

WIRC of ICAI



**OVER VIEW OF RERA,
PROFESSIONAL OPPORTUNITIES
& LANDMARK CASE LAWS**

CA. RAMESH S. PRABHU
CHAIRMAN, MAHASEWA,
VICE PRESIDENT, BAR ASSN OF MAHARERA & MAHAREAT
ON 24/03/2023,

Latest updates, important provisions under RERA, latest case laws

AGENDA

- Status on implementation
- Overview of RERA and Allied Laws
- Constitutional Validity of RERA by SC & HC
- RERA Registration & Exemption of Projects
- Applicability of RERA on lease & Industrial
- Accountability of Professionals
- Complaints of Un-regd Projects to be heard.
- Display of Plans at site By SC



Latest updates, important provisions under RERA, latest case laws

AGENDA

- Int & Refund on Delayed Possession
- RERA to supersede of one side Agreement
- Constitution of Appellate Tribunal



Real Estate Sector Challenges :GOVT INTERVENTION, MARKET SENTIMENTS AND NATURAL CALAMITIES

- **DEMONITIZATION IN 2016**
- **RERA 2016**
- **IBC 2016**
- **GST, 2017**
- **FINANCE ACT**
- **NBFC CRISES**
- **LIQUIDITY CRISES**
- **INVESTORS LEFT THE SECTOR**
- **COVID 19.... FOLLOWED BY LOCKDOWN.**

LAWS EVOLVED IN PROPERTY TRANSACTION

- **Contract Act 1872 –General**
- **Transfer of Property Act,1882**
- **Indian Stamp Act, 1899**
- **Registration Act, 1908**
- **Cooperative Societies Act 1912**
- **Mah.Ownership Flats Act, 1963**
- **Consumer Protection Act 1986**
- **Real Estate(Reg & Dev) Act, 2016**

Under M O F A, 1963

- **Flat Owners get Statutory Rights**
- **Can demand Building relevant papers**
- **Get the Agreement Registered**
- **Agreement in Specific Format**
- **Maintain property till society formed**

WORKING OF MOFA 1963

**DUTY OF BUILDER TO DISCLOSE
VARIOUS DOCUMENT,
PLANS ETC.**



Court Orders
or Punishment

State Government
Direction or Action



सत्यमेव जयते



**Enforcement & Delivery Mechanisms
are Missing !**



**Compliance is
Missing !**



Flat buyer, RTI activist & common man may file RTI applications
& write complaints to **GOVERNMENT**,
and struggles to get orders passed against builder.

and / or

Engages **LAWYER and fights in
COURT for several years**



WORKING OF RERA 2016

**DUTY OF BUILDER TO DISCLOSE
VARIOUS DOCUMENT,
PLANS ETC.**



सत्यमेव जयते

**Court Orders
or Punishment**
10

**State Government
Direction or Action**
5



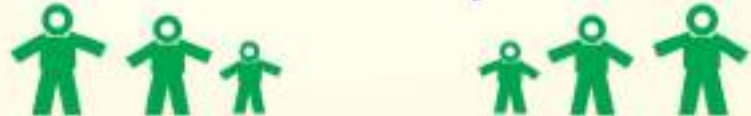
**Competent
Authority**

**Real Estate Regulatory Authority &
Adjudicating Officer**

APPELLATE TRIBUNAL, HC & SC



**Compliance & Service delivery as per Agreement
Rules & Laws is Improved**



Flat buyer, RTI activist & common man may file RTI applications & write complaints to
REGULATORY AUTHORITY & APPELLATE AUTHORITY,
to get orders passed against builder.



SUPREME COURT OF INDIA

on Constitutional Validity of RERA

Nearly 40 petitions in different High Courts challenging the constitutional validity of RERA.

To avoid multiple and conflicting orders :Union Govt filed a Transfer Petition (Civil) Nos. 1448-1456 of 2017

Held :

(1) The Bombay High Court to hear all the petitions

(2) Decide the petitions within 2 months

BOMBAY HIGH COURT WP 2737 of 2017

on Constitutional Validity of RERA

- **Neelkamal Realtors Suburban Pvt. Ltd.**
Vs.
Union of India and ors.
- **Held on : DECEMBER 06, 2017**

Challenged :

(1) RERA violative of the provisions of Articles 14, 19(1)(g), 20 and 300-A of the Constitution of India.

(2) Most of the sections of RERA

BOMBAY HIGH COURT WP 2737 of 2017

on Constitutional Validity of RERA

- **Held :**
- **All the provisions of RERA constitutionally valid and directed to register the on going projects and comply with RERA.**
- **Section 6 regarding extension of the registration as against one year, the RERA to decide on case to case basis.**
- **Appellate Tribunal U/s 43 to have two judicial members as against earlier one.**

