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Juris Corp
advocates & solicitors

RERA DOSSIER (2019-20)

INSIGHTS ON VARIOUS JUDICIAL PRECEDENTS SET BY THE REAL ESTATE REGULATORY AUTHORITIES

JURIS CORP OFFICES: MUMBAI (CORPORATE) • MUMBAI (DISPUTE RESOLUTION) • DELHI • BENGALURU

Juris Corp in the RERA Space

Juris Corp (**"the Firm"**) has developed substantial experience in structuring various complex real estate deals / transactions. For this, we draw on our capabilities in land laws, connects in multiple jurisdictions, securities law and banking regulations, as well as our experience in advising various real estate developers and investors / arrangers.

Juris Corp is one of the very few firms which has a dedicated team, with ability to advise on transactions across multiple locations in India, with vast experience in analysing and dealing with the provisions of the Real Estate (Regulation and Development) Act, 2016 (**"the Act"**).

The scope of work generally involves the following:

- Advise:
  - ✓ Clients on registration of projects under the provisions of the Act along with overseeing regulatory and procedural compliance with the Act and the relevant state rules.
  - ✓ Various financial institutions on safeguarding their interests in the collateral given by the borrowers vis-à-vis the existing facilities and new facilities in light of the provisions of the Act.
  - ✓ Clients on projects undertaken under the slum rehabilitation scheme.
  - ✓ Group structuring for efficiency and risk mitigation
- Drafting:
  - ✓ Applications to extend the registration of projects registered under the provisions of the Act and procuring certificates from the Real Estate Regulatory Authority for the same.
  - ✓ All documents in relation to highly complex Joint Venture structures, Development and Management structures in light of the provisions of the Act.
- Drafting, vetting and negotiating all documents for conveyance, lease and leave and license in relation to residential and commercial premises.
- Drafting, structuring, advising and negotiating all documents in relation to Real Estate Funding (in the form of loan, debentures, equity etc.).
- Drafting, vetting, advising and negotiating all documents on the basis of the commercial objectives of the transaction.
- Representing developers, homebuyers and financial institutions before the relevant Real Estate Regulatory Authority and the Appellate Authority constituted under the Act.

Juris Corp Team

Avikshit Moral

Equity Partner

Email: avikshit.moral@jclex.com

Mumbai

Practice Areas

- Real Estate
- Corporate Commercial
- Mergers & Acquisitions
- Advisory on Cross Border Transactions
- Private Wealth Management
- Education

Preeti Dhar

Principal Associate

Email: preeti.dhar@jclex.com

Mumbai

Aditi Joshi

Senior Associate

Email: aditi.joshi@jclex.com

Bengaluru

Chaitra Srinivas

Senior Associate

Email: chaitra.srinivas@jclex.com

Bengaluru

Prasham Shah

Associate

Email: prasham.shah@jclex.com

Mumbai

Kamlendra Singh

Associate

Email: kamlendra.singh@jclex.com

Delhi

Anirudh Jakhotia

Associate

Email: anirudh.jakhotia@jclex.com

Mumbai

Supported by:

Mannat Sabharwal

Trainee Associate

Delhi

Jainil Mehta

Trainee

Mumbai

Our Values

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Glossary

Abbreviation	Definition
Delhi RERA	Delhi Real Estate Regulatory Authority
Haryana RERA	Haryana Real Estate Regulatory Authority
IBC	Insolvency and Bankruptcy Code, 2016
Karnataka RERA	Karnataka Real Estate Regulatory Authority
MahaRERA	Maharashtra Real Estate Regulatory Authority
MahaRERA Appellate Tribunal	Maharashtra Real Estate Appellate Tribunal
MOFA	The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963
POA	Power of Attorney
The Act	The Real Estate (Regulation and Development) Act, 2016

INTRODUCTION

The real estate sector witnessed the beginning of a new era with the notification of The Real Estate (Regulation and Development) Act, 2016 (**"the Act"**), on 1st May 2017. With an object to bring about transparency and accountability in the real estate sector, the Act mandated developers to register their ongoing projects as well as new projects with the real estate regulatory authorities constituted under the Act.

Pursuant to the notification of the Act, the real estate sector eagerly awaited to see how the various provisions of the Act are interpreted by the various real estate regulatory authorities. Three years have passed since the Act was notified. Within a year of notification of the Act, the constitutional validity of various sections of the Act were challenged. However, the same was upheld by the High Court of Bombay. Over a period of time there have been some important rulings on certain aspects of the Act that have had an impact on how the stakeholders in the real estate sector have and continue to function.

This dossier intends to capture and compile the relevant judgments/orders passed during the past one year by Maharashtra Real Estate Regulatory Authority (**"MahaRERA"**), Karnataka Real Estate Regulatory Authority (**"Karnataka RERA"**), Delhi Real Estate Regulatory Authority (**"Delhi RERA"**) and Haryana Real Estate Regulatory Authority (**"Haryana RERA"**) which are pertinent from the perspective of developers, homebuyers and financial institutions on issues most relevant to each of them. The dossier also gives a flavour of divergent views taken by Authorities located in different states, making it extremely important to be mindful of the location of the Project one is involved in.

DEVELOPERS

1. DEVELOPERS

1.1 Withdrawal from Project on the basis of the Allotment Letter and payment of interest in such cases

One of the primary purposes of the Act is to establish an efficient and transparent manner to protect the interests of the consumers in the real estate sector. This was at the beginning of the real estate regulatory authority regime. With the introduction of the Act, real estate regulatory authorities all over the country were faced with a vexed question – **Can an allottee withdraw from a real estate project in the absence of an agreement for sale?**

In this regard, we have experienced that the stand taken by various real estate regulatory authorities has *'evolved'* over time. Essentially, real estate regulatory authorities have held that the terms of withdrawal will be governed by the terms of the allotment letter in the absence of an agreement for sale.

Below is a bird's eye view of the stand taken by the real estate regulatory authorities.

- **MahaRERA**
  - ***Santanu Nandy vs. Rajesh Estates & Nirman Private Limited***

    In this case, MahaRERA held that if the allottee intends to withdraw from the project, then such withdrawal shall be guided by the terms and conditions of the allotment letter.
  - ***Vijay Kumar Udasi & Ors. vs. Lohitka Properties LLP***

    MahaRERA held that in the absence of an agreement for sale, the allottee will not be entitled to any benefits under Section 18 of the Act.

    Section 18(1) of the Act *inter alia* provides that if the promoter is unable to give possession in terms of the agreement for sale or as the case may be, he shall be liable to return the amount received by him along with the interest in case the allottee wishes to withdraw from the project.
  - ***Mrs. Aparna Bhausaheb Lilinge vs. M/s. Maple Buildcon***

    The developer was directed to only refund the booking amount as per the terms and conditions of the booking application in the absence of any allotment letter or an agreement for sale. MahaRERA held that in the absence of an agreed date of

possession, as such there was no violation of Section 18 of the Act and the allottee was not entitled to any interest.

