

Real Estate (Regulation & Development) Act, 2016



NEWS, RECENT UPDATES &
JUDGEMENTS in MAHARERA

TUESDAY, 19th NOVEMBER
RERA STUDY GROUP

ATUL PURANI
B.Com, LLB, FCA



EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

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CIRCULARS

MahaRERA Circular No.: 25/2019

MahaRERA Circular No.: 26/2019

MAHARERA CIRCULAR NO.: 25 / 2019 DATED 11 -OCT 2019

No. MahaRERA / Secy. / File No.27 / 1004

Subject : Clarification regarding Registration of Agreement for Sale / Sale Deed for Real Estate Projects.

- Whereas in accordance with the provision of section 25 of the RERA Act, the Chairperson shall have power of general superintendence and directions in conduct of the affairs of MahaRERA.
- Whereas the said GR states that registration of Agreement for Sale / Sale Deed of any apartments will be done only if the project is registered or excluded from registration under Real Estate (Regulation and Development) Act 2016
- Whereas several complaints/ inquires have been received in MahaRERA from the buyers and promoter/ Developers thereby expressing their difficulties faced by them in registration of Agreement for Sale/ Sale Deed for Real Estate Projects.
- It is therefore necessary to clarify that the following transactions / projects do not require MahaRERA project registration of Agreement for Sale/ Sale Deed for Real Estate Projects:

I. REAL ESTATE PROJECTS THAT ARE EXCLUDED FROM MAHARERA REGISTRATION

1. Real Estate Projects where the area of land proposed to be developed is less than or equal to five hundred square meters.
2. Real Estate Projects where number apartments proposed to be developed is less than or equal to eight apartments.
3. Real Estate Projects where Promoter has received Completion certificate / Occupancy certificate / N/A (incase of plotted development from Competent Authority , any time before Agreement for Sale / Sale Deed Registration.
4. Redevelopment Projects which do not involve marketing , advertising , selling or new allotment of any Apartment , plot or building , as the case may be under the real estate project. In such projects, the promoter executes Permanent Alternative Accommodation Agreement with the existing tenants / slum dwellers /members of society, for which MahaRERA Registration is not required.
5. Any other project, where MahaRERA has already decided through ruling, that the project doesn't require registration.

In any of the above mentioned transactions / projects. MahaRERA Registration will not be required for registration of Agreement for Sale / Sale Deed.

MAHARERA CIRCULAR NO.: 25 / 2019
DATED 11 -OCT 2019

II . REAL ESTATE PROJECTS THAT ARE REGISTERED UNDER MAHARERA

Further there are real estate projects, which were registered with MahaRERA and are complete as per Real-estate (Regulation and Development) Act 2016 and Rules, Regulations. Orders and Circulars made thereunder.

Such projects have received Occupancy Certificate / Completion Certificate / N/A (in case of plotted development) / have uploaded Form 4, which is visible on the MahaRERA website.

For such projects, incase MahaRERA Registration duration has ended, then they do not need to extend their MahaRERA Registration for sale of apartments / plots.

MAHARERA CIRCULAR NO.: 26/ 2019 DATED 1-NOV-2019

No. MahaRERA / Secy. / File No.27 / 1066/ 2019

Subject: Additional mandatory document along with application for registration of projects

Whereas, under Section 34 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the said Act), MahaRERA is vested with powers which includes functions to register and regulate real estate projects and to ensure compliance of the obligations cast upon promoters.

Whereas, in exercise of the powers , vested with MahaRERA under Section 34 of the said Act, in order to ensure greater professionalism among promoters. bring a certain level of consistency in the practices of promoters, enforcement of code of conduct and to discourage fraudulent promoters , MahaRERA vide its **Order No 10** dated **11th October 2019**, introduced the procedure of registration of Self-Regulatory organization(SROs) of promoters, in the real-estate sector in Maharashtra.

Whereas , from December 1 , 2019 through MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (GENERAL) (SECOND AMENDMENT) REGULATIONS, 2019, membership details of Promoter with MahaRERA registered SRO (Self - Regulatory Authority) has been introduced as additional disclosure by promoters on the website of MahaRERA.

Therefore, with effect from December 1, 2019 every promoter applying to MahaRERA for registration of their real estate project , shall have to mandatorily disclose their membership details with a MahaRERA registered SRO.

ORDERS

ORDER 10 -SELF-REGULATORY ORGANISATION (SRO) FOR
PROMOTERS

ORDER 11 - FURTHER DIRECTIONS W.R.T FILING OF
COMPLAINTS WITH MAHARERA

ORDER 12 - CONVERSION OF APPLICATIONS FILED BEFORE
MAHARERA CONCILIATION AND DISPUTE RESOLUTION FORUM TO
SUO-MOTU COMPLAINTS BY MAHARERA.

ORDER 10 –SELF-REGULATORY ORGANISATION (SRO) FOR PROMOTERS

NO. MAHARERA/SECY/ORDER/L003/2019

DATE- 11th OCTOBER 2019

In order to ensure greater professionalism among promoters, bring a certain level of consistency in the practices of promoters, enforcement of code of conduct and to discourage fraudulent promoters, it is proposed to introduce Self - Regulatory Organization (SROS) in the real estate sector in Maharashtra and register them with MahaRERA.

1. The basic eligibility criteria for these Self-Regulatory organizations (SRO) shall be as follows:

- a) The proposed SRO has to be a group / association / federation of promoters' which is a legal entity.
- b) The proposed SRO should have at least 500 MahaRERA registered projects of their members.
- c) Details of Membership fees, Duration of Membership, qualification of membership and code of conduct to be followed by the members may be decided by the respective SRO and shall be made available to their members.

