



FILING OF COMPLAINTS BEFORE RERA AND FEW LANDMARK JUDGEMENTS

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA

PROGRAM ON RERA (PHYSICAL)

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RELEVANT RULES:

- THE MAHARASHTRA REAL ESTATE (REGULATION AND DEVELOPMENT)(RECOVERY OF INTEREST,PENALTY, COMPENSATION FINE PAYABLE , FORMS OF COMPLAINTS AND APPEAL, ETC) RULES 2017
- THE MAHARSHTRA REAL ESTATE (REGULATION AND DEVELOPMENT)(REGISTRATION OF REAL ESTATE PROJECTS, REGISTRATION OF REAL ESTATE AGENTS, RATES OF INTERST AND DISCLOSURE ON WEBSITE) RULES, 2017

AUTHORITY AND TRIBUNAL

- ▶ Government of Maharashtra has established “THE REAL ESTATE REGULATORY AUTHORITY” under Chapter V of The Real Estate (Regulation and Development) Act, 2016.
- ▶ Government of Maharashtra has also established “THE REAL ESTATE APPELLATE TRIBUNAL” under Chapter VII of The Real Estate (Regulation and Development) Act, 2016.
- ▶ Shri Ajoy Mehta is Chairperson of the MahaRERA Authority and Smt. Indira Jain is Chairperson of MahaRERA Appellate Tribunal.
- ▶ **Section 56 of the Act allows Chartered Accountants to represent at RERA Authority level and RERA Appellate Tribunal.**

SECTION 31 – FILING OF COMPLAINTS WITH THE AUTHORITY OR THE ADJUDICATING OFFICER

- ▶ Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.
- ▶ *Explanation.*—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.
- ▶ The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.
- ▶ Source Complaint can be filed in case of complaint about non registration of the project with MahaRERA which was supposed to be registered with MahaRERA.

IMPORTANT POINTS

- ▶ Who can file complaint – Only interested Person
- ▶ How much amount to be paid – Rs.5000
- ▶ Manner of filing complaint – Online through MahaRERA website
- ▶ Format – Form A or B depending on nature of Complaint
- ▶ For deciding Compensation for the complaints filed under Section 12, 14, 18 & 19 of The Real Estate (Regulation and Development), Act, 2016 - Complaint to be filed to Adjudication Officer in the Form B. (Section 71)
- ▶ Relevant formats of the forms are provided in the relevant rules.
- ▶ Hon'ble Supreme Court of India, in its recent judgement in **M/s Newtech Promoters and Developers Pvt. Ltd Vs. State of UP & Ors. [Civil Appeal Nos.6745 - 6749 and 6750 to 6757 of 2021]** dated 11th November 2021 has decided the jurisdiction of the “Adjudicating Officer” to entertain, hear and decide the complaints filed with Real Estate Regulatory Authority.

POINTS TO REMEMBER

- ▶ Email ID & Phone number - Very Important.
- ▶ One set of Complaint should be served on Respondent.
- ▶ Address of the Complainant should be Complete.
- ▶ Language of the Complaint should be Simple.
- ▶ Facts of the case.
- ▶ Provisions contravened.
- ▶ Reliefs Claimed.
- ▶ Interim relief claimed, If any.
- ▶ Be prepared with case before entering Courtroom.
- ▶ Think about possible arguments from other side.
- ▶ Don't give any kind of assurances to clients.

WHEN REFUND CAN BE CLAIMED – SECTION 18

- ▶ IN CASE OF DELAYED POSSESSION
- ▶ IN CASE OF POSSESSION NOT IN ACCORDANCE WITH AGREEMENT TO SALE

REMEDY AVAILABLE TO ALLOTTEE

- ▶ OPTION 1 – STAY WITH THE PROJECT & CLAIM INTEREST FROM THE DATE OF DEFAULT
- ▶ OPTION 2 – LEAVE THE PROJECT AND CLAIM REFUND OF ALL THE MONIES PAID TO PROMOTER ALONG WITH INTEREST FROM THE DATE OF PAYMENT

RULE 18 - Rate of interest payable by the promoter and the allottee

- ▶ The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:
- ▶ Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

RULE 19 - *Timelines for refund*

- ▶ The refund of any amount which is payable by the promoter to allottee along with the applicable interest and compensation if any, under the Act or the Rules and Regulations, shall be made by the Promoter to the allottee within thirty days from the date on which such refund along with applicable interest and compensation, becomes due and payable to the allottee:
- ▶ Provided that, every instance thereof shall be reported by the concerned promoter within thirty days to the Authority.