OBJECTS OF THE REAL ESTATE(R &D) ACT, 2016

1st Appeal: APPELLATE
TRIBUNAL 2nd Appeal: HC

4

OBJECTS

Regulatory Authority &
adjudicating officer

1

Regulation &
Development

2

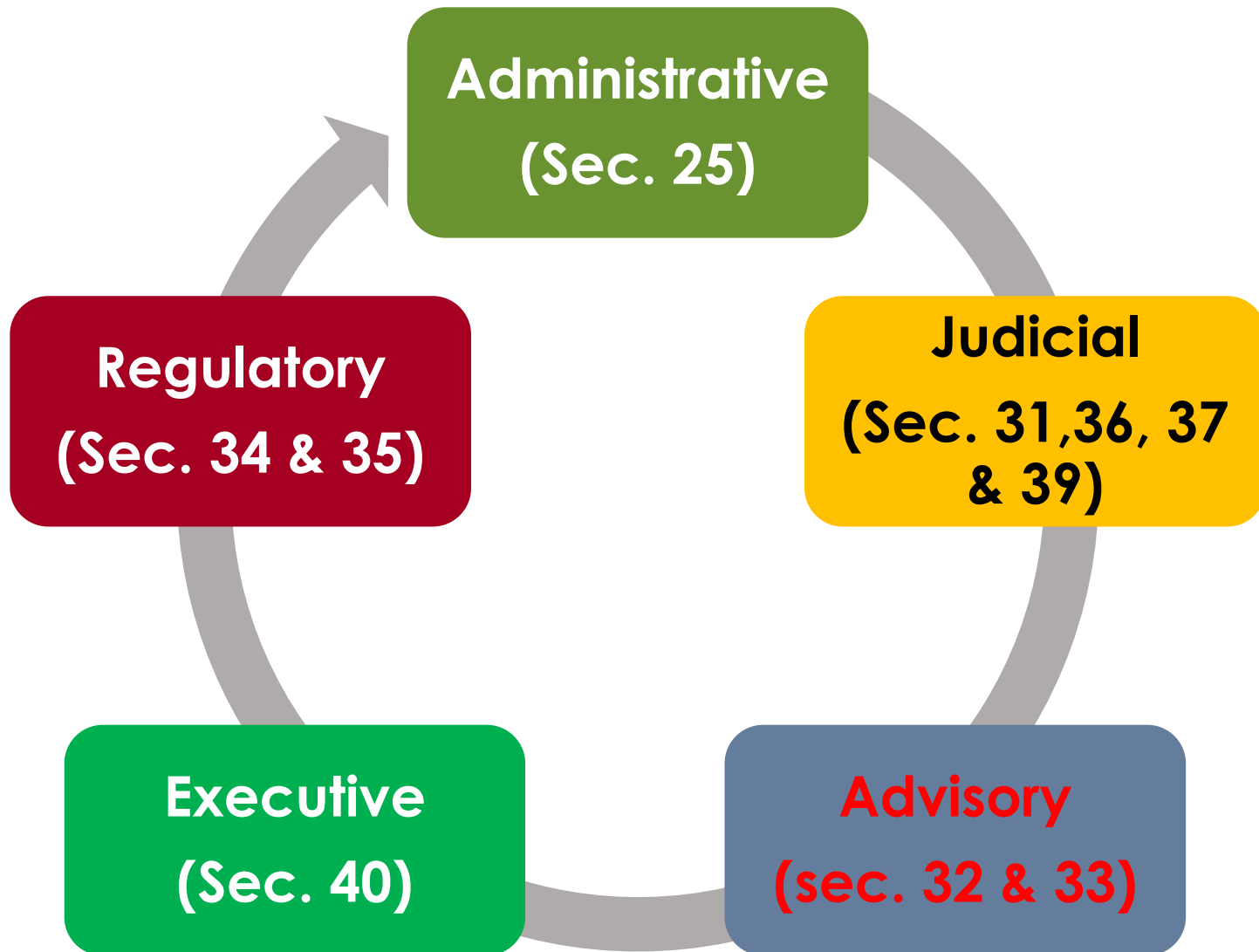
Transparency
and Efficiency



3

Protecting
Consumer
Interest

FUNCTIONS OF RERA



SALIENT FEATURES OF THE ACT



Real Estate Project Registration



Real Estate Agent Registration



Filing of Complaints



Financial Discipline



Transparent & Consumer-oriented

SC: WP 116 of 2019 in Forum for Peoples Collective Efforts & Anr v. The State of West Bengal & Anr – Set Aside West Bengal Housing Industry Regulation Act, 2017 considering it to be unconstitutional.

- The overlap between provisions of WB-HIRA and RERA was significant, leaving no doubt that State enactment was repugnant to Central enactment under Article 254 of Constitution. SC grounded its conclusion on following factors:
- The provisions of a statute are directly in conflict with a law enacted by Parliament so that compliance with one is impossible along with obedience to the other

SC: WP 116 of 2019 in Forum for Peoples Collective Efforts & Anr v. The State of West Bengal & Anr – Set Aside West Bengal Housing Industry Regulation Act, 2017 considering it to be unconstitutional.

- Parliament has intended to occupy the entire field by enacting an exhaustive and complete code
- The provisions of WB-HIRA do not compliment RERA. Instead, WB-HIRA purports to occupy the same field as the Union legislation.

U/S. 3 COMPULSORY REGISTRATION OF REAL ESTATE PROJECT

FOR DEVELOPMENT OF ANY PROPERTY **IN PHASES** OR OTHERWISE And All Pending Projects where OC is not received within 3 months And New Project before offer for sale.

REGISTRATION EXEMPTED

AREA DOES NOT EXCEED 500 SQ.METERS OR Less than 8 Units

All Completed Projects Where OC is Granted.

