

FILING OF COMPLAINTS BEFORE RERA & FEW DECIDED CASES

WIRC of ICAI's
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OVERVIEW OF RERA

RERA enacted to:

1. Bring Transparency w.r.t. Project information.
2. Enforce accountability against Promoters.
3. Regulate the Real Estate Sector.
4. **To protect the interest of Consumers in Real Estate Sector.**
5. Establish Adjudicating Mechanism for **Speedy Dispute Redressal.**

AUTHORITIES TO DECIDE THE COMPLAINTS:

Real Estate Regulatory Authority (RERA):

Maharashtra Government i.e. Chief Minister



MahaRERA Chairman



Members and Adjudicating Officers

Maharera i.e. Authority have powers to award Interest and levy penalty, but not compensation.

Adjudicating Officers have powers to award Compensation.

COMPLAINT U/S. 31

Section 31: Filing of Complaints with The Authority or The Adjudicating officer: Essential Ingredients:

- ▶ Complaint can be lodged u/s. 31(1) against:
 - ▶ 1. Promoter,
 - ▶ 2. Allottee
 - ▶ 3. Real Estate Agents

- ▶ PURPOSE OF COMPLAINT?
 - ▶ for any violation or contravention of the provision of this act or the rules and regulation made there under,

- ▶ BY WHOM?
 - ▶ by any **aggrieved person** before the authority or the adjudicating officer.

 - ▶ Person shall include association of allottees or any voluntary consumer association registered under any law for the time being in force.

 - ▶ The complaint is to be made in the form and manner and fees paid, as prescribed under rule 6 and 7 of The Maharashtra Real Estate(Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

- ▶ Complaints has to be filed in Form A under Rule 6 for complaints to Authority and in Form B under Rule 7 for complaints to Adjudicating Officer.

WHO CAN FILE A COMPLAINT?

Thus, the following person can file a complaint:

- ▶ Allottee: An aggrieved allottee who has interest in the project via booking of apartment having paid money and having booking form or allotment letter or registered agreement for sale.
- ▶ Association of Allottees: In case of Neptune buyers welfare association vs Neptune Ventures and Developers Pvt ltd., collective action by 55 buyers was made against the promoter which was accepted by the authority.
- ▶ Promoters of real estate project.
- ▶ Real Estate Agents.
- ▶ Sue Moto actions by the authorities: The MahaRERA authorities are empowered to initiate sue moto actions/ complaints upon coming to know/ becoming aware of any violations/ contraventions of the act by promoter, real estate agent or allottee.

WHO CANNOT FILE A COMPLAINT?

1. Third parties: Parties who have no privity of contract in a real estate project as a promoter or allottee or association of allottee or agents due to lack of locus standi.
 2. Matters pertaining to civil disputes amongst the following parties:
 - ▶ Co-promoters vs. Promoters and vice versa
 - ▶ Developers vs. Promoters and vice versa.
 - ▶ Land owners vs. Promoters and vice versa.
 - ▶ Contractors vs. Promoters and vice versa.
 - ▶ Lenders vs. Promoters and vice versa.
- ▶ MahaRERA Appellate Tribunal order dated 11/01/2021 in appeal number **AT006000000031830 Kotak Mahindra Bank Ltd vs. East & West Builders.**

WHY COMPLAINTS ARE FILED?

Usually Complaints are filed for:

1. **Refund** of money taken from Allottees along with interest as prescribed in the Rules, in case the project cannot be completed as per terms and conditions of Agreement for Sale or within the date specified therein, u/s. 18(1).
2. Compensation and or interest to the Allottees for the **delay** in giving possession u/s 18(1).
3. Compensation for defective **title of land**, without any limitation of time u/s. 18(2).
4. Irregular, unilateral and high handed **cancellation of Allotment** u/s. 11(5).
5. **Non-Execution** of Registered Agreement of Sale u/s. 13.
6. Compensation for Loss or damage due to **Incorrect/False Statement** by Promoter u/s. 12,
7. Exercise of Option to withdraw along with Refund of amount with Interest from the project by Allottee due to incorrect/false statement by promoter u/s. 12.
8. Claim of compensation for **contraventions** of any provisions of Act including sections 7, 11, 12, 13, 14, 15, 16, 17, 19 of the Act, u/s. 18(3).
9. Levy of **penalty** on Promoter for contraventions of sections 3 & 4 and for any other provisions of Act.
10. **Revocation** of Registration u/s. 7 for serious and persistent violations / contraventions by Promoter of provisions of Act, adoption of unfair trade practices, cheating of public at large, etc.
11. **Enforcement of Rights** of Allottees u/s. 19 and or to enforce any obligations of Promoter towards Allottees u/s. 11-18.