FREQUENTLY ASKED QUESTIONS

- ▶ I booked an Apartment in 2016. I was suppose to get possession by Dec 2018 as per ATS. I have not received possession till date. I want to file Complaint for delayed possession at MahaRERA. But my project is not registered with MahaRERA. What to do?
- ▶ I filed Complaint against Builder. For Last two hearing dates, Builder is not Appearing at MahaRERA Authority. What to do?
- ▶ I filed Complaint Complaint with MahaRERA. MahaRERA disposed off the Complaint after hearing and passed final Order. When I read Final Order, I observed that my "Project Name" is wrongly written in the Order. In Addition, amount paid by me is also wrongly mentioned (Typo). What to do?

FREQUENTLY ASKED QUESTION

- ▶ What is Roznama? How to obtain the copy of the Roznama?
- ▶ Do Complainant need to be present at each & every time hearing takes place?
- ▶ What is Dress code for Chartered Accountant appearing at Authority/Tribunal?
- ▶ Order has been passed in my favor. Builder is directed to pay refund within 30 days. He has not paid the same even after 2 month nor he has filed appeal. What to do?
- ▶ I am an allottee. I don't want to get into long drawn litigations with Builder? Can RERA help me?

MahaRERA Conciliation and Dispute Resolution Forum

- ▶ Mr. Vasant Prabhu is Chairman of the Forum.
- ▶ Complaint can be filed online with payment of Rs.1000.
- ▶ Complaint is heard by panel consisting of representative from Consumer Association, representative from Promoter's Association.
- ▶ No Representative is allowed during hearing of Conciliation Forum.
- ▶ Once both parties agree on the settlement, terms of those settlement are reduced in writing and signed by both the parties. Copies are furnished to both the parties.
- ▶ Non-Compliance - The parties concerned shall comply with the terms of settlement. Non-compliance of the terms by either party shall give the other party right to approach the MahaRERA. In case of further complaint to MAHARERA by the parties in the same subject, MAHARERA authority shall take cognizance of any such agreed terms of Conciliation.
- ▶ Resort to arbitral or judicial proceedings.—The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

POSITION AT MAHARERA

- ▶ More than 18500 complaints received by MahaRERA out of which around 12544 complaints are already disposed off.
- ▶ Out of 943 Conciliation requests received with consent of both parties, 809 are completed.
- ▶ Full Bench of Three Members is Constituted as MahaRERA Appellate Tribunal along with the Division Benches.
- ▶ Decisions delivered by MahaRERA Authority/Appellate Tribunal can be sought as precedent while filing complaints at MahaRERARERA.
- ▶ All the Orders delivered by MahaRERA Authority/ Appellate Tribunal is available at the official website of MahaRERA.
(<https://maharera.mahaonline.gov.in>)

Order No. 22 - Direction about Roznama and next date of hearing in complaints

- ▶ Order issued as on 2nd September 2021
- ▶ Roznama in the complaints shall be dictated by the respective Bench of MahaRERA, the Adjudicating Officer and the Conciliation Bench in open court.
- ▶ The next date of hearing of the complaint shall be recorded in the roznama.
- ▶ Only in complaints that are closed for final orders, the roznama may not record the next date.

Order No. 23 - New guidelines regarding Hearing of Complaint filed before the Authority

- ▶ Order issued as on 9th September 2021
- ▶ No adjournment shall be granted more than two times to a Party.
- ▶ No adjournment shall be granted at the request of the party except where there is/ are compelling circumstances or where circumstances are beyond the control of the party.
- ▶ The fact that the legal practitioner is engaged in another court shall not be a ground for adjournment
- ▶ Where the illness of a legal practitioner is put forward as a ground for adjournment, no adjournment shall be granted unless the party applying for adjournment is able to satisfactorily explain that it could not have engaged another legal practitioner in time.
- ▶ Excuses such as (i) "I have been briefed in the matter recently/ yesterday / in the morning" or (ii) "I am not prepared/ready with the arguments in the matter" or for such other reasons, shall be no grounds for adjournment.
- ▶ Where sufficient cause is not shown for grant of adjournment, hearing of the complaints shall be proceeded with.

