land owner who are causing construction of projects for selling part of it, they come within the definition of promoter and therefore there is no question of allotment or transfer of any apartment to them by a promoter. One promoter cannot allot or transfer an apartment to another promoter in the letter and spirit of the definition.
2. Respondents are directed to mention the names of the respective societies as promoter of their respective projects registered with MahaRERA and they shall upload the redevelopment agreements also within a month from the date of this order.

SAMRUDDHI VIREKAR VS. KARAN DEVELOPERS

FINDING

1. By signing the Deed of Assignment, Samrudhhi Developers had stepped into the shoes of Rebuilt Developers. All the details of Flat purchasers, encumbrances, obligations were made aware to Samrudhhi Developers under the said Deed of Assignment and by signing the Deed of Assignment, Samrudhhi had agreed to accept and clear the same.
2. Samrudhhi Developers can not be permitted to wriggle out of its statutory obligation under the provisions of the said RERA having accepted assignment of the said Real Estate project from the erstwhile promoter and under the guise of termination. various rights created under such Deed of Assignment read with Agreement for Sale would not come to end on the basis of any such termination. **(para 48 and 55)**
3. Section 15 (2) read with definition of Promoter 2 (zk), it clearly states that Promoter includes its Assignees and required to independently comply with the obligation of the original Promoter upon transfer of assignment of Real Estate Project. (para 15)
4. Since no question of law was arising in the Appeals and the Appeals were devoid of any merit, the same were disposed of with costs.

TRANSFER FEE ON SECOND SALE

Bhavesh Bhavanishanker Oza Vs. Era Realtors Pvt Limited –

Relief sought by Complainant seeking directions from MahaRERA to grant permission to transfer flat without asking transfer fees is not maintainable since there is no provisions under RERA to grant such reliefs

DEVELOPMENT MANAGER = PROMOTER

Gauri Thatte Vs. Nirmal Developer and Shapoorji Pallonji

Lucrative Properties Private Limited which is subsidiary of M/s. Shapoorji Pallonji Private Limited acted as a Development Manager and had the Authority to supervise and control all the activities of planning, selling, funding and constructing of the project. In case of a shortfall of the funds, the Development Manager is empowered to sell the apartments at discounted price'. Furthermore Lucrative Properties Private Limited is using brand name and goodwill of M/s. Shapoorji Pallonji Private Limited' collecting money from buyers, issuing the receipts bearing their logo and name and selling the units of the projects. Not only that it is sharing almost 10% of the revenue on priority basis. Therefore, held that Lucrative Properties Private Limited is the Development Manager and hence it needs to be added as a Promoter and held jointly liable alongwith Nirmal Developer to refund the monies taken from Allottee.

SINGLE BENCH

Janta Land Promoter Pvt. Ltd. Vs. Union of India decided on 16th October, 2020 by Hon'ble Punjab and Haryana High Court

Held:

- (a) single Member of Authority lacks inherent jurisdiction to adjudicate complaints filed under Section 31 of RERA and there is no provision in the Act which envisages the Authority functioning as a Single Member while exercising quasi judicial or adjudicatory functions.
- (b) Regulation framed by State Government permitting constitution of single bench are ultra vires the act.

Judgment dated 12.01.2021 by the Hon'ble Allahabad High Court

Held: single Member of Authority has jurisdiction to adjudicate complaints filed under Section 31 of RERA

Sriram Krishnan Vs. CCI Projects Pvt. Ltd (MahaRERA Appellate Tribunal)

Held: Relying on Judgment passed by Allahabad High Court it has concluded that single Member of Authority has jurisdiction to adjudicate complaints filed under Section 31 of RERA

POWERS AND JURISDICTION OF ADJUDICATING OFFICER

Sanvo Resorts Pvt.Ltd, Vs. Ranveer Sharma (MahaRERA Full bench)

Held: MahaRERA Authority can grant refund with interest under section 18 as per law and not the Adjudicating Officer who does not have the power to enforce the obligations and only the claim for compensation and/or interest that is being sought as compensation is to be adjudicated by the Adjudicating Officer.