2 The functions and obligations of the SRO shall be as follows:

- a) The SRO shall encourage its members to comply with the provisions of the Act applicable rules, regulations, order or circulars issued by the MahaRERA from time to time.
- b) The SRO shall be responsible for carrying out awareness and education activities among its members.
- c) The SRO shall specify standards of conduct for its members and also shall be responsible for the implementation of the same by its members.
- d) Any information or particulars furnished to MahaRERA by the applicant shall not be false or misleading in any material respect;

ORDER 10 –SELF-REGULATORY ORGANISATION (SRO) FOR PROMOTERS

NO. MAHARERA/SECY/ORDER/L003/2019

DATE- 11th OCTOBER 2019

3) Procedure for Registration:

- a) Any group or association or federation of promoters, which is desirous of being registered as a SRO with MahaRERA shall email their application in form A to Secretary , MahaRERA at secy@maharera.mahaonline.gov.in
- b) Within 7 days of receipt of application Secretary's office shall scrutinize the application to verify if there are at least 500 MahaRERA Registered projects among the members in MahaRERA online system.
- c) On satisfactory verification, Secretary's office shall request for online payment of Fees of Rs. 10,000. The details of verification and fees payment shall be intimate through email in Form B.
- d) On successful payment of fees by the applicant, the Certificate for Registration shall be issued in form C. The certificate shall be shared through email with the SRO and uploaded on MahaRERA website.

4) Applications for registration of SROs shall be accepted by MahaRERA from 2nd October 2019.

5) The registration of SRO shall be valid for a period of five years.

ORDER 10 –SELF-REGULATORY ORGANISATION (SRO) FOR PROMOTERS

NO. MAHARERA/SECY/ORDER/L003/2019

DATE- 11th OCTOBER 2019

- Maharashtra Real Estate Regulatory Authority has issued certificate No. **P1** to **NAREDCO WEST FOUNDATION** for a period of five years commencing from **18/10/2019** and ending with **17/10/2024**.
- Maharashtra Real Estate Regulatory Authority has issued certificate No. **P2** to **CREDAI-MCHI (Maharashtra Chamber of Housing Industry)** for a period of five years commencing from **22/10/2019** and ending with **21/10/2024**.
- Maharashtra Real Estate Regulatory Authority has issued certificate No. **P3** to **CREDAI-Maharashtra** for a period of five years commencing from **31/10/2019** and ending with **30/10/2024**.

REQUEST REMINDER BY MAHARERA TO EXISTING MEMBERS

MEMBER VASANT PRABHU IS SENDING SUCH INTIMATION TO REGISTERED MEMBER ALSO

Dear Promoter,

As per the MahaRERA order no. 10 dated 11th October 2019, MahaRERA General (Second Amendment) Regulation, 2019 dated: 24th October 2019 and MahaRERA Circular No 26/2019 dated 1st November 2019, the concept of Self-Regulatory Organisation (SRO) has been introduced by MahaRERA and taking up a membership of any one Registered SRO will become mandatory from 1st December 2019 for registering any project with MahaRERA. CREDAI (Maharashtra), NAREDCO and MCHI have already been registered by MahaRERA as SROs.

A provision has been made on your login id to select a MahaRERA Registered SRO. Please follow the below steps to select the SRO. MahaRERA portal > Login > Account > My Profile > Under Select the organization > Select the Name of the Organization > Update the project.

Thank you,
Dr. Vasant Prabhu,
MahaRERA

ORDER 11 - FURTHER DIRECTIONS W.R.T FILING OF COMPLAINTS WITH MAHARERA

NO. MAHARERA /SR.CY / ORDER / LM6 /2019

DATE: 23.D OCTOBER, 2019

Whereas Maharashtra Real Estate Regulatory Authority (MahaRERA) had issued Circular No: 09/2017 dated 24th July 2017 and Circular No: 18/2018 dated 17th July 2018 laying down SOP for handling complaints against registered projects.

Whereas based on experience of MahaRERA over past two years, it is felt necessary to issue necessary directions regarding filing of complaints, which shall be followed with immediate effect:

1. When a complaint is being lodged for seeking individual relief, the aggrieved person must provide for following details as part of the Complaint:
 - Building No./Wing No./ Flat No./Shop No./ Unit No.:
 - List names of all owners/ joint owners:
 - Total Consideration value (Rupees):
 - Money paid till date:
 - Date of allotment or booking:
 - Date of Agreement (if any):
 - Date of possession in the agreement (if any):

For a failure to do so, MahaRERA may treat the said complaint as not maintainable.
2. Group complaints shall be entertained only in respect of common relief claimed under Section 7 & 8 of RERA or for common amenities.