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

- Recent Landmark judgement more popularly known as “Newtech” judgement or “UP RERA judgement”
- **FACTS OF THE CASE:**
- In this case, Homebuyers were aggrieved as failure of builder to deliver the possession as per the Agreement to sale executed.
- To get relief, homebuyers filed complaint with UP RERA Authority. UP RERA Authority gave decision in favour of the Homebuyers and directed developer to refund all the amounts to homebuyers along with the interest as prescribed.
- Aggrieved by such order of UP RERA, challenged the order
- But rather than challenging the Order with the UP RERA Appellate Tribunal, developer filed an appeal with the High Court of Allahabad under Article 226 and 227 of the Constitution of India and challenged the jurisdiction of the single member of the Authority for passing such an order for refund.

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

➤ FACTS OF THE CASE:

- Developer also challenged pre deposit under section 43(5) of the Act.
- The High Court of Allahabad found no merits and dismissed the writ petition of the Developer.
- The Developer filed an appeal before the Hon'ble Supreme Court of India.

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

➤ BRIEF JUDGEMENT BY SUPREME COURT OF INDIA:

- Following questions were framed and accordingly answered/decided.
- **Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?**
- The court focused on Section 3 of RERA in relation to any “ongoing projects” that began prior to the Act and for which no completion certificates had been granted. The Act was intended to apply not just to projects that were yet to begin after the Act became effective, but also to current projects for which completion projects had not been obtained.
- As a result, the act was retroactive. Projects that have already been finished or for which a completion certificate had been issued were not included in its fold, therefore any vested or accrued rights remained unaffected. Simultaneously, it would apply after registering current and future projects under Section 3 in order to proactively follow the statute’s objective.

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

➤ BRIEF JUDGEMENT BY SUPREME COURT OF INDIA:

- **Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?**
- If the promoter has not given over possession, the allottee is entitled to a “refund of the price” and “compensation.” The judgment explained that regulatory authority has jurisdiction over the claim for refund of amount on demand under Sections 18(1) and 19(4) of the Act. After holding an inquiry under Section 71, the adjudicating official has the authority to adjudicate compensation under Sections 12, 14, 18, and 19. (3).
- That means in case allottee files complaint against Promoter for refund of amount, interest and/or penalty for delayed possession, such complaint shall be decided by the Authority. However, if Complaint pertains to Compensation, such Complaint shall be dealt by Adjudicating Authority.

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

➤ BRIEF JUDGEMENT BY SUPREME COURT OF INDIA:

- **Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?**
- If the power has been delegated by the responsible authority under the statute, such action by a single member cannot be deemed to contravene the Act's requirements.
- Section 81 of RERA expressly empowers the authority to delegate its powers and tasks to any member by general or special order. As a result, other powers and functions of the authority, if delegated to a single member of the authority, are subject to Section 81 of the Act, with the exception of the right to establish rules under Section 85 of the Act.

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

➤ BRIEF JUDGEMENT BY SUPREME COURT OF INDIA:

- **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?**
- if the promoter wants to file an appeal with the tribunal, and the appeal is later dismissed, it will be difficult for the allottee to recover the amount assessed by the authority. The provision for pre-deposit is important to avoid the issue of recovering the amount that has been established by the authority in fact.
- If the legislature intended to ensure that money determined by the authority can be preserved if an appeal is chosen by the promoter and the pre-deposit is given, Section 43(5) cannot be argued to be in contravention of Articles 14 and 19 (1) (g) of the Constitution.

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

➤ BRIEF JUDGEMENT BY SUPREME COURT OF INDIA:

- **Whether the authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?**
- Section 18 expresses the authority to command the repayment of the principal amount, and the interest that is payable is on the principal amount; in other words, there is no interest if the competent authority has not decided a principal amount. Furthermore, the act is interpreted to suggest that the principle amount plus interest has formed a composite amount that can be recovered as land tax arrears under Section 40(1) of the Act.
- The primary aim of the Act would be defeated if Section 40(1) is rigidly taken to suggest that only penalty and interest on the principal sum are recoverable as arrears of land revenue. The court emphasized that the sum that has been calculated and refundable to the allottees either by the authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act for the purpose of harmonizing the law.