RENOVATION OR REPAIRS WHICH DOES NOT INVOLVE REALLOTMENT & MARKETING

Bombay High Court: WP (St) No. 1118 of 2021 on 1-03-2021 - Macrotech Developers Ltd Vs State of Maharashtra and Others

- Petitioner is not required to register the phase of the project “Lodha Dioro” upto 40th Floor under the provisions of Section 3 of the Act in view of the part occupancy certificate in respect thereof having been obtained/issued by the MMRDA prior to 1.8.2017.(i.e before the date fixed for registration of ongoing projects which was upto 3 months of commencement of the Act, 2016)

Bombay High Court: WP (St) No. 1118 of 2021 on 1-03-2021 - Macrotech Developers Ltd Vs State of Maharashtra and Others

- 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.

SEC. 2 DEFINITIONS

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or buildings, as the case may be, is given on rent;

NAVNEET BAGGA VS. NEELKAMALREALTORS – MahaREAT.

FACTS:-

1. Agreement possession date: **31.12.2015 (including 12months grace).**
2. Purchased in resale from Original **Allottee in 2013** with the consent of the Promoters.
3. Claimed Interest u/s **18 of RERA from promoter.**

DEFENCE BY PROMOTERS:

1. No privacy of contract being resale
2. Due to Economic Downturn, Ban on Sand Mining etc
3. Revised date of completion should be considered

FINDINGS AND JUDGMENT

1. RERA has jurisdiction as allottee includes subsequent purchaser.
2. Economic Conditions, Ban on Sand etc are not force majeure.
3. As clarified in **Neelkamal case**, the Complainant is entitled to reliefs as claimed for delayed interest from the date mentioned in the agreement.
4. RERA cannot rewrite the agreement.

U/S. 4 DISCLOSURE OF INFORMATION BY THE PROMOTER

By Registration of the Project for development of immovable property in specified form by paying prescribed fees and by submitting information.

No & Size of
Layout,
phases

Proposed
Project &
facilities

Approvals
for each
phase

Declaration
by
Promoter

He has Title & land
is free from
Encumbrances &
Specimen of
Agreement for sale
Conveyance deed
Allotment letter etc

Project to be
Completed
as per Terms
Of
Registration
And schedule
of completion

Project to be
Completed
Within the
period
Of sanction by
Competent
Authority

70% of Realized
amt to be
deposited
in a separate
a/c In Sch. Bank
For meeting cost
Of project

**SUPREME COURT OF INDIA :
CIVIL APPEAL NO(s) 9064 & 9065 of 2018**

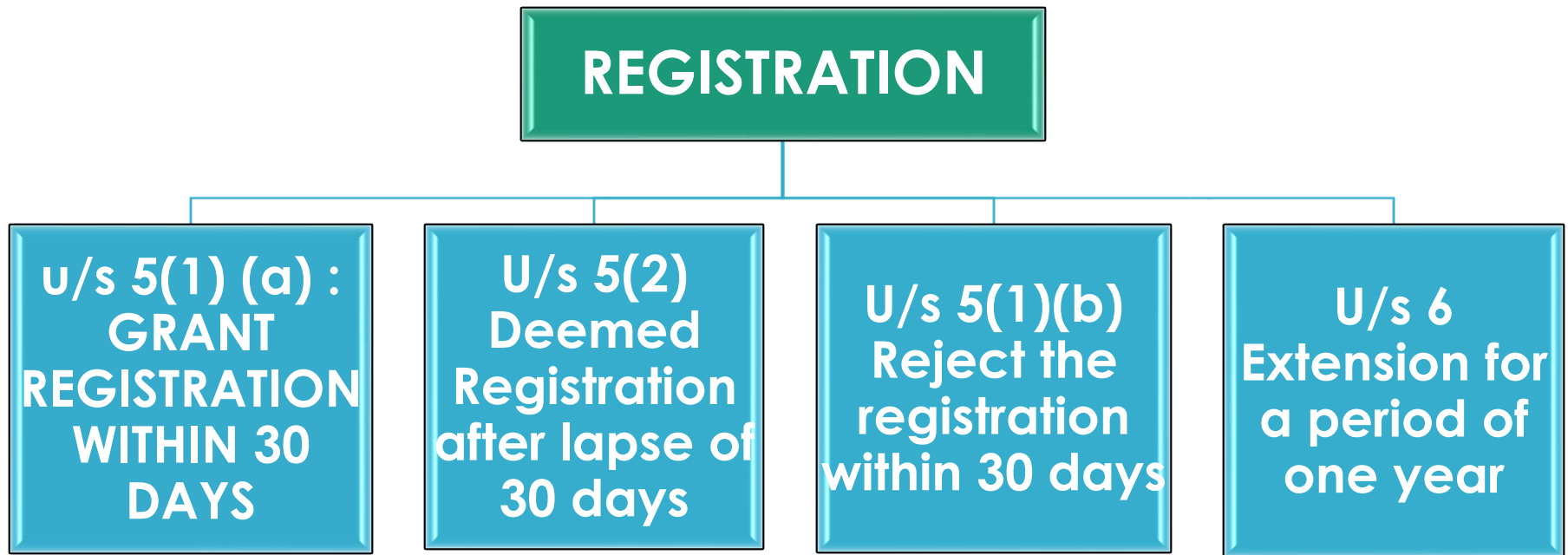
Ferani Hotels Pvt. Ltd. V / s SICr Mumbai & others

Order Dated : 27th September 2018

Held : To display Sanctioned plan; Layout plan; along with the specifications approved by the Competent Authority at the site apart from any other manner provided by the regulations made by the Authority. This aspect should be given appropriate publicity as a part of enforcement of RERA