ORDER 11 - FURTHER DIRECTIONS W.R.T FILING OF COMPLAINTS WITH MAHARERA

NO. MAHARERA /SR.CY / ORDER / LM6 /2019

DATE: 23.D OCTOBER, 2019

3. Individual complaint need to be filed separately for individual reliefs. Otherwise they will be held not maintainable for misjoinder for cause of action and parties.
4. The complaints should be filed with MahaRERA, in accordance with Section 31 of the Real Estate (Development and Regulation) Act 2016 read with rule 6 and 7 of The Maharashtra Real Estate (Regulation & Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal etc.) Rules, 2017 and the Regulations, Orders and Circular made thereunder.
5. MahaRERA shall issue certified copies of public documents only which are in its custody. No true copies of the documents will be issued, as copy of copy is not permissible. For Photostat copies of other documents which are placed on record by parties, with endorsement "True Copy", it is necessary for the concerned party to compare the said Photostat copy with the original and then endorse as "Self-certified Copy.
6. The Hon'ble Bombay High Court has framed the rules regarding service of notices by email. The rules indicate that if the notices served then the report of service of the notice is generated by the computer system and if it is not served on the party the report to that effect is also generated by the system. In MahaRERA, notices for hearing are sent online to the registered e-mail addresses logged with the MahaRERA system. Once the said information is reflected on the dashboard of the parties, the notices would be deemed to have been served upon the parties. Therefore, Complainants and Promoter Respondents are requested to monitor their online Dashboards on regular basis to check for progress of complaint including hearing dates, interim orders, final orders among others

ORDER 12 - CONVERSION OF APPLICATIONS FILED BEFORE MAHARERA CONCILIATION AND DISPUTE RESOLUTION FORUM TO SUO-MOTO COMPLAINTS BY MAHARERA.

NO. MAHARERA/SECY/ORDER/1047 / 2019

DATE : 23RD OCTOBER, 2019

Ref:

1. Circular No.15 /2018 dated 29th January, 2018 issued by MahaRERA for establishment of MahaRERA Conciliation and Dispute Resolution forum.
2. MahaRERA order No. 06/2018 dated 29-11-2018 prescribing the Procedure for referring the complaints to MahaRERA Conciliation and Dispute Resolution Forum by MahaRERA

AND WHEREAS, vide Circular No. 15 of 2018 dated 29-01-2018, the MahaRERA has established "**MahaRERA Conciliation and Dispute Resolution Forum**" for resolving disputes between the allottees and the promoters to facilitate the resolution of disputes amicably. Accordingly, new application was introduced by MahaRERA for filing online applications before the Maharashtra Conciliation and Dispute Resolution Forum.

AND WHEREAS, vide order No.6 of 2018 dated 29.11.2018 ,MahaRERA has prescribed procedure for referring complaints to MahaRERA Conciliation and Dispute Resolution Forum by MahaRERA. Whereas MahaRERA has been continuously working towards bridging the trust deficit between promoters and consumers, to bring about greater professionalism, accountability and commitment in the sector.

Whereas MahaRERA Conciliation Forum, from time to time, has conducted trainings, seminars and workshops for its members. One such "seminar on Conciliation" was conducted on 29th- 30th August 2019 to provide refresher training to all the empanelled conciliators, wherein, during the Feedback and interaction session, various participants, after detailed deliberation, provided suggestions to further strengthen the Conciliation Forum.

ORDER 12 - CONVERSION OF APPLICATIONS FILED BEFORE MAHARERA CONCILIATION AND DISPUTE RESOLUTION FORUM TO SUO-MOTO COMPLAINTS BY MAHARERA.

NO. MAHRERA/SECY/ORDER/1047 / 2019

DATE : 23RD OCTOBER, 2019

Therefore, based on the suggestions emerging out of the Seminar on Conciliation and in the spirit of MahaRERA' s endeavour to rebuild trust, this order is being issued, applicable with immediate effect:

1. Conciliation application is held by an allottee who has paid the fees of Rs. 1000 after the consent of the Promoter. As per different possibilities. the following procedure is prescribed for Conversion of such Application filed before MahaRERA Conciliation and Dispute Resolution forum to Suo-Moto Complaints by MahaRERA.

a) Non-attendance of parties for conciliation proceedings even after providing consent :

If a conciliation application, wherein both parties have provided consent and the complainant has paid the fees, but other party does not appear for conciliation hearing then Conciliation bench with their observations, may decide to refer such case to MahaRERA. The Authority, on receiving such a case, shall take a decision and the said decision may include treating the said matter as a suo-moto complaint if it relates to the issue of general importance

b) Unsuccessful Conciliation:

If both parties remain present during hearing but in the event of unsuccessful conciliation due to lack of agreement on terms of conditions of settlement, then the conciliation bench may decide to refer such a case to the MahaRERA authority which shall take a decision that may include to take the matter as suo - moto complaint if it relates to the issue of general importance.

ORDER 12 - CONVERSION OF APPLICATIONS FILED BEFORE MAHARERA CONCILIATION AND DISPUTE RESOLUTION FORUM TO SUO-MOTO COMPLAINTS BY MAHARERA.

NO. MAHRERA/SECY/ORDER/1047 / 2019

DATE : 23RD OCTOBER, 2019

c) Successful Conciliation but not executed or not complied:

In case of successful conciliation, wherein both the parties have resolved their dispute amicably but compliance /execution of settlement agreement is delayed beyond the time mentioned in the settlement agreement then in that case the buyer may again approach the conciliation forum for non-compliance of settlement agreement in time,

The Forum shall hear such complaints and direct all parties to comply at earliest. At any point of time, the conciliation panel may also refer this request to Authority for suo-moto action by MahaRERA and MahaRERA may take up the said matter for further suo-moto action.

MahaRERA may take up such cases mentioned above at I-a, I-b, I-c for the same fee of Rs.1000/- which has been already paid by the buyer for the conciliation instead of paying Rs. 5000/- for filing complaint to MahaRERA, on above grounds.

ORDER 12 - CONVERSION OF APPLICATIONS FILED BEFORE MAHARERA CONCILIATION AND DISPUTE RESOLUTION FORUM TO SUO-MOTO COMPLAINTS BY MAHARERA.