- ***Ratul Lahiri vs. Tata Housing Development Company***

  In the instant case, the date of possession was not mentioned in any written agreement. The booking form executed by the parties stated that the date of possession was to be decided at the time of execution of the agreement for sale. Upon hearing the parties and appreciating the evidence on record, the Maharashtra Real Estate Appellate Tribunal (**"MahaRERA Appellate Tribunal"**) observed that the possession was to be handed over by end of 2018. However, the developer unilaterally changed the same to December 2022. Negating the contention of the developer that the allottees cannot be granted compensation under Section 18 of the Act, it was held that where there is no agreement for sale indicating date of delivery of possession, other documents indicating agreed date can be relied upon in order to hold the developer accountable. Such documents may be a booking form, allotment letter, advertisement / pamphlet, brochures etc.

➢ **Delhi RERA**

- ***Shahid Khan vs. Delhi Development Authority***

  The Delhi RERA was faced with an issue as to whether the date of issue or the date of actual dispatch of allotment letter should be considered for computation of refund to the allottee. The Delhi RERA held that the date of dispatch shall be treated as date of issuance and not the date printed on the allotment letter.

1.2 Payment of interest under Section 18 of the Act:

Section 18 of the Act is a fundamental element of the Act. Majority of the allottees approach the relevant real estate regulatory authorities claiming compensation in the form of interest under Section 18 of the Act. An allottee can either withdraw from the project or continue in the project in case the developer fails to give possession of the unit in accordance with the *"agreement for sale"*. In the former case, the allottee can claim the entire amount paid by him along with interest while in the latter

case the allottee can continue in the project and claim monthly interest on the amount paid by him/her. Section 18 was incorporated in the Act with a noble intent of providing a safeguard for allottees in case of delayed possession.

A lot has transpired over the past year with respect to the interpretation of Section 18 of the Act. To know more, Read on..!

- **MahaRERA**
  - ***M/s. Sineware Computer Services Private Limited vs. M/s. Ganesh Enterprises & Anr.***

    MahaRERA rejected the claim for rent of the allottee as the allottee had already taken possession of the premises. In the instant case, the allottee had demanded rent from the developer stating that due to the delay, the allottee was forced to take office premises on rental basis and had to pay huge amount towards rent.
  - ***Rekha Ashok Musale vs. M/s. Nirmal Lifestyle (Kalyan) Private Limited***

    Following suit, MahaRERA held that there is no provision under the Act which entitles the allottee to claim the amount of rent paid by him. Thereby the allottee was not entitled to seek any amounts paid by him towards rent on account of delayed possession by the developer.
  - ***Devindersingh H. Anand and Ors. vs. Poona Bottling Co. Private Limited and Ors.***

    It has been held that subsequent allottees are not entitled to any interest under Section 18 of the Act. In the instant case, the complainants purchased the flat from the original allottees and were now claiming rent from the developer for the delay in possession on the basis of the date of possession mentioned in the earlier agreement between the original allottees and the developer. MahaRERA stated that the subsequent allottees were aware at the time of purchase of the flat that the date of possession had lapsed and hence they were not entitled to any relief.
  - ***Haladhar Mahato vs. Satish Bora and Associates***

    MahaRERA held that once the construction of the project is complete or possession is

given, provisions of Section 18 of the Act cease to operate. MahaRERA observed that the said provision was to apply in the event the developer is unable to handover the possession.

- ***Vanora Josephina Vaz vs. Omkar Ventures Private Limited***

  Once again, MahaRERA held that the provisions of Section 18 of the Act come into play when the developer fails to deliver the possession of the unit in accordance with the agreement for sale. An allottee had booked a flat under the *subvention scheme.* Certain amounts were paid by the allottee towards advance. However, the allottee did not qualify for the subvention scheme. In light of the same, the allottee desired to cancel the booking and sought for a refund of the amounts paid by her under Section 18 of the Act. Disposing of the complaint, MahaRERA directed the allottee to file a complaint before a competent court to seek refund of the amounts paid by her.

1.3 Completion of the project paramount

The Preamble of the Act, *inter alia,* states that one of the objectives of introducing the Act was ***"to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner."*** However, the provisions of the Act were being misused by some allottees to seek compensation from the developers.

MahaRERA in keeping up with the objective and spirit of the Preamble of the Act, opined in the cases of ***Nandlal Pannalal Agarwal and Girish Leeladhar Meisheri vs. Empire Mall Private Limited*** that MahaRERA should not be the forum and the provisions of the Act should not be used to withdraw from a project which has been completed with occupation certificate.

1.4 Force Majeure

The term *'force majeure'* contemplates something happening suddenly which is not foreseen, and which is beyond the control of a person. Force majeure clause has been relied upon by the developers in multiple cases. However, the doctrine can be invoked only when the event is beyond the control of the parties and strikes at the root of the foundation of the contract. In fact, due to the CoVID-19 pandemic, the term *'force*

majeure' has become all the more relevant.

Real estate regulatory authorities have hitherto come across plethora of cases where developers have tried to take protection under the force majeure clause for their failure to handover the possession of the units in accordance with the agreed timelines.

A typical force majeure clause may cover within its ambit eventualities such as draughts, earthquakes, fire and explosion, natural calamities, strikes, lockouts, floods, cyclones, epidemics, acts of government or "any other happening".

We have witnessed that real estate regulatory authorities across the country have taken conservative stand when it comes to analyzing force majeure clauses.

Some of the relevant judgments are as follows.

- **MahaRERA**
  - ***Haladhar Mahato vs. Satish Bora and Associates***

    In this case, the developer cited delay on part of the local authorities in granting occupancy certificate and in view thereof, the developer was unable to handover the possession of the unit to the allottee. MahaRERA did not appreciate the contentions of the developer and ordered the developer to handover the possession of the flat within a period of 15 days.

  - ***Pushpa Krishnagopal Sawhney vs. M/s. Statford Reality LLP***

    The project was delayed on account of delay in procuring the environment clearance certificate from the concerned authorities.

    MahaRERA observed that since the developer executed the agreement in March 2014, it was aware about the difficulties of getting the environment clearance for the project. MahaRERA held that as such, the developer was not entitled to any relief and ordered it to pay compensation to the allottee for the delayed possession.

  - ***Ankit Chopra and Ors. vs. M/s. Vital Developers Private Limited***

    In the instant case, the developer contended that the reason for delay in handing over possession of the flat was on account of a public interest

litigation pending before the Hon'ble High Court of Bombay and the injunction passed in relation to the same. MahaRERA held that an injunction granted by a Court cannot justify the delay in handing over the possession of the unit.