MahaRERA Circular 20/2018 Dated 9th Aug, 2018

U/s 5 GRANT AND U/s 6 EXTENSION OF REGRN



- (1) provide a Registration number,
- (2) Login Id and password for accessing the website
- (3) Period of Registration: As provided by the promoter

U/S. 7 RECOVATION OF REGISTRATION OF REAL ESTATE PROJECT

**On complaint
By any Stakeholders**

**Suo moto based
on any information,
Audit Report etc**

U/s8 :Consequence of Revocation or Lapse

**Debar
the
promoters
From
Execution &
Accessing
Website**

**Complete the
Project
by the
association
of allottees or
in any other
manner.**

**Declare as
Defaulter
And
Display
Photographs
In All States
Website.**

**Freeze the
Dedicated
account and
Transfer the
balance
To complete the
project**

CANCELLATION OF REGISTRATION

The MahaRERA suo motto order dated 3-11-022 **cancelled 54 registrations**

Suo motto order dated 21-11-2022 : **cancelled 15 registrations**

Reasons: The project was registered by using the forged approvals of KDMC.

Preventative Measures directed

1. (1) To the Secretary, (Urban Development)
Government of Maharashtra and

2. All local Planning Authorities to ensure that all statutory certificates are uploaded immediately upon issuing the same on their respective website / webpage including any changes / additions / alterations / modifications & Share with MahaRERA

Accordingly, Urban Development department
has passed a GR dt. 23-02-2023

Directed all the Competent Authorities to make available the commencement certificate and completion certificate of all the sanctions granted for the real estate sector in their jurisdiction.

SEC. 8 OBLIGATION OF AUTHORITY CONSEQUENT UPON LAPSE OF OR ON REVOCAION OF REGISTRATION

Upon lapse of the registration or on revocation of the registration under this Act, the **Authority**, may consult the **appropriate Government to take such action as it may deem fit** including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

SEC. 8 OBLIGATION OF AUTHORITY CONSEQUENT UPON LAPSE OF OR ON REVOCAION OF REGISTRATION

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, **the association of allottees shall have the first right of refusal for carrying out of the remaining development works.**

MAHARERA ORDERS BASED ON HC JUDGMENTS ON SECTION 7 & 8

- **Order No: 07 /2019 Date: 08h February 2019**
- **Consent of Association of Allottees is required to grant Extension of Registration u/s 7(3) of RERA**
- **Order No: 8/19 on 28.03.2019**
- **Empowered the purchasers of the Flats to form an Association of the Allottees to complete the project as per section 7 and 8 of RERA.**

HC WP NO. 2737 NEEL KAMAL REALTORS SUBURBAN PVT. LTD. AND ANR. VS. UNION OF INDIA

- **“The law confers powers u/s 7 on the authority, in the larger public interest to regulate the real estate sector. The authority shall be entitled to take into consideration reasons and circumstances due to which the project could not be completed within the extended aggregate period of one year as prescribed under Section 6.**

Minimum Members required in the Association to apply u/s 7 & 8 .

- **Provided that Association of allottees shall be Association or society or cooperative society or a federation or any other body by whatever name called, consisting of a majority of allottees having booked their plot or apartment or building, as the case may be, in the project.**

MahaRERA Order No ; 8/19



While filing the complaint, the Association of Allottees Shall also provide the following documents:

- ❖ Declaration confirming that the complainants has / have not filed any complaint & is pending with**
- ❖ (1) NCLT**
- (2) Debt Recovery Tribunal or**
- (3) Any other court/**
- (4) Any other Forum under any Act including**
- (5) IBC/**
- (6) SARFAESI ACT/**
- (7) DRT ACT/**
- (8) MPID ACT etc. and that on such proceedings are pending, to the best of their knowledge.**

MahaRERA Order No ; 8/19



Provide List of all stakeholders with available contact including

- (1) competent Authority,**
- (2) Promoter –**
- (3) Landowner /**
- (4) Investor,**
- (5) Architects certifying form 1 and 4,**
- (6) Engineer certifying Form 2 and**
- (7) CAs certifying Form 3 & 5 ,**
- (8) Banks listed in encumbrance certificate, and**
- (9) any other parties with third party interest in the project.**

MahaRERA Order No ; 8/19



- ❖ **On receiving this complaint, MahaRERA Shall do the following :**
 - (1) serve notice to the promoter, stating the grounds on which it is proposed to revoke the registration.**
 - (2) The Promoter is provided thirty days' notice to present his case.**

MahaRERA Order No ; 8/19



- (3) Copy of the said notice shall also be sent to the competent Authority. Association of allottees, Promoter - Landowner / Investor, Architects certifying Form 1 and 4, Engineer Certifying Form 2 and Chartered Accountant certifying Form 3 and 5, Banks listed in encumbrance Certificate, and any other parties with third party interest in the project.**
- ❖ (4) While a complaint under Section 7 or 8 is being heard by Chairperson/Member, all other pending complaints including complaints under section 7, against that project shall be brought under the same Chairperson/ /Member.**

MahaRERA Order No ; 8/19



- (5) Further complaints received for the same project shall be clubbed together and be heard along with other complaints of revocation.**
- (6) For any action to be taken under section 7 or 8, the MahaRERA may constitute Designated Resolution Panel (DRP) Consisting of one member from promoter's Associations and one member from consumer forum.**
- (7) The member of the said panel would be selected out of the existing conciliation forum members who has adequate professional experiences in the Real Estate Sector or is a Chartered Accountant, or Architect, or Engineer, or lawyer.**