NO. MAHRERA/SECY/ORDER/1047 / 2019

DATE : 23RD OCTOBER, 2019

2. In Annexure (A): Model Form of Agreement in Maharashtra Real Estate:

(Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) **Amendment Rules, 2018,**

- a) Rule 30 states that "Any dispute between parties shall be settled amicably. In case of failure to settle the dispute amicably, it shall be referred to the Authority as per the provisions of the Real Estate (Regulation and Development) Act, 2016, Rules and Regulations, thereunder"
- b) Such amicable settlement of dispute as referred in Rule 30, shall be conducted through MahaRERA Conciliation and Dispute Resolution Forum.

3. The Self Regulatory Organization (SRO) should initiate/communicate with their members to accept the Conciliation request initiated by the First Party. in order to solve the disputes at the basic level itself and to encourage the applicant/complainant to arrive at an early solution to their grievances by approaching Conciliation Forum.

RULES

REVENUE AND FOREST DEPARTMENT
GOVERNMENT CIRCULAR NO. - ISSUE - 1/2 /
PR. NO. 1/2 (POLICY)

REVENUE AND FOREST DEPARTMENT GOVERNMENT CIRCULAR NO. - ISSUE - 1/2 / PR. NO. 1/2 (POLICY)

Section-3.

- 1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that, projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that, if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

- 2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required ;
 - (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

REVENUE AND FOREST DEPARTMENT GOVERNMENT CIRCULAR NO. - ISSUE - 1/2 /

PR. NO. 1/2 (POLICY)

- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation - For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

Certain requirements to be verified before accepting a document for registration.-

- (1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain –
 - (a)
 - (b).....
 - ..
 - (i) that if the transaction which is intended by the document, is prohibited by any existing Act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document and that the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate.

REGULATIONS

**MAHARERA GENERAL (SECOND AMENDMENT) REGULATIONS 2019 -
DATED 24/10/2019**

**MAHARERA GENERAL (AMENDMENT) REGULATIONS 2017 -
DATED 03/10/2019**

I. MAHARERA GENERAL (SECOND AMENDMENT) REGULATIONS 2019 - DATED 24/10/2019

Whereas, in order to ensure greater professionalism among promoter, bring a certain level of consistency in the practices of promoters, enforcement of code of conduct and to discourage fraudulent promoters, MahaRERA introduced Self-Regulatory Organization (SROs) in the real estate sector in Maharashtra vide MahaRERA Order No. 10, dated 11th October 2019. Accordingly, it was felt necessary to amend the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017, to enable promoters to submit details of their membership of SRO, during submission of their Project Registration Application.

In exercise of the powers conferred on it under sub-sections (1) and clause (i) of sub-section (2) of section 85 of the Real Estate (Regulations and Development) Act, 2016 and of all other powers enabling it in that behalf, the Maharashtra Real Estate Regulatory Authority, hereby make the following Regulations to amend the Maharashtra Real Estate Regulatory Authority (general) regulations 2017. namely :-

1. Title and Commencement.-

- a) These regulations may be called the Maharashtra Real Estate Regulatory Authority (General) (Second Amendment) Regulations, 2019.
- b) They shall come into force from 1st December 2019.

2 Principal Regulations -These regulations amend the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (hereinafter referred to as the principal regulations).

3 In regulation 4 of the principal Regulations, after clause (b), the following clause shall be inserted, namely :- (c) Membership details of Promoter with MahaRERA registered SRO (Self-Regulatory Authority).

II. MAHARERA GENERAL (AMENDMENT) REGULATIONS 2017 – DATED 03/10/2019

Whereas, Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interests and disclosures on website) (Amendment) Rules, 2019 were issued by Government of Maharashtra on 6th June 2019. Therefore, in consonance with amendment in Rules, it was felt necessary to amend the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

In exercise of the powers conferred on it under sub-sections (1) and clause (i) of sub-section (2) of section 85 of the Real Estate (Regulations and Development) Act, 2016 and of all other powers enabling it in that behalf , the Maharashtra Real Estate Regulatory Authority, hereby make the following Regulations to amend the Maharashtra Real Estate Regulatory Authority (general)regulations 2017. namely :-

1. Title and Commencement.-

- a) These regulations may be called the Maharashtra Real Estate Regulatory Authority (General) (Second Amendment) Regulations ,2019.
- b) They shall come into force from 1st December 2019.

2 Principal Regulations -These regulations amend the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (hereinafter referred to as the principal regulations).

II. MAHARERA GENERAL (AMENDMENT) REGULATIONS 2017 – DATED 03/10/2019

3. In regulation 2 of the principal Regulations, after clause (a) after sub-clause (v), the following sub-clause shall be inserted, namely :-
(v-a) “ incurred ” means amount of product or service received , creating a debt in favour of a seller or supplier and shall also include the amount of product or service received against the payment.
4. In regulation 3 of the Principal Regulations, the words "and submitted to the banks" shall be omitted.
5. After Regulation 3, the following regulations shall be inserted, namely:-
 - 3A In order to ensure quality of materials and workmanship being used on the project, an Engineer who supervises the work should submit Quality Assurance Certificate in Form 24. This form shall be submitted at end of every financial quarter. This Form is applicable to projects registered after 1st December 2018 only.
 - 3B For plotted development projects, in Forms 1, 2, 2A, 3 and 4 only the relevant sections shall be applicable. The model form of agreement for Plotted Development projects, under Rule 10 of Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real-estate agents, rates of interest and disclosures on website) Rules,2017 is provided as Annexure-B

Further, in case of, plotted development projects, wherever IOD/Building Plan approvals not provided as per local rules, then NA Order from competent authority for plotted development shall suffice. Similarly, wherever Occupation Certificate / Completion Certificate is not provided as per local rules, submission of duly filled Form 4 signed by Architect shall denote completion of project."