Pradeep Wandrekar (Chairman Sadaphuli CHSL Vs DSK Worldman Projects Ltd – Complaint No. CC00500000023275)

- This decision of The Maharashtra Real Estate Regulatory Authority (MahaRERA) can be called as landmark achievement of MahaRERA towards its objective of completion of stalled project and giving home to homebuyers.
- The project is located at Talegaon, Pune. Project “DSK Sadafuli” is of 3 buildings having 279 residential flats out of which 149 flats are sold.
- As 80% work of these buildings is complete, most of the payment due against the flat consideration was paid to Promoter by Home Buyers.
- Promoter of the Project got arrested and sent to jail. Work came to standstill.
- The homebuyers started finding out ways and legal remedies to complete the project but it was difficult as the Promoter was in jail. The Homebuyers went to “Mumbai Grahak Panchayat” and “Mumbai Grahak Panchayat” advised homebuyers to file an application with the MahaRERA under section 7 & 8 for takeover of the project.

Pradeep Wandrekar (Chairman Sadaphuli CHSL Vs DSK Worldman Projects Ltd – Complaint No. CC005000000023275)

- Following the advice of “Mumbai Grahak Panchayat” the homebuyers collectively filed an application with MahaRERA which was heard by the then Hon’ble Chairman of MahaRERA “Mr. Gautam Chatterjee”.
- The Hon’ble Chairman of MahaRERA directed to establish Bench of Conciliation Forum with Mr. Niranjan Hiranandani & Adv Shirish Deshpande as its member and further directed them to discuss the issue with all stakeholder and find way out to complete the project.
- Promoter had taken the loan of Rs. 7,32,00,000/- from Tata Capitals for which flats in the project were mortgaged. The total of the outstanding amount along with interest was around Rs.25,00,00,000/-.
- The project was not financially feasible due to this though there were 118 flats available for sale. The issue was discussed with the officials of the lender and as a positive move, interest was waived off as a special case.

Pradeep Wandrekar (Chairman Sadaphuli CHSL Vs DSK Worldman Projects Ltd – Complaint No. CC005000000023275)

- The Homebuyer association appointed new developer who undertook to repay the outstanding amount to lender within prescribed time.
- Further, MahaRERA has also appointed retired IAS officer and head of the MahaRERA Conciliation and dispute resolution Forum Mr. Sanjay Deshmukh to ensure completion of the project.
- This all arrangement was approved and brought on record with the consent of all the parties concerned and accordingly order dated 15th July 2022 was given by Hon'ble Chairman, MahaRERA Mr. Ajoy Mehta.

BS JAYVARDHAN VS. STATE OF TELANGANA AND OTHERS..... (WP NO.2694 OF 2021)

➤ BRIEF JUDGEMENT BY HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD:

- Writ petition was filed by petitioner challenging the order of the Chairman, Telangana State Real Estate Regulatory Authority delegating the powers to the Secretary, Telangana State Real Estate Regulatory Authority to conduct the hearing on the Complaints received.
- Delegation of the quasi judicial powers was questioned.
- Held: - When the Act prescribes that the particular thing has to be done by particular person, the same has to be followed in letter and spirit. No deviation from the same can be permitted.
- Hon'ble High court imposed interim stay and directed the Secretary, Telangana State Real Estate Regulatory Authority not to take up any other cases by virtue of this order.

OBEL BUILDERS VS. REAL ESTATE REGULATORY AUTHORITY, KARNATAKA (APPEAL NO. 82/2019)

➤ BRIEF JUDGEMENT BY KARNATAKA REAL ESTATE APPELLATE TRIBUNAL:

- Appellant made an application with the RERA Authority for registration of the Real Estate Project under section 4 of the Act.
- Nearly after 5 months from the date of receipt of an application, Karnataka RERA Authority sent e mail notice to Developer and asked Developer to file an affidavit for non violation of Section 3 of the Act. After a month,, RERA Authority imposed penalty on of Rs. 31,84,855/- for violation of the provisions of the Section 3 of the Act. Being aggrieved by such order, Developer filed an appeal with Appellate Tribunal
- Held: Registration was restored. Appellate Tribunal observed that Authority failed to grant or reject registration within 1 month from the date of application as contemplated in Section 5 of the Act. Moreover, it further went on observing that RERA Authority imposed penalty without holding proper enquiry as specified.

OBEL BUILDERS VS. REAL ESTATE REGULATORY AUTHORITY, KARNATAKA (APPEAL NO. 82/2019)

➤ BRIEF JUDGEMENT BY KARNATAKA REAL ESTATE APPELLATE TRIBUNAL:

- RERA Registration of the project was directed to be restored.
- Matter remanded back to RERA Authority to freshly consider its decision impose penalty for alleged violation of the Section 3 of the Act after holding enquiry as specified.



THANK YOU

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