- ***Sandeep Vithoba Jadhav vs. M/s. Solitaire Palms and Anr.***

  Imposition of demonetisation had a huge impact on the otherwise unregulated real estate sector. In this case, the developer cited demonetisation and financial crisis in the real estate sector as the reason for delay in handing over the possession.

  MahaRERA rejected the grounds cited by the developer and held that the same were not beyond the control of the developer. The developer was ordered to pay compensation to the allottees for delayed possession.

- ***Manoj Gagvani vs. M/s. Sheth Infraworld Private Limited***

  Adopting a sensitive approach towards the plight of the developers, the MahaRERA Appellate Tribunal held that the Act is a social and beneficial legislation. It observed that the Act does not re-write the contracts. The MahaRERA Appellate Tribunal further observed that when the developer has taken genuine efforts to complete the project and to hand over possession to home buyers, then MahaRERA or MahaRERA Appellate Tribunal can mold the relief accordingly.

  In the aforementioned case, there was significant delay on part of the pollution department to grant a no-objection certificate for the project and as a result there was delay in completing the construction of the project.

  While reducing the amount of interest to be granted to the allottee, the MahaRERA Appellate Tribunal observed that:

  - ✓ it is required to be seen that the developer should not suffer hardship
  - ✓ the developer should not be discouraged from launching real estate projects
  - ✓ the developer should not be thrown out of such project

on account of financial liability of payment of interest for delayed possession.

- ***Anagha Aniket Mahajan vs. Linker Shelter Private Limited***

  In the instant case, the allottee sought possession of a flat which was a subject matter of litigation before the Supreme Court. Accordingly, until disposal of the proceedings, the developer could not handover the possession of the flat. In view of the same, MahaRERA disposed of the complaint filed by the allottee.

- ***Nikhil Sardesai vs. Sanklecha Constructions Private Limited and Anr.***

  The developer cited force majeure events as a reason for delayed possession.

  MahaRERA held that the developer was well aware of the hurdles it faced and still promised to give possession to the allottee. Invoking the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**"MOFA"**), MahaRERA held that the agreement could not be re-written, and the date of possession cannot be extended. Further, MahaRERA held that the developer was only entitled to an extension of 6 months from the date of possession on account of force majeure events.

➢ **Delhi RERA**

- ***Aashish Sethi vs. M/s. Umang Real Tech Private Limited***

  The developer cited reasons like lack of adequate sources of finance, shortage of labour, manpower and material cost, the provisions and procedural difficulties, shortage of water in region, recession in economy etc. for delay in completion of project. Delhi RERA, relying on ***Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan***, held that the allottee cannot be compelled to wait for a longer period and hence the afore-mentioned events cannot qualify as force majeure events.

➢ **Karnataka RERA**

- ***Dasika Kanthi Kiran vs. Mantri Developers Private Limited and Ors.***

The Karnataka RERA refused to accept the reasons cited by the developer for delay in completion of the project viz. demonetisation, curb on illegal and sand mining mafia and strikes regarding the Kaveri water dispute. The developer was ordered to pay interest to the allottee in accordance with the provisions of the Act for delayed possession.

- ***Sameer Agarwal vs. Mantri Technology Constellations Private Limited***

  In the instant case, reasons cited by the developer for delay in completion of the project viz. encountering hard rock during excavation, license issue for blasting the rocks, restrictions on the working hours for construction as directed by the High Court of Karnataka and the strike by sand suppliers due to curb on illegal sand mining mafia were rejected by the Karnataka RERA. It was held that the same do not qualify as force majeure events. The developer was ordered to pay interest to the allottee in accordance with the provisions of the Act for delayed possession.

- ***Capt. Dev Krishnan vs. Townsville Neo Town***

  While placing reliance on the judgment of ***Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan***, Karnataka RERA refused to consider heavy rain, sand strike, disruption of supply of cement, strike by transporters and bundh as force majeure events and ordered the developer to refund the amount paid by the allottee along with interest for delay in handing over the possession of the unit.

- ***Oswal Sunil Mendonca vs. Mantri Developers Private Limited***

  In yet another case, Karnataka RERA held that demonetisation was not an event beyond the control of the developer and directed the developer to pay compensation to the allottee for the delay in handing over the possession.

- ***Ananda Subhaiah vs. Shubham Agarwal***

  Karnataka RERA, relying on the stand taken by the Maharashtra RERA, dismissed the plea taken by the developer that delay in handing over the

possession of the unit was on account of Lok Sabha elections. In the instant case, the developer had also paid pre-EMI interest to the allottee for the delay. However, Karnataka RERA refused to grant any relief to the developer.

While talking about the event of force majeure, it becomes essential to discuss the Report of the Standing Committee on Urban Development dated 12th February 2014, which sets out comments and observations on various clauses of the Real Estate (Regulation and Development) Bill, 2013. The said Report acknowledged that significant delay is caused on part of the governmental authorities to grant approvals for construction of real estate projects. The Standing Committee *inter alia* observed as follows:

"The Committee is given to understand that the real estate developers need to run after various departments of the appropriate government for getting clearances for their projects. Moreover, the Bill does not prescribe any timeline for the appropriate Government for giving clearances to the projects of the promoters / builders. These factors are also responsible for making delays in the completion of the projects."

The Standing Committee also had the following noteworthy suggestion:

"The Committee desires that the Ministry should insert a new sub-clause under Clause 29 so that the Real Estate Regulatory Authority will give necessary directions to the appropriate Government to put in place a single window system for getting all necessary clearances of the projects by the builders / promoters. The Committee further desires that the Ministry should specify the timelines in the Bill itself for giving various types of clearances of the real estate projects. The Committee is of the strong view that in this way the projects will be cleared in a hassle-free manner. This will curtail delays in completion of the projects and also bring down the cost of real estate projects significantly."

However, the afore-mentioned suggestions were not incorporated in the Act.

1.5 Jurisdiction

The Act is a special enactment providing for a mechanism to resolve disputes between allottees and developers. Inspite of there being a special mechanism in place, allottees often approach the consumer forums.

With the inclusion of allottees in the definition of *'financial creditor'* under the

Insolvency and Bankruptcy Code, 2016 (**"IBC"**), the National Company Law Tribunal was one such other forum where the allottees queued up to seek refunds of the amounts paid by them to the developer.

In terms of Section 71 of the Act, any complaint with respect to matters covered under Section 12, 14, 18 and 19, pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commissions or the National Consumer Redressal Commission, maybe withdrawn with the permission of such forum or commission as the case may be, and the allottee may file an application before the adjudicating officer under the Act to resolve the same.

Some of the relevant judgements have been captured as follows.

- **MahaRERA**
  - ***Ramnik Hardhor Karia vs. M/s. Oswal Developers***

    In the instant case, the allottee had filed a complaint before MahaRERA seeking directions to the developer to handover the possession of the flat and pay interest for delayed possession. The developer contended that it had already obtained the occupation certificate and hence the project was not registered with MahaRERA. Accordingly, the developer further contended that the complaint is not maintainable. MahaRERA held that the complaint was not maintainable since the project was not registered with MahaRERA.