II. MAHARERA GENERAL (AMENDMENT) REGULATIONS 2017 – DATED 03/10/2019

6 In regulation 4 of the Principal Regulations, in clause (a), after the words "promoters enterprise" the following shall be inserted namely :-

" The said certificate is only in respect of the amount to be deposited and withdrawn from the separate Bank Account. The Chartered Accountant shall further certify that the withdrawal from the Separate Bank Account of the said project has been in accordance with the proportion to the percentage of completion of the project."

7 In Form -2 of the Principal Regulations,-

(1) The words "(License No.)" shall be deleted.

(2) In label B, The word "layout" to be replaced with "project".

(3) In Annexure A, the following explanation shall be inserted, namely:-

" Explanation -1 - The increase in construction cost due to execution of extra/additional items as certified by the Engineer in Annexure A, shall be allowed to be added in Form 3"

8. After Form 2, **Form 2A** shall be added, in accordance with Format annexed at **Annexure – I**

9. The Form 3 in the Principal Regulations shall be substituted in accordance with format annexed at **Annexure - II.**

10. In Form 5, the words "Membership No." shall be replaced by "UDIN No. And Membership Number.....".

II. MAHARERA GENERAL (AMENDMENT) REGULATIONS 2017 – DATED 03/10/2019

11. In Regulation No. 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017,-

- i. In clause (a) for the words "the Authority" the words 'the Authority or Adjudicating Officer "shall be substituted
- ii. In clause (c) for the words “The Authority" the words 'The Authority or Adjudicating Officer” shall be substituted.
- iii. In clause (d) for the words “ The Authority" the words 'The Authority or Adjudicating Officer” shall be substituted.
- iv. In clause (e) for the words “ The Authority" the words 'The Authority or Adjudicating Officer” shall be substituted.

12. The Model form of Agreement for plotted development shall be in accordance with format annexed **at Annexure - III.**

SUO-MOTO ORDERS BY MAHARERA

SUO-MOTO ENQUIRY NO 17/2018 BETWEEN MUMBAI GRAHAK PANCHAYAT V/S
MAGIC BRICKS AND OTHERS ORDER DATED 03-10-2019

SECRETARY, MAHARERA VERSUS M/S WISTERIA REAL VISION PVT. LTD.(SUO-
MOTO CASE NO. 18 OF 2019) DATED 04-09-2019

SUO-MOTO ENQUIRY NO 17/2018 BETWEEN MUMBAI GRAHAK PANCHAYAT V/S MAGIC BRICKS AND OTHERS ORDER DATED 03-10-2019

SUO-MOTO ENQUIRY. NO. 1712018.

Property sites will have to register with MahaRERA

Portals, which go beyond just advertising, fall within the definition of a real estate agent, rules housing authority

Real estate portals, which do more than just lend advertising space for real estate projects, will have to register with the Maharashtra Real Estate Regulatory Authority (MahaRERA) within two months, as they fall within the definition of a real estate agent, the housing authority has ruled.

On a question raised by consumer protection group Mumbai Grahak Panchayat (MGP) on whether online real estate portals can operate without prior registration with the RERA authorities, a two-member bench of MahaRERA, comprising Vijay Satbir Singh and Bhalchandra Kapadnis, examined the issue. It also asked all stakeholders – the MGP, portals like Housing.com, 99acres.com, Makaan.com, developer bodies National Real Estate Development Council and CREDAI-MCHI to present their views on the subject.

SUO-MOTO ENQUIRY NO 17/2018 BETWEEN MUMBAI GRAHAK PANCHAYAT V/S MAGIC BRICKS AND OTHERS ORDER DATED 03-10-2019

SUO-MOTO ENQUIRY. NO. 1712018.

The advocates for some real estate portals argued that their sites acted merely as advertising spaces for promoters to advertise their projects. Like billboards in outdoor advertising, they were merely advertising spaces online and charged fees or remuneration for advertisements and hence they did not fall under the purview of RERA provisions regulating real estate agents or promoters, they claimed.

They also argued that while the portals went beyond pure advertisement spaces and provided comparative analysis of projects, rates, amenities, etc, they provided



SUO-MOTO ENQUIRY NO 17/2018 BETWEEN MUMBAI GRAHAK PANCHAYAT V/S MAGIC BRICKS AND OTHERS ORDER DATED 03-10-2019

SUO-MOTO ENQUIRY. NO. 1712018.

these services without charging any fee to the consumers. The advocates for some portals argued that they did not operate like a real estate agent on a commission basis or charge any brokerage. The portals also argued that they do not play a direct role in the final sale or fruition of the sale transaction. The portals also wondered how they could register with just one state RERA authority when some of them have nationwide branches for their operations.