CHECKLIST OF DOCUMENTS TO BE VERIFIED

Checklist of Documents to be verified before preparing Complaint u/s. 31 of the Act by Allottee or by professional representatives for and on behalf of Allottee:

1. Advertisement Brochure of the project.
2. Booking Form.
3. Allotment letter.
4. Registered agreement for sale.
5. Receipts of payments.
6. Statement of Account of payments/ledger of allottee in books of builder.
7. Home loan sanction letters and statements if any.
8. Rental / leave and licensed agreements of existing accommodation of allottee.
9. Correspondence exchanged between promoter and allottee including letters, demand letters, email, notices, etc.
10. Verification of project details in MahaRERA website, with special emphasis on initial date of completion, proposed / revised / extended date of completion declared by promoter, commencement certificate, percentage of completion, etc.
11. Study of any previous orders/ rulings by authority on the project.

MANNER OF FILING COMPLAINT:

MahaRERA Rule 6: Manner of filing complaints with the Authority and the manner of holding an inquiry by the Authority.—

(1) Any aggrieved person, having any interest in the project, may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the Adjudicating Officer, as per Form 'A' in triplicate which shall be accompanied by a fee of rupees five thousand through NEFT or RTGS system or any other digital transaction mode :

Provided that, when the Authority makes a provision for filing a complaint web-based, it shall not be necessary to submit such form in triplicate.

MANDATORY DETAILS IN COMPLAINT

Individual relief requires separate complaint(MahaRERA order No. 11 dated 23rd October, 2019)

(1) When a complaint is being lodged for seeking individual relief, the aggrieved person must provide for following details as part of the Complaint:

- Building No./Wing No./ Flat No./Shop No./ Unit No.:
- List names of all owners/ Joint owners:
- Total Consideration value (Rupees):
- Money paid till date:
- Date of allotment or booking: .
- Date of Agreement (if any):
- Date of possession in the agreement (if any):

For a failure to do so, MahaRERA may treat the said complaint is not maintainable

MANDATORY DETAILS IN COMPLAINT (contd)

(2) **Group complaints** shall be entertained only in respect of common relief claimed under **Section 7 & 8** of RERA or for common amenities.

(3) **Individual complaint** need to be filed separately for **individual reliefs**. Otherwise they will be held not maintainable for misjoinder for cause of action and parties.

(4) The complaints should be filed with MahaRERA, in accordance with **Section 31** of the Real Estate (Development and Regulation) Act 2016 read with **rule 6 and 7** of The Maharashtra Real Estate (Regulation & Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal etc.) Rules, 2017 and the Regulations, Orders and Circular made thereunder.

FORMAT OF COMPLAINT

The specified form is Complaint to the Authority in Form A prescribed under rule 6 under section 31 of The Act.

Complaints for Compensation claims are to be made in Form B to the Adjudicating Officer under Rule 7. Format of Form B is similar to Form A and is available in Appendix to the Relevant Rules.

The blank Format of Form A is given below for ready reference.

FORMAT OF COMPLAINT (Contd)

FORM 'A'

[See rule 6]

Complaint to the Authority

(Complaint under section 31 of the Act)

For use of Authority(s) office:

Date of filing: _____

Date of receipt by post: _____

Complaint No.: _____

Signature: _____

Authorised Officer: _____

IN THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
OFFICE, MUMBAI.

Between

-COMPLAINANT

And

-RESPONDENT

Details of claim:

1. Particulars of the complainant(s):

(i) Name of the complainant:

(ii) Address of the existing residence of the complainant:

(iii) Address for service of all notices:

FORMAT OF COMPLAINT (Contd)

2. Particulars of the respondents:

- (i) Name(s) of respondent:
- (ii) Office address of the respondent:
- (iii) Address for service of all notices:

3. (a) Jurisdiction of the Authority:

The complainant declares that the subject matter of the claim falls within the jurisdiction of the Authority.

(b) Project Registration No.