  - ***Zarine Watson vs. Marvel Dwellings Private Limited***

    The agreement between the allottee and the developer stated that only a civil court can entertain the disputes between the parties. In this case, the developer failed to handover the possession of the flat and the allottee intended to withdraw from the project, thereby filling a complaint before MahaRERA. The developer contended that MahaRERA did not have jurisdiction since the agreement for sale stated that the disputes were to be settled by the civil courts. MahaRERA held that since the project was registered with MahaRERA, it had jurisdiction over the project and Section 79 of the Act bars jurisdiction of a Civil Court and jurisdiction of MahaRERA

cannot be ousted by an agreement between the parties.

- ***Manjusha Dyaneshwar Bhusari vs. M/s. Yemul and Sancheti Associates***

  The complainants had executed a development agreement. The property was mutated in the name of the respondent, but power of attorney (**"POA"**) was still with the complainants. The complainants had prayed for cancellation of the POA. However, the respondent stated that the complaint is not maintainable since the same is pending before the City Civil Court in Pune. In view of the same, MahaRERA ordered in favour of the developer and held that the complaint was not maintainable.

- ***Sarita Bhairu Chandekar and Anr. vs. Prashant Bhandari and Anr.***

  The allottees had filed a complaint for delayed possession. The developer contended that the said complaint was not maintainable since the agreement between the parties stated that the disputes were to be referred to arbitration. MahaRERA held that:

  - ✓ it had special powers under the Act to adjudicate the present dispute.
  - ✓ it is a special forum and its jurisdiction cannot be delegated to an arbitrator despite the provisions of the Arbitration and Conciliation Act, 1996 and the arbitration clause in the agreement for sale.

  Accordingly, MahaRERA ordered the developer to pay compensation to the allottees on account of delayed possession.

- ***Complainants vs. D.S. Kulkarni Developers Limited***

  The allottees had filed a complaint before MahaRERA claiming compensation on account of delayed possession. MahaRERA held that on account of pending proceedings in the Court constituted under the Maharashtra Protection of Interest of Depositors Act, 1999, it was untenable for MahaRERA to issue any directions under the Act. Accordingly, the complaints were dismissed.

➢ **Karnataka RERA**

- ***Manjunath Naik vs. Karnataka State Government Employees House Building Co-operative Society***

  The Karnataka RERA held that:

  ✓ the complainant cannot pursue his claim before Karnataka RERA when he has sought the same remedy before a parallel forum.

  ✓ if the plea before the consumer forum is withdrawn before filing a complaint under the Act, then there would be no embargo.

  In this case, the complainant filed complaints before Karnataka RERA and the Bangalore District II, Additional Consumer Disputes Redressal Forum.

  It is worth noting that the subjects of complaint before the consumer forum and RERA were the same. Karnataka RERA relied on the judgment of ***M/s. Emaar MGF Land Limited vs. Aftab Singh*** and observed that the complainant had to make a choice between the authorities that he can approach for seeking relief.

- ***Vansant Kumar Kalarickal Paniker vs. Fortuna Buildcon India Private Limited***

  In the instant case, the allottee had sought for refund of the amount paid to the developer towards the equated monthly instalments. An Interim Resolution Professional had been appointed for the developer under the IBC. Accordingly, the developer was not held answerable.

  Karnataka RERA held that Section 89 of the Act had an overriding effect and admitted the complaint and directed the developer to pay compensation to the allottee. However, Karnataka RERA directed the allottee to realise the amounts by approaching the National Company Law Tribunal since the developer was not in a position to realise the award.

1.6 Other relevant orders!

MahaRERA has been one of the most active real estate regulatory authorities in the country. Often, MahaRERA has been faced with unique scenarios which

may not have been otherwise dealt with. We have handpicked some of them.

- **MahaRERA**
  - ***Anupam Kumar Gupta vs. Sanyam Realtors Private Limited***

    In this case, MahaRERA dealt with the reasonability of sale consideration. In the instant case, the erstwhile developer had transferred the project to a new developer. The new developer agreed to execute an agreement for sale with an old allottee subject to the sale consideration being revised. MahaRERA held that the parties must be reasonable while deciding on the revised sale consideration and ordered the parties to execute an agreement for sale.

  - ***Saurav Purkayastha vs. M/s. Ruparel Realty Private Limited***

    MahaRERA held that the developer was not entitled to deduct amounts from the sale consideration paid by the allottee on the ground that the allottee had failed to make payments in accordance with the payment schedule. In the present scenario, the developer rescinded the agreement for sale on the ground that the allottee failed to tender the sale consideration in accordance with the payment schedule. The developer conceded that it was willing to refund 80% of the amount paid by the allottee and intended to deduct 20% of the sale consideration on account of the default of the allottee.

  - ***Sajid Ismail vs. Nadeem Essak Parihar***

    In the instant case, MahaRERA dealt with a dispute between the parties pertaining to an access road granted by the relevant authorities. The complainant challenged the validity of such permission alleging that the respondent had encroached upon their land for access road. MahaRERA dismissed the complaint stating that the said matter falls outside the purview of MahaRERA.

  - ***Nahari Bhau Chilwante and Anr. vs. M/s. Drushti Developers and Ors.***

    The allottees had executed an agreement for sale with one of the partners of the developer. The allottees sought for registration of the agreement for

sale and also demanded handover of the possession of the unit. The developer, a partnership firm, resisted the demands of the allottees on the ground that the agreement for sale was executed by a partner who had defrauded the other partners of the partnership firm and thus the other partners relinquish any responsibility or liability in relation to the same. MahaRERA held that the firm is bound by the actions of each and every partner and accordingly ruled in favour of the allottees.

- ***Priyesh Ashok Vijaywargi vs. Vikram Prakashrao Takale and Anr.***

  MahaRERA imposed a penalty of INR 1,50,000/- on a developer for his failure to execute an agreement for sale despite receiving the entire sale consideration.

- ***Sandip Vinayak Nikam vs. Sardar Promoter and Builders***

  MahaRERA held that consent given by the allottees to the developer for extension of the registration of the project under the Act did not amount to extension of the agreed date of possession as set out in the agreement for sale. Since the developer had failed to handover the possession of the flat as per the agreement for sale, the allottees claimed compensation under the Act. The developer contended that they had applied for the extension of the registration of the project by taking consent of the allottees. Further, the developer contended that they had paid an amount of INR 40,000/- to the allottee in lieu of the delayed possession. MahaRERA observed that there was nothing on record to indicate that the allottee had accepted the amount of INR 40,000/- towards satisfaction of his claim of interest.