(8) The said panel with the help of Association of Allottees shall prepare a blue Print for completion of the project. The Blueprint shall consist of the following:

- ❖ (a) Financial Blueprint detailing current financial status of project including Cash in Hand, Liabilities, expected revenue and so on. It shall also contain financial estimate to complete the project and detailed roadmap towards arranging the finances.**

MahaRERA Order No ; 8/19



- (b) Construction Blue Print determining the amount of construction work needed to complete the project. Accordingly, detailed roadmap with timelines for completion of work including selection of contractor.
- ❖ (c) Overall, Designated Resolution Panel with the help of Association of Allottees shall prepare the detail blueprint for project completion.
 - ❖ (d) The existing professionals attached to the MahaRERA Registered Project namely Architect, Engineer, Chartered Accountant shall assist the said panel in the preparation of the blue print.



- (9) The aforesaid entire exercise will have to be completed within a **period of four months**. However, MahahRERA by recording reasons may extend the said period.
- (10) After finalization of blue print, the said blue print will be submitted to the MahaRERA by Designated Resolution Panel.



- ❖ **MahaRERA May decide the Following:**
- ❖ (1) Permit the project to remain in force subject to such further terms and conditions as it thinks fit to impose under Section 7 (3).
- ❖ (2) All the terms & conditions imposed by Maharera Shall be binding on promoters as well as Association or allottees.
- ❖ (3) Or revoke the Registration of the project

U/S. 9 COMPULSORY REGISTRATION OF REAL ESTATE AGENT & U/s 10 Functions.

U/s 9 No unregistered Real Estate Agents shall facilitate sale of registered projects with RERA.

U/s 10 Functions of Real Estate Agent

Not to Facilitate sale of unregistered projects

Maintain the books of a/c

Not to involve in any unfair trade practices.

Facilitate for all information & Docs

Any other functions prescribed

OBLIGATIONS OF PROMOTERS :

Sec-3

- Register the project with the authority before offer to sell.

Sec- 4

- Upload 5 yrs track record and project details on website.

Sec 4

- deposit 70% of buyers in a separate scheduled bank account, to be used for land cost and construction after certified by Architect , Engineer and Chartered Accountants. & Audit .

Sec 11

- Disclose all the details of the project to customer

OBLIGATIONS OF PROMOTERS :

Sec-11

- Form the society on booking majority flats

Sec- 12

- Liable for damages for any misinformation in Advt.

Sec -13

- Register the agreement before receiving more than 10%

Sec 14

- Adhere to approved plans & project specifications
Promoter is liable for 5 years defect liability

OBLIGATIONS OF PROMOTERS :

Sec-15

- NOC from 2/3rd and Authority to create third party interest

Sec- 16

- Take insurance of Title and building

Sec -17

- Transfer the title within 3 months of OC

Sec 18

- Refund , compensation and interest on default.

ANITA CASTELLION VS. GODREJ LANDMARK REDEVELOPMENT PVT. LTD –Bom HC

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 stopped 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.

SAMRUDDHI VIREKAR VS. KARAN DEVELOPERS Findings:

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. Samruddhi 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.

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

OBLIGATIONS OF PROMOTERS :



Sec-13

- **Register the agreement before receiving more than 10% of value.**
- **The agreement has be in the prescribed form as per Rules.**

SC: Directed Union Govt to prescribe Uniform Agreement and uniform state Rules across India as per RERA.

- Hearing a PIL by Ashwini Upadhyay Hon'ble SC directed that Based upon the responses from state Govts, the Central Government along with the amicus curiae would prepare a model agreement for sale containing –
- **Part A: 'Core' clauses** in consonance with the mandatory provisions of the Real Estate (Regulation and Development) Act 2016, for the protection of the home buyers. These clauses cannot be altered by any State/UT and must necessarily be a part of every agreement for sale.”

SC: Directed Union Govt to prescribe Uniform Agreement and uniform state Rules across India as per RERA.

Part B: Additional clauses based on individual needs and exigencies of each State/UT as permissible within the scheme of the 2016 Act. However, these clauses must not be contrary to or dilute in any manner the clauses in Part 'A'," it said.

Held: The bench noted that after considering the response from 11 states on the model agreement for sale, union govt would submitted the same for consideration and for its approval. "The states/UTs shall then incorporate in the agreement for sale.

RERA IMPLEMENTATION STATUS REPORT

(As on 15-10-2022)



94748
Real Estate
Projects

70,035
Real Estate
Agents

101,083
Complaints
Disposed-off

Source : Ministry of Housing and Urban Affairs:
<https://mohua.gov.in/cms/implementation-status.php>

PROFESSIONAL OPPORTUNITIES FOR CAs :



- **Consultancy & Compliance for REGISTRATION , extension, revival of lapsed projects (Sec 3 to 8)**



- **DRAFTING AND VETTING OF DOCUMENTS AS PER RERA REQUIRED FOR REGISTRATION**



- **Chartered Accountant for certificate to withdraw from designated account in the prescribed form.**



- **Chartered Accountant for yearly RERA Audit in the prescribed form.**

PROFESSIONAL OPPORTUNITIES FOR CAs :

5

- Represent before the authorities (Sec 56) such as RERA, Appellate Tribunal and Adjudicating officer.