Pankaj Kishore Agarwal Vs. Real Gem Built Tech Pvt Limited (MahaRERA Appellate Tribunal)

Held : Complaint for violation of the provisions of the Act is to be filed with the Authority only, who after coming to conclusion that compensation needs to be adjudicated in favour of complainants for violation of provisions under Sections 12, 29 14, 14, 18 and 19 for compensation, will refer the matter to the Adjudicating Officer adjudicating compensation.

Authority is vested with wide powers as compared to powers vested with the Adjudicating Officer under Section 71 limited only to adjudging compensation only under the aforesaid Sections for any violation of the provisions of the Act.

Hence all the powers other than those vested under Sections 71 and 72 with the Adjudicating Officer are deemed to be vested in none other than the Authority itself and therefore complaints seeking refund with interest have to be decided by the Authority only. In such circumstances the jurisdiction of the Authority cannot be taken away or usurped by the Adjudicating Officer by merely adding the relief of compensation to other reliefs in a complaint that apparently do not fall under the jurisdiction of the Adjudicating Officer.

AGAINST WHICH PROJECTS COMPLAINTS CAN BE FILED ?

(a) In **Prasad Patkar & Ors.** the full bench of the authority held that since Part OC Received in respect of Building B and C, the same were not required to be registered with RERA and complaints in respect of Building B and C cannot be entertained by RERA is as much as RERA had no jurisdiction to entertain the complaints and they were held to be not maintainable.

(b) **Macrotech Developers Limited Vs. State of Maharashtra & Ors.**

Hon'ble High Court of Judicature at Bombay in Second Appeal has relied judgment passed in on Prasad Patkar and Ors and Haresh Jethmal referred above and held that :-

(i) Adjudicating Officer had no jurisdiction to determine the registration of the project or phase thereof under Section 3 (1) of the Act. This was solely within the sphere of powers of the Authority to pass the necessary orders and directions pertaining to aspects of registration of the project or part thereof in terms of Section 3 read with Section 31 of the Act, being one of its functions under Section 34 of the Act.

(ii) Adjudicating Officer had no jurisdiction to entertain the complaint as the subject project did not require registration in terms of Section(3) of the Act (**since OC was received prior July 2017**)

Implication: This Judgment leave to rest the controversy with regards belated Complaints filed against projects which are not required to be registered under provisions of MahaRERA

AGAINST WHICH PROJECTS COMPLAINTS CAN BE FILED ?

- (c) In **Haresh Jethmal Vs. Bellissimo Crown Buildmart** – An application was made by the Promoter for rejection of Complaint on the ground that the Allottee form part of building for which OC is received and the said portion was not registered with RERA. The adjudicating officer has distinguished the ruling passed in the matter of **Prasad Patkar and Ors** and referred **Mohd Zains case** and held as follows:-

“Therefore, the interest of allottees of the entire project is involved in the completion of the whole project in its entirety. It would be anomalous to hold that some part of the building is covered by RERA's jurisdiction and other part is exempted. Hence, in my opinion, the entire project comes under the jurisdiction of RERA so long as occupancy certificate is not issued by the Competent Authority. This leads me to hold that though the respondents have received the part O.C. including that of 13 floor where the complainant's booked flat is situated, the jurisdiction of the Real Estate Regulatory Authority is not lost”

(Note : the Matter was amicable settled before Hon'ble High Court in Second Appeal and Complainant acknowledged the contention that Project does not require registration)

- (d) **Not Registered and OC not Received but fully occupied** - In **Parag Mantri Vs. Green Space** the authority has held that though the building was fully occupied and Occupation Certificate is not received but since common area and amenities are not completed, the complaint was maintainable against such projects.

WHO CAN FILE A COMPLAINT ?

- (a) **Suo Motu Actions by MahaRERA** – In several cases relating to violation of provisions relating to Advertising MahaRERA has suo motu action against defaulting Promoters. Eg. **Sai Estate Case, Piramals Case...**
- (b) **Third party (no locus standi)** – In **Istekhar Yusuf Shaikh vs Dhruva Woolen Mills Pvt. Ltd** the authority has held that this is not a PIL forum and held that Authority shall hear grievances of affected parties only.