  It was held that Section 18 confers a legal right and MahaRERA ordered:

  - ✓ the developer to restore the allottee in the position that he was before booking the flat; and
  - ✓ the developer to refund the amounts.

- ***Samyak Lalwani and Ors. vs. M/s. Yashodhan Associates***

The developer had handed over the possession of the flat without obtaining the occupancy certificate. The registration of the project had expired, and the developer had not applied for an extension. MahaRERA directed the developer to apply for extension of registration of the project since the project qualified as an *"ongoing project"* due to lack of occupancy certificate. The developer was directed to fulfil its obligations and compensate the allottees.

Further, MahaRERA observed that there was a violation of the Act, MOFA and the Maharashtra Municipal Corporation Act, 1949.

- ***Techno Dirive Engineer Private Limited vs. Renaissance Indus Infra Private Limited***

  In the instant case, the allottee had filed a complaint against the developer on the ground that the developer failed to handover an industrial unit booked by the allottee in accordance with the agreed date of possession. The allottee had booked the unit for setting up its industrial manufacturing unit. MahaRERA dismissed the complaint stating that industrial units do not come under the definition of "real estate project" and the provisions of the Act are not applicable to industrial units.

➢ Haryana RERA

- ***Greenopolis Welfare Association vs. Orris Infrastructure Private Limited and Anr.***

  In the instant case, the developer had failed to complete the project in accordance with the timelines. Coming down heavily on a developer, Haryana RERA stated that in the event the developer failed to commence the construction of the project within the timelines provided by Haryana RERA, the developer shall be liable to pay a fine of INR 1 Crore for each day of delay.

ALLOTTEES

2. ALLOTTEES

2.1 Refund of amount with interest for delayed possession

Initially, the real estate regulatory authorities across the country had taken a rigid stand about the requirement of a registered agreement for sale to claim interest and/or refund under Section 18 of the Act. With time, the real estate regulatory authorities have adopted a lenient approach considering multiple scenarios wherein the developers failed to execute and register the agreement for sale and the uninformed allottees had to bear the brunt.

In this section, we will deal with certain relevant judgments *vis-à-vis* refund of amount along with interest to the allottees on account of delayed possession.

- **MahaRERA**
  - ***Seema Sureschandra Mehata and Ors. vs. Marvel Realtors and Developers Limited***

    MahaRERA held that the provisions of Section 18 of the Act dealing with return of amount along with interest to the allottee are applicable to agreements which have been executed prior to the Act coming into force.

  - ***Mr. Jagdish Patel vs. Skystar Buildcon Private Limited***

    In the instant case, the allottees wished to withdraw from the project on account of some personal reasons. The allottees requested the developer to refund the amounts paid by them. However, the developer deducted certain amount and refunded the balance amount to the allottees. When the matter was heard by MahaRERA, it was held that there was no contravention by the developer and the forfeiture was in accordance with the terms and conditions of the booking letter. However, MahaRERA Appellate Tribunal set aside the order of MahaRERA. MahaRERA Appellate Tribunal held that the allottees were entitled to refund of all amounts paid by them since they had paid a considerable amount without execution of any document and such refund was justifiable. However, MahaRERA Appellate Tribunal observed that there cannot be a straight jacket formula that the developer is not entitled to forfeit the amount paid by the allottee on cancellation of the

transaction and the same depends on the facts and circumstances of each case.

- **Haryana RERA**
  - ***Kedar Singh Bhadauria vs. Ansal Housing and Construction Limited***

    The Haryana RERA has taken a stern view against the developer for failing to deliver the possession on the due date even after availing a 6 months' extension. Haryana RERA directed the developer to pay interest at the prescribed rate for every month's delay from the due date of possession till the actual date of possession.

  - ***Sandhya Goel vs. Today Homes and Infrastructure Private Limited***

    In the instant case, the Haryana RERA clarified that the relief of interest cannot be granted from the date of booking as Section 18 of the Act envisages interest only for the period of delay in handing over the possession.

- **Delhi RERA**
  - ***Devender Kumar vs. M/s. Parsvnath Realcon Private Limited***

    Delhi RERA held that an allottee cannot be compelled to wait indefinitely for possession of the unit after paying a huge sum towards the cost of such unit. In the instant case, the developer failed to handover the possession of the unit even after 57 months, whereas the parties had agreed to a period of 30 months with an additional grace period of 6 months for the purpose of handing over the possession of the unit.

  - Usually, the developers contend that the delay in handing over possession was on account of governmental delays. Relying on the principle that the allottees cannot be asked to wait indefinitely for possession of the unit, the Delhi RERA in ***Amit Kumar Vaid vs. Antriksh Developers and Promoters Private Limited; M/s. JBB Infrastructures Private Limited vs. M/s. Parsvnath Developers Private Limited and Anr; and Raghav Mittal vs. Antriksh Developers Private Limited*** directed the developers to refund the amount with interest

from the date of receipt of such amount until the date of full payment made to them.

- **Karnataka RERA**

  - ***Monu Gupta vs. B. Rajshekar***

    In the instant case, the allottee alleged that the developer had failed to give possession of the unit and had unilaterally extended the date of possession. In the absence of any specific and concrete denial, Karnataka RERA concluded that as per Section 18 of the Act, the person aggrieved has a right to claim compensation.

  - ***Manoj Radhakrishna vs. Avinash Prabhu***

    Karnataka RERA directed the developer to pay interest to the allottee as the developer failed to abide by the terms of the agreement which mandated the developer to complete the project as per the agreed timelines. The allottee had paid all instalments towards the purchase consideration and Karnataka RERA granted relief under Section 18 of the Act.

  - ***Thomas K.A. vs. M/s. Antevorta Developers***

    In the instant case, the developer had communicated to the allottee that they would handover the possession by April 2018. However, the agreement for sale executed between the parties provided for the date of possession as 26th September 2020. Karnataka RERA held that the agreement executed between the parties is binding and the terms of the same will prevail. The communications made by the developer was with the objective of prior fulfilment of the commitment, but it cannot be held against the developer to mean that he had revised the date of possession to 2018.

  - ***Capt. Dev Krishnan vs. Townsville Neo Town***

    Karnataka RERA held that in the event of a developer being substituted, the new developer shall also be liable for all the existing obligations of the erstwhile developer. In the instant case, there was a delay on part of the new developer in handing over the possession of the unit. Karnataka RERA

granted relief to the allottee and ordered the developer to pay compensation to the allottee.

- ***Ravi Kumar vs. R.R. Mahapatra***

  The allottee contended that the developer had lured the allottee into a scheme by way of misrepresentation.

  Subsequently, the developer refunded the amount paid by the allottee after retaining an amount of INR 50,000 claiming to be administrative charges. Karnataka RERA held that as per Section 18 of the Act, the developer was bound to return the amount in case of loss suffered by the allottee and also awarded interest.