6

- **RETAINERSHIP SERVICES** for various compliances and consultancy through the cycle of the project.

7

- **CONSULTANCY ON MANAGEMENT OF THE FUNDS AS PER RERA**

8

- **OTHER SERVICES TO PROVIDE IN ADDITION TO ACCOUNTS, DIRECT AND INDIRECT TAX CONSULTANCY.**

OFFENCES AND PENALTIES

Section	Offence	Penalty
59(1)	Contravention of S-3 i.e. failure to obtain registration.	Upto 10% of cost of project as per RERA.
59(2)	Contravention of any other provision of (other than S-3) or of rules made there under.	Punishable with a term extended upto 3 yrs. Or with fine which may extend upto further 10% of the cost of project or with both.

OFFENCES AND PENALTIES

Section	Offence	Penalty
60	Provides false information or contravenes the provisions of sec.4 – Application for registration with RERA	Penalty upto 5% of cost of project.
61	Contravention of any other provisions of the Act.	Penalty upto 5% of cost of project.

OFFENCES AND PENALTIES

Section	Offence	Penalty
62	Non Registration by Estate Agents or contraventions of section 9 and 10 regarding registration of estate agents with RERA	Rs.10,000/- during which such default continues which may cummulative extend upto 5% of cost of plot/flat/ Apt for which sale and purchase has been facilitated as per RERA.
63	Failure to comply with the orders of Authority by the Promoter	Penalty for every day during which the default continues, which may be cummulative upto 5% of cost of project.

OFFENCES AND PENALTIES

Section	Offence	Penalty
64	Failure to Comply with the Orders of Appellate Tribunal by Promoter	Punishable with imprisonment for a term which may extend upto 3 years or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of project.
65	Failure to comply with the orders of Authority by the Real Estate Agent.	Penalty for every day during which the default continues, which may be cummulatively upto 5% of cost of plot/flat as the case may be for which sale /purchase done.

OFFENCES AND PENALTIES

Section	Offence	Penalty
66	Failure to Comply with the Orders of Appellate Tribunal by real estate agent	Punishable with imprisonment for a term which may extend upto 1 year or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of flat/Apt as the case may be done.
67	Failure to comply with the orders of Authority by the Allottee.	Penalty for every day during which the default continues, which may be cummulatively upto 5% of cost of plot/flat as the case may be for which sale /purchase done.

OFFENCES AND PENALTIES

Section	Offence	Penalty
68	Failure to Comply with the Orders of Appellate Tribunal by the allottee.	Punishable with imprisonment for a term which may extend upto 1 year or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of flat/Apt as the case may be.
69	Offence committed by Company- Every officer at the relevant time and also the company shall be liable to pay the penalty.	Every Director officer or manager who is liable to discharge the duties shall be considered as committed the offence and shall be accordingly committed.

SUPREME COURT :WP 43 OF 2019

- **Newtech Promoters and Developers Pvt Ltd.
Vs**
- **UP State RERA& Others**
- **Order Dated: 11th November, 2021**
- **Challenged by the Promoter on various aspects of RERA working including :**
 - i) Whether the Act has a retroactive application?**
 - ii) Whether the Authority has power to pass an order directing the builders to refund the amount to the allottees under Sections 12, 14, 18 and 19 of the Act?**

SUPREME COURT :WP 43 OF 2019

iii) Whether the Authority has the power under Section 81 to delegate its function of hearing of complaints?

iv) Whether the pre-condition of pre-deposit mentioned under Section 43(5) of the Act in relation to right of appeal is valid?

v) Whether the Authority has been vested with the power to issue recovery certificate for recovery of the principal amount?

SUPREME COURT :WP 43 OF 2019

4. ISSUE 1: RETROACTIVE APPLICATION OF THE ACT

Whether the Act has retroactive or retrospective effect and what will be its legal consequences if tested on the anvil of Constitution of India?

It was observed by the Court that the Act is not retrospective in nature because it affects the existing rights of the persons mentioned in the Act like promoters, allottees etc. The intent of the legislature was to bring all "ongoing projects"² which commenced prior to the Act and for which the completion certificate had not been issued, under the ambit of the Act.

SUPREME COURT :WP 43 OF 2019

ISSUE 2: POWERS VESTED WITH THE AUTHORITY

Whether the Authority has power to pass an order directing the builders to refund the amount to the allottees under Sections 12, 14, 18 and 19 of the Act or does such a power exclusively vest with the adjudicating officer under Section 71 of the Act?

In view of the legislative intent of the Act, the Court held that the power is vested with the Authority to deal with issues relating to refund of the investment amount or interest on such refund.

SUPREME COURT :WP 43 OF 2019

ISSUE 2: POWERS VESTED WITH THE AUTHORITY

However, if any complaint pertains to compensation and interest thereon, the adjudicating officer under the Act will have the power to deal with such cases. If adjudication other than compensation as envisaged under Sections 12, 14, 18 and 19 of the Act is extended to the adjudicating officer, it may expand the ambit and scope of powers and functions of the adjudicating officer under Section 71 of the Act, and that would be in contravention of the Act.

SUPREME COURT :WP 43 OF 2019

ISSUE 3: POWER OF AUTHORITY UNDER SECTION 81 OF THE ACT

Whether the Authority under Section 81 of the Act has the power to delegate its function of hearing of complaints under Section 31 of the Act to a single member?