The MahaRERA members examined the definitions of advertisement and real estate agent under sections of RERA. They also examined Section 9 of RERA (which prohibits any real estate agent from facilitating the sale or purchase of a promoter's property without prior registration). The bench ruled that introducing buyers and sellers of properties, providing comparative market research, virtual tours of projects facilitated the decision and monetary gain in any form was as good as brokerage. The bench left it to the online real estate platforms to decide if they wish to exist as pure advertisement spaces online or carry on activities beyond mere advertising. The bench said if they carried their activities one step beyond pure advertising, they would be

prohibited from carrying them out without prior registration with MahaRERA. The bench also gave two months for the portals to decide on their registration. The bench also ruled that if a portal has nationwide activities, they should register with the respective state RERA authority.

**SECRETARY, MAHARERA VERSUS M/S WISTERIA REAL VISION PVT.
LTD.(SUO-MOTO CASE NO. 18 OF 2019) DATED 04-09-2019**

SUO-MOTO CASE NO. 18 OF 2019

Secretary, Maharashtra Real Estate Regulatory Authority

.....

Complainant

Versus

M/s. Wisteria Real Vision Pvt. Ltd.
MahaRERA Regn. no. A52100003089

.....

Respondent

Coram: Shri. Gautam Chatlerjee, Chairperson, MahaRERA

1. This is a Suo-moto matter taken up by MahaRERA, when it has come to the notice that the Respondent having MahaRERA agent registration no. A52100003089, has facilitated the sale of apartments in real estate Projects spread over 100-acre township in Haveli Pune, by advertisements on social media websites, without mentioning any MahaRERA registration details.

**SECRETARY, MAHARERA VERSUS M/S WISTERIA REAL VISION PVT.
LTD.(SUO-MOTO CASE NO. 18 OF 2019) DATED 04-09-2019**

SUO-MOTO CASE NO. 18 OF 2019

- 2 The material placed before MahaRERA, Prima facie shows that the Respondent has facilitated sale of apartments in real estate Projects' which are not registered with MahaRERA, thereby violating section 10 (a) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the said Act).
- 3 In view of the above MahaRERA has decided to take Suo-moto cognizance in exercise of its power conferred upon it by sec 35 of the said Act, and a notice to the Respondent was issued to appear before the Authority and explain his stand in the matter.
- 4 In pursuance of the notice issued, the Respondent appeared before the Authority on August 27,2019 and thereafter on September 04, 2019. Hon'ble Chairperson of the Authority has explained the contravention alleged to have been committed by the Respondent.
- 5 The Respondent has been given full opportunity to defend by following the principles of natural justice.

SECRETARY, MAHARERA VERSUS M/S WISTERIA REAL VISION PVT. LTD.(SUO-MOTO CASE NO. 18 OF 2019) DATED 04-09-2019

SUO-MOTO CASE NO. 18 OF 2019

- 6 The Respondent has admitted to certain facts which are put on record. He submitted to inadvertently having shared the details of the said real estate projects by circulating advertisements to prospective customers by advertising & Prior to its MahaRERA registration. He further tendered an unconditional apology and assured that he will not solicit, misguide or engage in such facilitation of advertisements or sale, going forward.
- 7 The Hon'ble Chairperson has heard the Respondent. He accepted that the alleged violations of the provisions of the Act are totally inadvertent and he did not have any intention to show non - compliance towards the Provisions of the Act or Rules or Regulations made there under. The Respondent has submitted an affidavit dated August 29, 2019, that such a violation or the Act would not happen in the future and he will strictly comply with the provisions of the Act, Rules, Regulations and Orders / Circulars issued there under.
- 8 It is in these circumstances after giving full hearing , the Authority, therefore, holds that the Respondent has violated provisions of 10 (a) of the Real Estate (Regulation and Development) Act, 2016. Therefore, in exercise of the Powers conferred by Section 62 of the Act, Respondent is directed to pay a penalty of Rs. 80,000/- (Rupees Eighty thousand only) for eight days of violation; starting from August 21, 2019 till August 28, 2019, and he is further warned to not repeat such violation in future
- 9 The suo- moto matter accordingly stands disposed of

JUDGEMENTS

APPELLATE TRIBUNAL

BOMBAY HIGH COURT

KERALA HIGH COURT

DELHI HIGH COURT

SUPREME COURT

APPELLATE TRIBUNAL

APPELLATE TRIBUNAL- 10473

APPELLATE TRIBUNAL-10934

APPELLATE TRIBUNAL- 10473-ABOTT ANTHONY QUINNY VS **MANGILAL JAIN**

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI
Misc. Application No. 18/19

In
Appeal No. AT006000000010473

M/s. Abott Anthony QuinnyAppellant

V/s.

Mr. Mangilal R. Jain & Ors.)Respondent

CORAM : **SUMANT KOLHE, MEMBER (J)**
S. S. SANDHU, MEMBER(A)

DATE : **25th OCTOBER, 2019.**

ORDER : (PER S.S. SANDHU, MEMBER(A))

This application is filed by the allottee applicant to restore the captioned appeal dismissed for default by this Tribunal on 30th January, 2019. The said order reads as follows:

"Called.

None for the appellant.

Keep back.

Called at 12.35 P.M.

Second time none appears for appellant.

On 5th September, 2018 and 18th January, 2019 also none appeared for appellant. Today even on second call, appellant is absent.

Appeal stands dismissed for default.

No costs."