- ***Naveen Shetty vs. Provident Housing Limited***

  Karnataka RERA refused to grant interest to an allottee at the rate of 24% p.a. Karnataka RERA observed that the rate of interest is not in accordance with the provisions of the Act and the Rules made thereunder.

  However, Karnataka RERA ordered the developer to refund the amount to the allottee along with interest at the rate provided under the Act.

- ***Mamata Kumari Choudhary and Ashok Kumar vs. Ozone Urbana Infra Developers Private Limited***

  Karnataka RERA held that the allottees were entitled to compensation from the date of the deed till the receipt of the occupancy certificate. The developer failed to complete the project on time. The developer introduced a scheme to provide compensation for the delay to the allottees and commenced sale. Karnataka RERA found that the sale deeds executed by the developer violated the provisions of Section 17 and 19 (10) of the Act because the developer had executed the sale deeds without applying for the occupancy certificate. Sale Deed is required to be executed only after obtaining the occupancy certificate.

- ***Satyakam Vashistha vs. Mantri Technology Constellations Private Limited***

  Karnataka RERA held that compensation for delayed possession will be paid from the

date which is mentioned as the due date in the agreement for sale and not from any other date which the developer claims.

- ***Vikas Kumar vs. Omar Sheriff***

  Karnataka RERA observed that since the developer had unilaterally postponed the date of completion of the project, the allottee is entitled to compensation as per the provisions of the Act.

- ***Prashanth vs. Purva Star Properties Limited***

  In this case, the developer had obtained occupancy certificate in 2018. However, the developer executed a sale deed much later in May 2019. As per the provisions of Section 19(10) of the Act, an allottee is required to take possession of the unit within 2 months from the date of the occupancy certificate. However, since the developer failed to execute the sale deed in time, the developer was directed to pay compensation to the allottee.

2.2 Whether the terms of the agreement for sale prevail over the provisions of the Act

Prior to the introduction of the Act, a standard agreement for sale was not mandatory. When the Act came into force, it mandated that the agreement for sale to be executed between the developer and the allottees should be in accordance with the proforma agreement for sale provided under the Rules. This led to the introduction of a new regime where the agreement for sale ensured ample protection to the allottees.

The real estate regulatory authorities across the country have held in multiple cases that the provisions of the Act shall prevail over the agreement for sale. This was more so from the perspective that in some cases, agreements for sale were heavily skewed in favour of the developers. Some of the relevant judgments on this issue are as follows.

➢ MahaRERA

- ***Sundeep Anand and Ors. vs. Kul Developers Private Limited and Anr.***

  Laying down the controversy at rest, MahaRERA held that the provisions of the Act will prevail over the terms of the agreement for sale. In this case, MahaRERA was to determine whether the allottee would be entitled to get interest as provided under the Act or as per

the agreement between the parties. MahaRERA observed that *"The Act is a special enactment for protecting the interest of the allottees with a view to complete the project in a specific timeline. There is no phraseology such as 'unless agreed to the contrary under Section 18' which allows the terms of the agreement to prevail over the provisions of the Act."* MahaRERA held that interest is to be awarded at the rate as prescribed by the statute for the delayed possession.

- **Haryana RERA**
  - ***Mohini Vij vs. Emaar MGF Land Limited***

    Following suit, Haryana RERA also held that the provisions of the Act will prevail over the agreement for sale. In this case, Haryana RERA observed that the interest payable under the agreement for sale is nominal, unjust and completely one-sided. Accordingly, Haryana RERA directed the developer to pay interest in accordance with the provisions of the Act.

- **Karnataka RERA**
  - ***Vignesh V. Kamath and Anr. vs. Nitesh Estates Limited***

    In this case, Karnataka RERA was faced with a question whether the allottee would be entitled to interest as per the provisions of the Act. The developer contended that there was no agreement between them and the allottee with respect to payment of interest and thus the developer was not liable to pay interest. However, Karnataka RERA did not appreciate this argument and held that Section 18 of the Act makes it mandatory for the developer to return the amount along with interest at the rate prescribed. Accordingly, the developer was directed to pay interest as per the provisions of the Act.

  - ***Hamza vs. Janaadhar (India) Private Limited***

    In this case, the terms of the agreement for sale stated that if the allottee did not cancel the booking within 7 days of booking the unit, the developer will be entitled to forfeit the booking amount. Karnataka RERA held that this term in the agreement for sale will prevail over the provisions of the Act. In this case, the developer was able to establish that it suffered

a loss and was forced to reserve the unit with a hope that the allottee would take progressive steps towards his payment obligation.

- ***SVLN Sridhar Rao vs. SJR Prime Corp***

  In this case, Karnataka RERA gave precedence to the settlement agreement over the provisions of the Act. The allottee stated that the project was not registered, however the occupation certificate was obtained. In view of the same, Karnataka RERA issued notice to the developer and thereafter a settlement agreement was executed between the developer and the allottee whereby the developer agreed to refund the amount paid by the allottee. Hence, the project was exempted from registration and the complaint was withdrawn in view of the settlement agreement.

2.3 Agreements executed prior to the Act coming into force

MahaRERA, *vide* Circular dated 27th June 2017, had, *inter alia,* specified that in respect of ongoing projects which were required to be registered under the Act, where the agreements were executed prior to 1st May 2017, shall be governed by MOFA.

However, with time, the provisions of this circular were diluted and the agreements which were executed prior to the Act coming into force were also governed by the provisions of the Act.

- **MahaRERA**
  - ***Umesh Vyas vs. Prima Terra Buildtech Private Limited and Anr.***
  - The developer had committed to handover the possession of the flat by December 2013. However, the developer failed to do so and accordingly, the allottee filed a complaint before MahaRERA seeking interest for delayed possession. The developer contended that since the agreement for sale had been registered under the provisions of MOFA and hence the complaint is not maintainable. Refuting the contentions of the developer, MahaRERA held that the allottee was entitled to the relief claimed by him.
- **Delhi RERA**
  - ***Kumar Manish vs. Rachna alias Lata Dixit***

Delhi RERA rejected the complaint wherein a challenge was made with respect to violations of various clauses of the agreement for sale executed between the parties. Delhi RERA held that the project was completed long back and in view of the applicability of the Limitation Act, 1963, the complaint was not maintainable.

- **Karnataka RERA**
  - ***Raghunath MS vs. Esteem Group***

    In this case, the project was completed and conveyed to the association of allottees prior to the commencement of the Act. The allottee had purchased the unit from an erstwhile allottee. The developer contended that since the project was completed before the commencement of the Act and the occupancy certificate was obtained, they cannot be bound by the provisions of the Act. Referring to the Preamble of the Act, Karnataka RERA held that even if the project was completed prior to the commencement of the Act, the developer is bound by the provisions of the Act. Accordingly, Karnataka RERA directed the developer to hand over all documents and execute a registered deed to include civic amenities in favour of the association of allottees.