In **Navnath Associates Vs. Anand R. Tambe**, Hon'ble Appellate Tribunal held that a complaint filed by Son on behalf of mother without having proper authority/power has no locus standi to file complaint and subsequent authorization does not retrospectively validate the same, hence complaint dismissed.

- (c) **Allottee** – An Aggrieved allottee [having allotment letter or registered Agreement for sale] can file a complaint under section 31(1) of RERA.
- (d) **Association of Allottees** – In **Neptune 100 above buyers Welfare Association Vs Neptune Ventures & Developers Pvt. Ltd.** a Collective action by 55 buyers made against the Promoter which was accepted by the Authority.

WHO CAN FILE A COMPLAINT ?

- (e) **Society** – In **Samaj Kalyan CHSL V/s. Niraj and Ors** it was held that Society itself is a Promoter as per provisions of RERA and is not entitled to seek reliefs from MahaRERA with respect to non payment of transit accommodation rent by the Developers under scheme of Redevelopment.
- (f) **Tenant** – In **Kunal Parmar Vs/ Amex Developer** the Authority has held that the Tenant under scheme of 33 (7) along with the Developer 'cause it' to be constructed , hence the Tenant also comes within the definition of Promoter under RERA , hence complaint filed by Tenant is not maintainable.

In Milan Narendra Patkar Vs. Ruparel Estates India pvt. Ltd.(Appellate Tribunal) – due to conflicting views between the bench the issue with regards whether Tenant can be considered as an allottee under Section 2 (d) or Promoter as under Section 2 (zk) of RERA is placed before Hon'ble Chairperson.

- (g) **Investors** – In **Mahesh Pariani Vs Monarch Solitaire LLP** it was held that Complainant was an investor in the project having MOU with the respondent and hence, is a Promoter (Investor) as per MahaRERA circular. An Investor cannot be an allottee and hence, the dispute was civil and not violative of RERA provisions.

WHO CAN FILE A COMPLAINT ?

- (h) **Co-Developer/ Owners/Sub Developer** - In **Shrikant Merchant V/s Shreepati Castle AOP** it was held that internal dispute between two groups within Promotes/ Co-Developers/ Sub- Developer are civil in nature and cannot be resolved before RERA.
- (i) **Contractors** – In **Swatantra Anand Vs Paradigm Ambit Buildcon** it was held that Complaint by the contractor for Non-payment of bills by the Promoter is a civil issue not to be entertained by the Authority.
- (j) **Bulk Booking Allotment Letters (Investors)** – In **Kamal Agrawal and Ors. Vs. Sakla Enterprises** it has been held that in view of the said explicit provision under RERA, the respondent promoter should not have accepted the money from the complainants without first registering the agreements for sale with the complainants. Further the payment made by the complainants has not been denied by the respondent. Hence the respondent has violated the provision of section 13 of the RERA. Hence it cannot deny the claims of the complainants merely by saying that they are investors and not allottees, since the complainants have invested their money in the MahaRERA registered project.

WHO CAN FILE A COMPLAINT ?

- (k) **Lender Bank** - In **Kotak Mahindra Bank Ltd Vs. East & West Builders**, the Appellate Tribunal has upheld the view taken by MahaRERA that Appellant is neither a Promoter nor Allottee or real estate agent and therefore cannot be treated as an aggrieved party as per provisions of Section 31 of RERA' He therefore declined to grant reliefs prayed for and clarified that mere grievance of any nature against a Promoter, Allottee or real estate agent would not entitle any person to file a complaint under Section 31(1) of RERA if the same does not arise on account of violation of any provisions of RERA.
- (l) **Sub Vention Scheme** – In **Khyati Shah Vs. Rajsanket Realty Limited**, the MahaRERA Authority has held that agreement for sale was executed under the provisions of MOFA, wherein it was mandatory to mention the date of possession in the agreement. However, the respondent has violated the said provisions of MOFA. On such act of omission on the part of the respondent, the complainant should not suffer. Further, there is an agreement executed between the parties under subvention scheme, wherein the respondent No. 1 agreed to pay EMI to the respondent No. 2 till the possession is handed over to the complainant. However, they stopped paying EM I from March, 2019. Therefore, the said date as per the agreement should have been considered as the date of possession for handing over flat to the complainant. Respondent was directed to refund the 20% amount paid by the complainant towards the cost of the said flat along with stamp duty and registration charges paid by her and further was directed to directly deal with the bank under subvention scheme for remaining amount payable to the respondent No. 2 viz., ICICI Bank.