2. The learned counsel for applicant submits that he remained absent in the hearing of appeal before the designated Appellate Tribunal on 5th September, 2018. He could not get the next date

APPELLATE TRIBUNAL- 10473-ABOTT ANTHONY QUINNY VS

MANGILAL JAIN

despite enquiries. However, it later turned out that notice was sent on email dated 16th January, 2019 for the hearing on 18th January, 2019. As he is an elderly person unfamiliar with the use of electronic media and having no access to computers/emails on regular basis and since there was no any physical notice, he was not in a position to appear on the appointed dates for hearing. He came to know of the dismissal of his appeal on 22nd February, 2019 and filed the instant application for restoration on 16th March, 2019. He further submits that there is no malafide on his part and his absence was unintentional. He pleaded that he has a good case on merits and therefore considering the aforesaid facts the appeal be restored in the interest of natural justice.

3. Opposing the plea for restoration, the learned Counsel for Non-applicant argues that once the email address is shared by applicant for communication with him it is necessary for him to access and refer to intimations received for appearing in the matter. Besides Advocate of the applicant also has to keep track of the proceedings in appeal. He, therefore, argued to reject the application for restoration.

4. Considered the rival submissions and also perused the record of proceedings that culminated in dismissal of the appeal. The facts on record in the office reveal that the appeal was first listed on 5th September, 2018 before the designated Appellate Tribunal. In the order recorded on the said date the applicant is

shown to be absent despite communication dated 30th August, 2018. The matter was, therefore, adjourned to 27th September, 2018. It is also directed therein to Respondent and the MahaRERA to inform applicant to appear on the adjourned date failing which the appeal shall be dismissed. On 24th September, 2018 an email is sent by office to applicant informing postponement of the date. It is also mentioned that next date of hearing will be communicated shortly. In reply to this, the applicant requested for informing him of the next date. The facts obtained from record further reveal that appeal was taken up for hearing thereafter only on 18th January, 2019 after formation of the Tribunal by giving notice dated 15th January, 2019. Since the applicant remained absent on the said date and also on the subsequent dates i.e. 25th January, 2019 and 30th January, 2019 the appeal came to be dismissed in default on 30th January, 2019.

APPELLATE TRIBUNAL- 10473-ABOTT ANTHONY QUINNY VS **MANGILAL JAIN**

5. From the above facts, it appears that no hearing took place immediately after adjourning the matter listed on 27th September, 2019. The matter was listed next only on 18th January, 2019. In the intervening period, this Tribunal became functional from 24th December, 2019. This being the initial phase of the Tribunal, the administrative processes had not fully stabilized and, therefore, in such circumstances it seems uncertain that the notice dated 15th January, 2019 for hearing on 18th January, 2019 has actually been received by the applicant. As a result it is likely that for want of

receipt of this notice, he could not appear in the hearing on 18th January, 2019. We also find that there was no notice sent after the last notice dated 15th January, 2019 sent for hearing listed on 18th January, 2019. It therefore, also implies that in case the applicant has missed to receive the notice dated 15th January, 2019 he had no occasion to be in the notice for the hearings fixed on 18th January, 2019 and thereafter till his appeal was dismissed in default on 30th January, 2019.

6. Having regard to the above facts and circumstances, it appears that on account of transitional phase subsequent to formation of this Tribunal, the applicant was not in receipt of sufficient and proper notice for the hearings scheduled by the Tribunal. Therefore, he was unable to appear on the dates fixed for hearing resulting in dismissal of his appeal in default. This has resulted in depriving him of the natural justice. Therefore, we are of the considered view that in the circumstances enumerated hereinabove, the case of the applicant deserves to be considered sympathetically and to be decided on merits in the interest of justice.

7. Accordingly, the application for restoration of appeal is allowed and the appeal stands restored to its original stage. No costs.

APPELLATE TRIBUNAL-10934 SHER SINGH CHILOTRA VS **RAVI DEVELOPMENT**

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL,MUMBAI

M.A. 2/19

In

AT006000000010934

Sher Singh Chilotra
Versus

...Applicant

Ravi Developments

... Respondent

(Mr. Jay Mishra, Advocate for Applicant)
Mr.Makrand V. Raut a/w Hima Khuman, Advocates for
Respondent)

CORAM: SUMANT M. KOLHE, MEMBER (J)

DATE : 07TH OCTOBER, 2019.

ORDER BELOW APPLICATION FOR CONDONATION OF DELAY

Read the application for condonation of delay and say
filed. Heard both sides. Perused evidence and papers.

2. The following points arise for my determination –

POINTS

1. Whether the petitioner has sufficient cause for condonation of delay ?
2. What order ?

My findings to above points for the reasons as stated below
are as under :

1. Affirmative.
2. As per final order.

POINT NO.1

3. The petitioner is allottee. Respondent is promoter.
The petitioner had filed the complaint
No.CC006000000012332 against the respondent. The
learned Member No.1, MahaRERA passed impugned order
dated 7.5.2018.

4. Being dissatisfied with the said order, the allottee
preferred an appeal to which a delay of 152 days has been
caused. In order to substantiate and prove the sufficient
cause for delay in preferring the appeal, the petitioner has
filed an affidavit in support of application for condonation of
delay. I would like to point out that the petitioner was
dissatisfied with impugned order particularly on the point
that interest for delayed period of possession was granted
from 1.5.2017 and the petitioner was asking for interest from
agreed date of possession and so the petitioner was under