If the power under Section 81 of the Act has been delegated by the Authority, then such action, if being exercised by a single member cannot be said to be outside the provisions of the Act.³ However, the same power to delegate under Section 81 shall exclude making regulations under Section 85 of the Act.

SUPREME COURT :WP 43 OF 2019

ISSUE 4: VALIDITY OF PRE-DEPOSIT UNDER SECTION 43(5)

Whether the pre-condition of pre-deposit mentioned under Section 43(5) of the Act for dealing with substantive right of appeal is valid in the eyes of law?

The Court held that the question of discrimination between allottees and promoters does not arise as they fall under distinct and different categories or classes. The deposit of amount equivalent to 30 percent of penalty by the promoter while preferring an appeal shall avoid uncalled litigation at the appellate stage and shall further safeguard the

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amount to be recovered for the allottee in case the appeal fails at a later stage. The intention of the legislation is that the promoters ought to show their bona fide intentions by depositing the amount so contemplated and avoid frivolous appeals.

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ISSUE 5: POWER OF AUTHORITY TO ISSUE RECOVERY CERTIFICATE

Whether the Authority has been conferred power under Section 40(1) of the Act to issue recovery certificate for retrieval of the principal amount?

The Court observed that there exist visible inconsistencies in the powers of the Authority regarding refund of the principal amount under Section 18 of the Act and the text of the provision by which such refund can be referred under Section 40(1) of the Act. If Section 40(1) is strictly construed, it would defeat the purpose of the Act.

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The Court held that there exists ambiguity in Section 40(1) of the Act and the same must be harmonized with the purpose of the Act. It was further clarified that the amount which has been determined and refundable to the allottees is recoverable within the ambit of Section 40(1) of the Act.

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- **Pioneer Urban Land and Infrastructure Ltd**
Vs
- **Union of India & Others**
- **Order Dated: 9th August, 2019**
- **Challenged Home Buyers as Financial Creditors under IBC, 2016 while RERA in place.**
- **Held :**
- **The Amendment to the Code include Home Buyers as financial creditor u/s 5(8)(f) does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.**

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- **Held :**
- **The RERA is to be read harmoniously with the Code**
- **In the event of conflict that the Code will prevail over the RERA.**
- **Concurrent remedies to Allottees:**
 - (a) Consumer Protection Act, 1986,**
 - (b) RERA**
 - (c) Triggering of the Code.**
- **Directed the Chief Secretaries of all the states/ UT to appoint Permanent Authority/Tribunal in 3 months as per RERA. **

MAHAREAT Appeal in Complaints No. SCI 0000672
Regn of RERA on plot size or number of apartments or both.

- **M/s Geetanjali Aman Constructions Vs**
- **Hrishikesh Ramesh Paranjpe & others**
- **Appellants had not registered the project.**
- **The area of plot is 382 sq.mtrs. and project consists of twenty two flats and nine shops**
- **Two members held: The exemption is for projects of 500 sq.Meters or 8 units ..Need not register the project with MahaRERA.**
- **Other member held: 500 sq.Meters is for plots and units are for buildings... so liable for regn.**

BOMBAY HIGH COURT :CIVIL APPLN .683 OF 2018: RERA apply to long leased under construction flats.

- **Lavasa Corporation Limited**
Vs.
- **Jitendra Jagdish Tulsiani & others**
- **Held that: Long term lease of '999 years', it would definitely amount to sale and is thus covered under RERA.**

MAHARERA Complaint No: -78620

Applicability of RERA to industrial Units

- Techno Dirive Engineer Pvt Ltd
- **Vs**
- Renaissance Indus Infra Pvt Ltd
- Coram: Hon'ble Shri. B.D.Kapdanis
- Date: 26th November, 2019
- MahaRERA regn No. p51700010971
- Held :
- **RERA is not applicable to Industrial units as the definition of apartment in RERA does not include industry as against definition flats under MOFA which includes industry.**

- **BOMBAY HC :2nd APPEAL 13781 OF 2018**
- **Accountability of Professionals upheld**

- **M/s Sea Princess Realty] Vs Allottees**
- **Project : Gundecha Trillium**
- **Possession Date : 31st December, 2016**
- **MahaRERA order: 16.01.2018,**
Decided : Int for 6 months
- **MahaREAT order : 4th April, 2018,**
Decided :

- (1) Conducted joint inspection &**
- (2) allowed interest for 1 year and**
- (3) Action against Architect for issuing wrong certificate of completion.**

2nd Appeal order : 7th JUNE, 2018 BY HC.

2nd Appeal only on Question of law and not on facts.

- Relied on SC : Surat Singh-vs- Siri Bhagwan and ors [(2018)]
- Ratio : “ As per para 20. of the considering CPC section 100 of CPC, the 2nd appeal would be only if the High Court is "satisfied" that the case involves a "substantial question of law“.
- The entire appeal is based on the facts discovered in the First appeal
- Dismissed the appeal
- **Confirmed: Interest on Delayed possession for 1 year and actions against architect.**

BOMBAY HC : WP(L) 908 OF 2018.

Complaints of Un-registered Projects to be heard

- Mohd Zain Khan Vs MahaRERA
- Order Date : 31st July, 2018.
- **MahaRERA was not entertaining complaints of unregistered projects.:**
- In HC MahaRERA gave an undertaking to modify the software and register the complaints of unregistered projects in 15 days:
- **Held :**
MahaRERA to hear complaints against unregistered projects and dispose of the complaints as per the procedure set for registered projects.