2.4 Formation of association of allottees for completion of the project

Sections 7 and 8 of the Act empowers the real estate regulatory authorities to revoke the registration of a project and take such action(s) as it may deem fit for carrying out the remaining development work. Further, under Section 37 of the Act, the authority may, for the purpose of discharging its functions, under the provisions of the Act and the rules made thereunder, issue such directions from time to time to the developers, allottees or real estate agents as the case may be and such directions shall be binding on all concerned. MahaRERA *vide* its Order dated 28th March 2019 has also issued directions for revocation of registration of the projects and the steps taken thereafter.

Lately, various associations of allottees have taken this route and have prayed before the real estate regulatory authorities to revoke the registration of the project and permit them to complete the construction of the project in case where there has been substantial delay on part of the developer in completing

the projects. We have highlighted some of the instances and the stand taken by the real estate regulatory authorities in relation to the same.

- **MahaRERA**

  - ***Dattatray Khedekar vs. M/s. ShreePrakash Creative Buildcon J.V.***

    MahaRERA was of the view that it would not be appropriate to create further charge on the project in the nature of allowing refund of money to any allottee from the designated account specially created as a ring fenced account for the purpose of completion of the project. Keeping in line with the directions given *vide* the aforesaid order, MahaRERA directed the developer to handover the list of allottees in the project to the complainants to enable the allottees to take an informed decision pertaining to the project.

    MahaRERA also gave an option to the developer to seek the approval of the association of allottees for order under Section 7(3) of the Act[1] as per MahaRERA Order no. 7/2019[2] regarding completion of project in an extended specific time period instead of revocation of project.

  - ***Anita and Sanjay Kamble vs. Govind Marutirao Kakde***

    Keeping in mind the larger interest of all the allottees of the project, MahaRERA held that awarding interest at the stage of the project where only 60% of the super structure work is completed would mean jeopardising the project completion. Accordingly, MahaRERA directed that in case the developer fails to complete the project by the specified date, the allottee through the association of allottees shall be at liberty to

[1] Under Section 7(3) of the Act, the RERA Authority may instead of revoking the registration, permit the registration to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees and any such terms & conditions so imposed shall be binding upon the promoter.

[2] Order No. 7/2019 dated 8th February 2019 passed by the MahaRERA provides that further extension may be given to promoter in those cases where the concerned association of allottees resolve that instead of revoking the registration, the existing promoter be permitted to complete the project in a specific time period and on payment of same fees as prescribed under the rules for extension.

seek remedy under Section 7 of the Act.

- ***Mithanagar Archa CHS Ltd. vs. Dhanshree Developers Private Limited***

  The developer was ordered to wind-up its operations. Accordingly, the allottees sought for revocation of registration of the project so that the society (formed by the allottees) could complete the project by utilizing its own funds. After hearing all the parties, MahaRERA revoked the registration of the project and also directed to freeze the designated account of the project. This was one of the very few instances where MahaRERA had revoked the registration of the project.

2.5 Non-registration of the agreement for sale

Section 13 of the Act *inter alia* prohibits a developer from accepting an amount exceeding 10% of the total consideration for a unit, plot or building as the case maybe, without executing an agreement for sale and without having the same registered.

This has been one of the most common issues where the developers failed to execute an agreement for sale inspite of receiving more than 10% of the total consideration. The real estate regulatory authorities often take a stringent view and direct the developers to execute and register an agreement for sale where developers have received more than 10% of the total consideration.

Some of the noteworthy rulings have been captured in the following paragraphs.

➢ MahaRERA

- ***Dinanath Ragunath Chaudhari vs. Linker Shelter Private Limited***

  The developer had terminated the booking on the ground of non-payment from the allottee. Despite the allottee having paid more than 10% of the total consideration, the agreement for sale was not executed. MahaRERA held that the developer had committed a default under Section 13 of the Act and thereby directed the developer to withdraw the letter of termination and register the agreement for sale within a period of 1 month.

- **Karnataka RERA**

  - ***Selvaraj vs. Sukesh Jain***

    Karnataka RERA prevented a developer from relying on the clause of the agreement for sale which entitled the developer to forfeit the amount and demand interest at a higher rate than that provided under the Act, as the developer had failed to execute an agreement for sale inspite of receiving more than 10% of the total consideration for the unit.

  - ***Sudhir Pillai vs. M/s. Shobha Limited***

    Karnataka RERA held that the developer was required to register the agreement for sale at the developer's own cost and no recovery of registration cost can be made from the allottee since the delay in executing the agreement for sale was on part of the developer. Further, Karnataka RERA recognised the right of the allottee to register the agreement for sale at a later stage.

2.6 Compensation towards mental agony

One of the most common prayers by allottees before the real estate regulatory authorities is seeking compensation for mental agony. But what amounts to mental agony has not been discussed with clarity by the real estate regulatory authorities.

In ***Suman Rupanagudi vs. Adarsh Developers*** the Karnataka RERA tried to clear this ambiguity by placing reliance on the judgment of the Hon'ble Supreme Court of India in ***Ghaziabad Development Authority vs. Union of India***. The Hon'ble Supreme Court, while considering a case of breach of contract under Section 73 of the Indian Contract Act, 1872, held that no damages are payable for mental agony in case of breach of a contract.

In ***Lucknow Development Authority vs. M.K. Gupta***, the Hon'ble Supreme Court of India held that the liability for mental agony had been fixed not within the realms of contract but under the principles of administrative law.

In view of the same, Karnataka RERA refused to grant relief towards mental agony.

2.7 Amenities

The term *"internal development works"* has been defined under the Act to mean roads, footpaths, water supply, sewers, drains, parks, tree planning, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid

waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plan.

Section 19(2) of the Act provides that the agreement for sale shall, *inter alia,* specify the particulars of the *"internal development works."* This goes on a long way in imposing accountability on developers to ensure that the allottees are well informed about the amenities in the project.

Real estate regulatory authorities have been faced with issues pertaining to parking spaces, internal roads, common area facilities, sewage treatment plants to name a few. Some of them are highlighted below.

- **MahaRERA**
  - ***Yogesh Dixit vs. Manikcand Vasudha Developers (Sai Eshanya)***

    MahaRERA, while dealing with the issue of car parking, relied on the judgment of the Hon'ble Supreme Court of India in the matter of ***Nahalchand Laloochand Private Limited vs. Panchali Co-operative Housing Society Limited***. The Hon'ble Supreme Court held that under MOFA, stilt area cannot be treated as a garage and that parking areas (open to sky or stilted portion) cannot be excluded from common area and facilities under MOFA.

    Accordingly, MahaRERA was of the view that the parking space in open parking area or stilt portion are not saleable along with the unit because they are *"common areas"*.