4. **Facts of the case:**

(Give a concise statement of facts and grounds of claim against the respondent)

5. **Relief(s) sought:**

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s)

[Specify below the relief(s) claimed explaining the grounds of claim(s) and the legal provisions (if any) relied upon]

Grounds of Reliefs and Legal Provisions Explained as under:

FORMAT OF COMPLAINT (Contd)

6. Interim order, if prayed for:

Pending final decision on the complaint the complainant seeks issue of the following interim order:

[Give here the nature of the interim order prayed for with reasons]

7. Claim not pending with any other court, etc.:

The complainant further declares that the matter regarding which this complaint has been made is not pending before any Court of Law or any other Authority or any other Tribunal(s).

8. Particulars of the fee in terms of sub-rule A (1) of rule 6:

(i) Amount

(ii) Mode

9. List of enclosures:

(Specify the details of enclosures with the complaint)

Verification

I, _____, son of _____, the complainant do hereby verify that the contents of paragraphs (1 to 9) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the complainant

OTHER RELEVANT DOCUMENTS REQUIRED:

1. Statement of Payments:

- i. Containing Complainant's Name, Complaint Number & date in Heading.
- ii. S.No, Date, Amount, Purpose, Receipt No., Cheque No., Bank Name in tabulated manner.
- iii. Duly signed by Complainants alongwith Name.
- iv. Provision to be provided for Respondent's Signature with their Names and remarks.

2. Vakalatnama / Authority Letter u/s. 56.

3. Proof of Service of Documents to Respondents (now dispensed with)

4. Duly Paged Index of Documents.

CHECKLIST FOR ONLINE COMPLAINTS

Checklist of Items needed for filing online Complaint is given below:

For User/Complainant Registration

- **Full Name including full names of Joint-Allottees/Co-owners.**
(It is mandatory to include all the Joint-Allottees as Co-Applicants/Co-Complainants in the Complaint).
- **Email Id.**
- **Mobile Number.**
- **Address.**

For Lodging Complaint

- **Project Registration Number**
- **Name of Promoter.**
- **Address of Promoter.**
- **Details of Interest of Complainant in Project.**
- **Complaint in Form A containing:**
 - Facts of Case
 - Relief(s) / Compensation Sought
 - Grounds for Complaint and legal provisions relied on, if any
 - Interim Order, sought, if any.
 - Enclosures of Documents
- **Statement of Payments.**
- **Scan of relevant documents like relevant pages of registered agreement of sale, allotment letter, payment receipts, rental agreement, home loan letters, etc**

Important Practical Aspects on Filing of Online Complaint in Maharera Portal:

1. The Portal does not distinguish / seek Complaint in Form A to the Authority or Complaint in Form B to the Adjudicating Authority.
2. Still Professionals and Complainants are advised to prepare complaints in respective forms as per Rules and upload the scan of the same.
3. All Complaints are initially heard by the Authorities and then compensation complaints forwarded to Adjudicating Officer for adjudication of quantum and order.
4. Complaints pertaining to Interest, Penalty, enforcement of rights and all other matters except compensation matters are disposed of by The Authorities themselves.
5. Complaints pertaining to Compensation matters are disposed of by Adjudicating Officers.
6. The whole complaint procedure is online and visible in the website. Therefore, it is not required to visit the RERA office except for hearings conducted in respect of complaints filed by the Complainant under RERA. Now hearings are also conducted online, since onset of pandemic.
7. PDF scan Scan of relevant documents are required with size of each document less than One (1) MB.

ONLINE COMPLAINT FILING PROCEDURE

Step 1: User Registration in Maharera Website www.mahareraonline.gov.in

Step 2: Login to the System using Userid and Password.

Step 3: Create User Profile by providing Name, Address, Mobile and Email ID.

Step 4: Add Complaint by selecting New Complaint

Step 5: Generate Complaint Number by filling Project Registration Number.

**Step 6: Add Complainant Details with Name/ Joint Names, Type, Address, Email & Mobile.
To briefly state the nature of interest in the Project.**

Step 7: Add Respondent Details with Name, Type, Address, Email & Mobile.

Step 8: Mention short description and mandatory upload of documents(Can add more than one file by adding fields):

- 1. Facts of Case**
- 2. Relief Sought.**
- 3. Interim Order, if any.**

Step 9: Declaration and Verification

Step 10: Payment of fees.