WHO CAN FILE A COMPLAINT ?

- (m) **Allotte under Deed of Cancellation** - In **Powle Sonali Tushar Vs. DSK Worldman Projects Ltd.**, Hon'ble Appellate Tribunal held that as per agreement for sale the Promoter had agreed to hand over possession by November, 2015, There is no dispute that for whatever reasons, on request of Complainants to that effect and by mutual agreement, parties cancelled the transaction and agreed for refund of the amount vide Deed of Cancellation executed on 23.01.2017 i.e, prior to RERA came into force. Consequently, no sale transaction or agreement survived between the parties thereafter for claiming entitlement under Section 18 of RERA. This Section is applicable only when the transactions subsist as on 01.05.2017 and that too in case the promoter fails to discharge its obligations to hand over possession as per the terms of the agreement or by the date specified therein. In the matter at hand, no such agreement or transaction in any other form existed during the currency of RERA for taking cognisance and considering reliefs under Section 18 as sought by Complainants in the complaint.
- (n) **Allotee of erstwhile Developer** – In **Anupam Kumar Gupta Vs. Sanyam Realtors Private Limited** , Hon'ble Appellate Tribunal has held that there is not privity of Contract between the Allottee and new Developer, furthermore since the name of Allottee is not mentioned in list of Allotees provided by erstwhile developer, the Allotees claim against new Developer not maintainable.

WHO CAN FILE A COMPLAINT ?

- (o) **Promoter against MHADA** - In **Shree Hari Housing Resorts and Infra Vs. Chief Officer Aurangabad Housing and Area Development Board MHADA** - MHADA vide its letter dated 4-12-2019 shown its willingness to purchase the plot area from Promoter as per Government Resolution. Accordingly, the complainant-promoter has taken further necessary action for allotment of said plot area to MHADA. Thereafter, various communications and meetings were held with MHADA and by letter dated 03/03/2020 the complainant requested MHADA to release the payment. However, MHADA vide its letter dated 05/03/2020 has informed the complainant that there is no feasibility to take the said plot and therefore MHADA is not ready to purchase the said plot of the land. Aggrieved by the said letter the complainant had filed this complaint. The complainant has mainly contended that if the respondent-MHADA denies to purchase the said plot of land then it would have to go for change in layout requiring revised permissions which may lead to huge loss. Hence, the present complaint is filed to seeking an consideration along with interest from MHADA from the date of confirmation dated 08/05/2019 till the actual realisation of the said amount. **Held** - Admittedly, there is no allotment letter issued by the complainant to MHADA nor any registered agreement for sale entered into between the complainant and the respondent for sale of the said plot of land. Since the said allotment has not been finally made the respondent cannot be treated as an allottee and hence the complainant cannot seek any relief against the MHADA under sections 18 and 19 of the RERA. However, the complainant is always at liberty take further legal recourse against the MHADA before the appropriate forum.

WHO CAN FILE A COMPLAINT ?

- (p) **Allotment Letter given as security towards loan given by Security Holder** :- In **Hitesh Randhir Sayta Vs. Marvel Buildcon** , Hon'ble Appellate Tribunal has held that the transaction between the parties is in the nature of loan for which flats were provided as security MOU entered between parties shows that the transaction between the parties is not sale and purchase of flats but it is a loan advanced for short term against security provided in the form of flats. In MOU, consequences are also given for not repaying the loan as per agreed terms. **Cumulative effect of all clauses in MOU exhibits that promoter is debtor whereas Allottee is a creditor.** Right to purchase the flat as per terms of agreement for sale is different from right to sell the flat secured against loan in case of default. So letter executed between parties cannot be accepted as allotment letter to claim transaction of sale and purchase between the parties. Allotment letter has no reference of MOU and vice-versa though both are executed on same day by the same parties. In absence of transaction for sale of flats in project of promoter in favour of Allottees, the dispute does not fall within the scope and ambit under RERA for adjudication. Resultantly, promoter cannot be directed to execute agreement for sale as per Section 13 of RERA in favour of Allottee as prayed for.