    MahaRERA further observed that the common areas are to be transferred to the society of the allottees by the developer and therefore the society *vis-a-vis* its members have the right to use each and every part of the common area including the open or stilted car parking space. The developer has no right to sell the stilt parking space as its control is with the society / association of the allottees.

  - ***Anita Jayant Oswal vs. M/s. Mahanagar Realty***

    In this case, the allottees had alleged that the developer did not provide amenities such as lifts and internal roads as per sanctioned plans. MahaRERA concluded that these issues are

required to be dealt with by the competent authority which has granted permission for construction in the project including issuing the occupancy certificate.

MahaRERA directed:

- ✓ the developer to approach the concerned competent authority for redressal of their grievances.
- ✓ the competent authority to take appropriate action on representation that may be filed by the allottee.

- ***Harish Rao and Ors. vs. Pentagon Shreemangal Vishram Venture and Ors.***

  Various allottees approached MahaRERA after taking possession, on the ground that the developer did not provide them promised amenities like parking, podium and other amenities as set out in the agreement for sale. In this case, whilst disposing the complaint, MahaRERA directed the developer to verify all the amenities of the project in accordance with the commitments made in the agreement for sale and rectify the defects, if any, within a period of 1 month. Further, the developer was asked to submit a certificate of the architect certifying that amenities have been provided as per the agreement for sale.

- ***Rohit Chawla and Ors. vs. Bombay Dyeing & Mfg. Co. Ltd.***

  In the instant case, the developer had published the project and gave assurances regarding details of the amenities and flats and basis such representations, the allottees booked flats in the project in 2012-2013. The developer further represented to the allottees that it would handover the possession of the flat by 2017. However, the developer failed to handover the possession and also failed to provide amenities as were assured to the allottees. Accordingly, the allottees filed a complaint before MahaRERA claiming that they had suffered a loss on account of incorrect and false statements made by the developer in relation to the project. Further, the allottees also sought refunds of the amounts paid by them along with interest thereon.

MahaRERA held that Section 12 of the Act (which deals with obligations of the developer regarding veracity of the advertisement or prospectus) was not retrospective and was not applicable to the instant case since the allottees had booked flats in the year 2012-2013 and the Act came into force in the year 2017. Further, MahaRERA had rejected the plea of the allottees to withdraw from the project since it would jeopardise the completion of the project. The MahaRERA Appellate Tribunal overruled the order passed by MahaRERA and held that provisions of Section 12 (which deals with obligations of the developer regarding veracity of the advertisement or prospectus) are retroactive in nature and the allottees are entitled to protection for breaches and failure of the developer notwithstanding that the transactions between the developer and the allottees consummated before the Act came into force. Further, MahaRERA Appellate Tribunal also held that the allottees are entitled to withdraw from the project and the developer was under an obligation to refund the amounts paid by the allottees along with interest thereon.

- **Karnataka RERA**

  - ***Harish Babu M.L. vs. Antevorta Developers Private Limited***

    In this case, the allottee *inter alia* alleged that the compound wall and entrance gate for the project were not built. Karnataka RERA held that it was the responsibility of the developer to provide for basic amenities like a compound wall or an entrance gate and directed the developer to build the same.

  - ***Vidhyadhar Durgekar and Ors. vs. M/s. Ramky States and Farms Limited***

    In the instant case, the sewage treatment plant was alleged to be inadequate as it emitted foul smell. Additionally, the report of the assistant engineer provided that it was not maintained properly and upon inspection by the Pollution Control Board, it was found that the same was inadequate. In such a scenario,

Karnataka RERA directed the developer to:

- ✓ file an application to seek extension of registration of the project to provide all amenities.
- ✓ ensure that the sewage treatment plant is repaired under the supervision of the Karnataka State Pollution Control Board.
- ✓ to adhere to the payment of all outgoings until the developer transfers physical possession of the project as contemplated under the Act.

FINANCIAL INSTITUTION

3. FINANCIAL INSTITUTION

3.1 Balancing the rights of allottees and secured creditors

Section 15 of the Act has been perceived as a hurdle to enforce security interests created over other real estate projects by the developer. Under section 15 of the Act, the developer cannot transfer his majority rights in a real estate project without:

- the prior written consent of at least two thirds of the allottees; and
- the prior approval of the relevant real estate regulatory authority.

Therefore, in respect of the enforcement of security interests in such residential properties, the prior approval requirements under Section 15 of the Act would apply. The prior approval requirement under Section 15 of the Act could therefore be a potential obstacle to any step-in rights of a financial institution as a secured creditor. In some states such as Maharashtra and Karnataka, the issue has been addressed by clarifying that no prior consent is required if such transfers result from enforcement of any security interest by a financial institution / creditor which pertains to any charge registered with/disclosed to the RERA Authorities set up in those states.[3] However, the status in other states is unclear as the real estate regulatory authorities in other states have not issued similar clarifications.

➢ **MahaRERA Appellate Tribunal**

- ***Xander Finance Private Limited vs. Trivesh Pooniwala and Ors*.**

  The MahaRERA Appellate Tribunal had to resolve the inherent tension between the rights of home allottees who were seeking a refund of payment made for a real estate project, and the rights of a financial institution which held security interest in the property in the form of a mortgage.

  MahaRERA had passed an order to create a charge on the property in favour of the allottees.

  The Appellate Tribunal held that the aforementioned order was not illegal, however in order to strike a balance between competing rights and interests, such charge must remain subject to the rights of the

[3] Circular No. 24/2019 dated 4 June 2019 issued by the Maharashtra Real Estate Regulatory Authority and Circular No. KRERA/Circular/02/2019 issued by the Karnataka Real Estate Regulatory Authority.

financial institution as a secured creditor under the mortgage. In doing so, the MahaRERA Appellate Tribunal noted that Section 26 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 conferred priority to the debts to be paid to secured creditors such as Xander Finance Private Limited.

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Juris Corp
advocates & solicitors

Contact us:

MUMBAI OFFICES

307, Century Bhavan, 3rd Floor,
Dr Annie Besant Road, Worli,
Mumbai - 400 030, India
Tel: +91 22 6720 5555 / +91 22 4057 5555
Fax: +91 22 2421 2547

Dispute Resolution Office

148, Jolly Maker Chamber II, 14th Floor,
Nariman Point, **Mumbai** - 400 021, India
Tel.: +91 22 4920 5555
Fax: +91 22 2204 3579

DELHI OFFICE

809, 8th Floor, Ansal Bhawan,
16 Kasturba Gandhi Marg,
New Delhi - 110 001, India
Tel: +91 11 4175 1889
Fax: +91 11 4014 4122

BENGALURU OFFICE

Kheny Chambers, Upper Ground Floor,
4/2 Cunningham Road, **Bengaluru** - 560 052, India
Tel: +91 80 4669 8200
Fax: +91 80 2226 6990

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