Similar procedure to be followed for Conciliation Application at link <https://mahareraconciliation.mahaonline.gov.in/>

Step 1: Visit Link

<https://maharera.it.mahaonline.gov.in/SourceInfo/SourceInfo>

Step 2: Provide Informant Name, Address, Mobile and Email ID

Step 3: Provide Promotor's Name Address, Email ID, Contact Numbers

Step 4: Provide Project Information like Name, Address with other details as to commencement of construction, current status, occupation status, photographs, Approval documents, etc.

Step 5: Submit

FEW DECIDED CASE LAWS

1. Neelkamal Realtors Suburban Pvt Ltd & Anr vs. Union of India & Ors. (Bombay High Court) - Upheld the **Constitutionality** of the RERA Act and also held that u/s. 18 the delay in handing over the possession would be counted from the date mentioned in the agreement for sale and further that interest u/s 18 is **not penal** in nature but **compensatory**.

Further it was held that, in case the promoter defies to pay the compensation, then the same would amount to **unjust enrichment** by the promoter of the hard earned money of the allottees which he utilized. The allottee cannot be said to be acting **gratuitously**. The promoter enjoying the benefit is bound to make compensation to the allottee.”

2. Lavasa Corporation vs. Jitendra Tulsiani and Ors.(HC) - Long term lease Agreement of 999 years deemed to be sale transaction & lessor deemed to be promoter & lessee deemed to be allottee.

3. Navneet Bagga vs. Neelkamal Realtors. - Case of second sale during construction of on- going project with consent of promoter. Held second purchaser of under construction projects is an allottee entitled for interest u/s 18 on delayed possession.

FEW DECIDED CASE LAWS (contd..)

4. Anita Castellion vs. Godrej Landmark Redevelopment Pvt. Ltd. *Sec 12 operates till Agreement For Sale (AFS) is entered into between parties. Post AFS, sec 12 ceases to operate & sec 18 comes into play. Therefore, Post AFS, Allottee cannot invoke sec 12 and agitate based on brochure, booking form etc.*

5. Mital Padia vs. Larsen & Toubro Ltd and 2 others. - *Promoter entered into AFS with investors to raise funds. Held such investors are allottees since promoter has entered into AFS and is now stopped from denying the complainants status as home-buyers. Also held that, simply because OC is received the jurisdiction of RERA does not come to an end.*

6. Rohit Chawla & 11 Others vs. Bombay Realty (One ICC) (A.T.). - *No AFS. Allottees granted refund with interest based on possession date mentioned on brochure.*

7. Amrita Kaur vs. East & West Builders.(A.T.) - *No Date of Possession (DOP) specified anywhere & No AFS. Relying on S.C judgement in case of M/s Fortune Infrastructure v/s Trevor D'lima(2018) 5 SCC 442 where in it was held that in absence of specific mention of D.O.P, reasonable period is 3 years within which possession should be handed over by promoter to allottee, refund with interest was awarded to Allottee.*

FEW DECIDED CASE LAWS (contd..)

8. Gauri Thatte vs. Nirmal Developer and Shapoorji Pallonji. - *Held development manager who has right to sell the apartments, collect money and holding revenue sharing rights is also a promoter and jointly liable along with main promoter Nirmal Developer.*

9. Dinesh R. Humane vs. Piramal Estate Private Ltd. (A.T.) - *Forfeiture of booking money received under letter of allotment held ex-facie unfair, unreasonable & inequitable. Right to reserve includes right to withdraw. Full refund ordered.*

10. M/s. Newtech Promoters and Developers Pvt Ltd Vs. State of UP & ORS etc. Supreme Court of India.

Upheld the Constitutionality of pre-deposit of 100% of Interest and compensation awarded and minimum 30% of penalty imposed by the Authority with Tribunal u/s. 43(5) for any appeal preferred by Promoter.

THANK YOU

Disclaimers:

- 1. This presentation is for Educational Purposes only explaining the relevant section and relevant rule in a very brief and concise manner to fit-in limits of allotted time.**
- 2. This presentation should not be and is not meant to be used as a complete practical guide for complaint filing purposes.**
- 3. Any person intending to file a complaint has to go through meticulously and is expected to be thorough in all sections, rules, regulations, circulars, notifications, orders issued under the Maharera Act and all documents pertaining to the individual facts of each case.**
- 4. The Presenter or WIRC will not be liable, in any manner whatsoever, for any loss or resultant lack of gains, for unauthorised and unintended use of this presentation.**

THANK YOU,

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