FORFEITURE

In **Ganesh Vs. Vijay Suraksha LLP and Mr Sunil Mayekar Vs Aryaman Infratech Pvt Ltd** it was held that the Promoter can forfeit sums as agreed in contract in case the allottee want to exit from the project without any fault on part of Developer.

In Dinesh R. Humane Vs. Piramal Estate Private Ltd.

Hon'ble Appellate Tribunal held that absolutely unfair and unreasonable and one-sided condition imposed on the Allottees under Allotment Letter. Allottees cannot be restrained from exercising their right of withdrawing the request. Right to make request for reservation of flat includes the right to withdraw such request for reservation of flat. Clause 17 providing forfeiture of 10% amount of the total price of flat or the amount paid till date whichever is lesser in case of withdrawal by Allottees is ex facie unreasonable, unfair and inequitable. So, Promoter is not entitled to forfeit.

Furthermore in this peculiar matter, though the claim of refund is not governed by any specific provision of RERA (*since premature withdrawal without any violation on part of Promoter*), it cannot be ignored that object of RERA is to protect interest of consumer. So Regulatory Authority and Appellate Tribunal are having inherent powers under the Regulations framed under RERA to pass such orders which are necessary to meet the ends of justice and in exercise thereof in the instant case, the promoter was directed to refund the total amount paid by Allottee without any forfeiture

CASES RELATING TO CLAIM OF INTEREST AND COMPENSATION UNDER SECTION 18

(A) WITHDRAWAL FROM PROJECT

In **Pravin Utam Hiwale Vs Darode Jog Homes Pvt. Ltd** authority directed Refund the amounts with interest at MCLR + 2% from 01.05.2017(*date of RERA Coming in force*) onwards till their payment

In **Avinash Saraf, Neha Duggal Saraf Vs Runwal Homes Pvt. Ltd** Complainants were entitled to refund **Consideration Amount, Stamp Duty, Registration Charges and Interest** paid by complainants to the bank, with interest at MCLR+2% from 01.05.2017 till their payment.

In **Pradnya Sable Vs. Kambar Constructions** - it was held that issues relating to Local Goons etc cannot be held as reason due to which extension of time for handing over possession be allowed and order of Refund with MCLR + 2 % on Principle+ stamp duty+ registration fees + Bank processing Charges / Fees.

In **Bhupinder Pal Singh Vs. Sachin Karla** – Hon'ble Appellate Tribunal has held that the impugned order for disposing of complaint with liberty to Allottee to approach MahaRERA after revival of project is improper, incorrect and illegal. Promoters have failed to handover possession of the flat to Allottee as per date agreed in the agreement for sale. Allottee has chosen to withdraw from the project, Allottee demanded refund with interest and compensation. Promoters have failed to respond. Accordingly Allottee is entitled for refund with interest as per Section 18 of RERA and Promoters are under obligation to refund the amount with interest as per the rate prescribed under RERA.

In **Mysore Sainatha Lavanya Vs. Akshay Gruhapravesh LLP**, Hon'ble Appellate Tribunal had granted refund of principle with interest @ State Bank of India, Highest Marginal Cost of Lending Rate plus 2 % from the date of payment of amount by Allottee to Promoter till its realization on basis of Booking Form entered between parties.

CASES RELATING TO CLAIM OF INTEREST AND COMPENSATION UNDER SECTION 18

(B) CONTINUE IN PROJECT AND CLAIM INTEREST

In **some cases** Hon'ble Authority has directed to pay monthly interest from agreed date of possession in the Agreement till actual handing over of possession.

In **some cases** Hon'ble Authority has directed to pay monthly interest from 1st May,2017 i.e effective date of RERA till actual handing over of possession.

In **some cases** the Hon'ble Authority has directed the Respondents to handover possession upon revised dates as directed by Authority failing which, interest is to be paid at SBI's highest MCLR + 2% on the entire amount paid by complainant, till the actual date of possession.

Thank you