SC: CIVIL APPEAL NO(s) 9064 & 9065 of 2018
Plans need to be Displayed at site By SC

Ferani Hotels Pvt. Ltd. V / s SIC Mumbai & others

Order Dated : 27th September 2018

Challenge : Appeal raises the issue of disclosure under the R T I , seeking information regarding the plans submitted to public authorities by a Signature Not Verified Digitally signed by developer of a project. The SIC had allowed it.

SC Held : **No merit in the appeal and consider it a legal misadventure & imposed cost of Rs.2.5 Lakhs**

SC :CIVIL APPEAL NO(S). 3533-3534 OF 2017

Int & Refund on Delayed Possession beyond 3 years

**M/S. FORTUNE INFRASTRUCTURE (NOW KNOWN AS
M/S. HICON INFRASTRUCTURE)**

VERSUS

TREVOR D'LIMA & ORS.

Held: Upheld the decision of NCDRC that in the absence of date of Possession in the Agreement is not mentioned, 3 years will be reasonable time from the date of booking.

Authorities/ Appellate Tribunals have relied upon this and passed number of decisions.

MAHAREAT Appeal No. AT-10802

- **M/s. Unique Shanti Developers**
Vs
Mrs. Malaika Monis & others:

Date : 19th November, 2019

The promoter had challenged the order refund of principle amount with interest to allottees by Adjudicating officer due to delay in handing over the possession as per agreement for sale.

MAHAREATAppeal No. AT-10802

- WP: 2737/2016, Neel Kamal Realtor case, the Hon'ble Bombay High Court has laid down that, -
- **"Provisions of RERA Act do not rewrite the clause of completion or handing over possession in agreement for sale."**
- **S.4(2) (I)(C) enables the Promoter to give fresh timeline independent of the time period stipulated in agreement for sale so that he is not visited with penal consequences laid down under RERA.**

MAHAREAT APPEAL NO. AT -10679

RERA to supersede of one side Agreement

Mr. Sandeep Shivram Jadhav

Vs

Rahul Excellence,

Challenged the order of MahaRERA for allowing the deduction of 20% of the agreement value by the promoter as per the registered agreement.

Appeal Order Date: 15th March, 2019

MAHAREAT APPEAL NO. AT -10679

Held : (1) Adjudicating officer committed error in deducting 20% as per deduction clause in an agreement while allowing exit.

(2) Section 18(1)(a) of RERA Act 2016 will prevail over said deduction clause of agreement which took place prior to application of provisions of RERA.

(3) Any term or condition in an agreement which are against the spirit of provisions of RERA cannot be implemented as parties are governed by obligations and duties as per RERA.

SC:CIVIL APPEAL NO 12238 OF 2018

Complaints can be filed even after receiving OC

Pioneer Urban Land & Infrastructure Ltd. ...

Vs

Govindan Raghavan ...

SC Decided on : 2nd April, 2019

Builder challenged the NCDRC order which had allowed the allottee to exit with interest as the even though OC was received before the complaint was decided as OC was delayed by two years against the agreed possession date.

SUPREME COURT OF INDIA :

CIVIL APPEAL NO 12238 OF 2018

Held : One side contract not binding on Parties.

- (1) A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.
- (2) when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.
- (3) Confirmed the order of NCDRC for exit with interest though OC was received during trial.

W.P (L) NO.3714 OF 2017- Bombay High Court

Sharan Bihari Lund Vs Union of India and others

1. MahaRERA order 28.11.2017 merely recorded submissions of the parties and without elaborating reasons proceed to pass the order.
2. Section 38(2) of RERA provides that the authority shall be guided by the principles of natural justice
3. The recording of reasons is obviously an aspect of the principles of natural justice and need to be adhered to.
4. The order that ought to be passed by the authority shall be in compliance with the statutory requirements of Section 38(2) of the Act

MahaREAT: Sea Princes Realty Vs Manoj Votavat : No.AT-78

- The promoter M/s. Sea princess Realty shall pay interest @ 10% p.a. as directed as chairperson in the order dated January 16, 2018 effective from 1st January, 2017 till actual handing over the individual flat to each of the allottees duly complete in all respect with amenities as illustrated in para 5 of the Agreement.
- The secretary MahaRERA is requested to independently initiate action under the provisions of RERA against Mr. Manoj Dubal for issuing factually incorrect Certificate date dt.01.11.2017

RAJASTHAN HC

UBI, Jaipur Vs. Rajasthan RERA: Para 36

- (i) Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid.
- (ii) 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. (iii) 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.
- (iv) RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security.⁹³

RAJASTHAN HC

UBI, Jaipur Vs. Rajasthan RERA: Para 36

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.

- (iv) 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.

SC: UBI Vs Rajasthan RERA

SLP to Appeal (C) Nos.1861-1871/2022

- We are in complete agreement with the view taken by the High Court by which the High Court has ultimately concluded in para 36.

“(v) 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.”

- However, it is clarified that para 36(v) reproduced hereinabove shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights. With this, the Special Leave Petitions are dismissed.

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CA.Ramesh S. Prabhu, FCA, CISA(USA)

Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented.

--CA. Ramesh S. Prabhu

Let us empower each one of us by sharing knowledge. Let us Innovate, Get involved & Solve issues collectively within four corners of Law.

Thank you for Getting involved in the discussion!

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