APPELLATE TRIBUNAL-10934 SHER SINGH CHILOTRA VS RAVI DEVELOPMENT

impression that typographical mistake is committed in writing date as 1.5.2017 in impugned order, from which date, interest for delayed period possession is to be calculated. It is revealed that the petitioner applied for rectification of impugned order on 24.5.2018. However, there were no notices issued for hearing of said application for rectification by the office. So, petitioner filed an application under Rights to Information Act, 2005 on 20.8.2018. However, there was no reply to this application. In October, 2018, petitioner personally visited the office. The office handed over the order passed on his application under RTI Act, 2005. It is revealed from the said order that it was already passed on 19.9.2018. However, the petitioner received it by hand in the month of October, 2018. Thereafter, the petitioner has fairly submitted that there were several attempts for settlement of the matter and moreover, he had financial difficulties in preferring the appeal and so there is delay of 152 days in preferring the appeal. In ordinary course of nature, it is quite possible that the allottee may approach for rectification of order under pretext that there is typographical mistake regarding the date since when interest is to be calculated. Thereafter, the allottee got copy of order passed on application under RTI Act, 2005 only in the month of October, 2018 when there were attempts to settle the matter

and also petitioner had financial difficulties to prefer the appeal. The affidavit of petitioner is sufficient to substantiate all these grounds which show that there was sufficient cause with the petitioner for not preferring the appeal within stipulated period. In this matter there is no intentional or deliberate delay on the part of the petitioner. The petitioner was acting bonafide throughout the period from the date of passing of order till the date of preferring the appeal. Thus, the petitioner has sufficient cause for condonation of delay.

5. First let us consider the legal aspect of condonation of delay. It is laid down by Hon'ble Supreme Court in **1987 law Suit (S.C.) 214, Collector Land Acquisition Vs. MST Katiji** that; refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. Similarly, every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

APPELLATE TRIBUNAL-10934 SHER SINGH CHILOTRA VS **RAVI DEVELOPMENT**

6. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay.

7. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Hon'ble Supreme Court has also laid down in **1998 Law Suit Supreme Court 872, N. Balakrishnan Vs. M. Krishnamurthy** that;

" Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. The word sufficient cause as used

should receive a liberal construction so as to advance substantial justice. When there is a reasonable ground to condone the delay and that delay was not occasioned deliberately and intentionally, then delay should be condoned.

8. In view of the above discussion I am of the opinion that this is a fit case to condone the delay. So, I answer the point accordingly. I pass the following order :-

ORDER :

- 1) MA 2/19 is allowed.
- 2) Delay of 152 days is condoned.
- 3) Appeal No.AT006000000010934 shall continue with the same number as already registered.
- 4) Appeal be fixed on 13.11.2019 for appearance of both parties.

BOMBAY HIGH COURT

1) SINGLE-MEMBER BENCH CAN'T DECIDE RERA
APPEALS: BOMBAY HC

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS:

BOMBAY HC

SECOND APPEAL (ST) NO. 14845 OF 2019
ALONGWITH
CIVIL APPLICATION NO.787 OF 2019

Man Global Limited,)
A company registered under the)
Companies Act, 1956 having office)
at 101, Man House,)
Opposite Pawan Hans, S.V.Road,)
Vile Parle (East), Mumbai 400 056)

..... Appellant/
Applicant

VERSUS

Bharat Prakash Joukani,)
Indian Inhabitant, having address at)
207, Bhullar Star Estate,)
Behind Sakinaka Telephone Exchange)
Andheri Kurla Road, Sakinaka,)
Andheri (East), Mumbai – 400 072)

..... Respondent

ALONGWITH
SECOND APPEAL (ST) NO. 14840 OF 2019
ALONGWITH
CIVIL APPLICATION NO.785 OF 2019

Man Global Limited,)
A company registered under the)
Companies Act, 1956 having office)
at 101, Man House,)
Opposite Pawan Hans, S.V.Road,)
Vile Parle (East), Mumbai 400 056)

..... Appellant/
Applicant

VERSUS

Ram Prakash Joukani,)
Indian Inhabitant, having address at)
207, Bhullar Star Estate,)
Behind Sakinaka Telephone Exchange)
Andheri Kurla Road, Sakinaka,)
Andheri (East), Mumbai – 400 072)

..... Respondent

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: **BOMBAY HC**

Mr.Prasad Dhakephalkar, Senior Advocate, a/w. Ms.Saloni Shah, i/b. DSK Legal for the Appellant/Applicant.

Mr.Nimay Dave, a/w. Mr.Anosh Sequeira, Mr.Dhiren Durante, Ms.Viloma Shah, Mr.Prakash Khati, i/b. Hariani & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 1st OCTOBER, 2019

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: **BOMBAY HC**

The Bombay High Court (HC) set aside on October 17 another single bench order given by Maharashtra Real Estate Appellate Tribunal, in line with an HC ruling earlier this month which said the Tribunal needs to have a minimum two-member bench with at least one judicial member.

The HC ruling by Justice MS Karnik came during the hearing of a second appeal filed by Larsen & Toubro Ltd (L&T) which challenged the tribunal's March 14, 2019 order directing the developer to pay interest on a sum of Rs 1.65 crore for delaying possession of a flat booked by home-buyer Rekha Sinha in L&T's Emerald Isle project in Powai.

Earlier this month, the HC had set aside two Tribunal orders given by its Administrative Member SS Sandhu asking developer Man Global Ltd to pay interest on delayed possession to two home buyers on the ground that as per provisions of the Real Estate (Regulation and Development) Act (RERA), a single-member bench has no jurisdiction to decide upon appeals or applications.

The order by Justice RD Dhanuka had ruled that Section 43 (3) of RERA clearly states that every bench of the Appellate Tribunal shall consist of at least Judicial member and one Administrative or Technical member. L&T had raised the same question of law – whether a sole member of the Tribunal can decide any appeal.

Advocate Samiksha Manek, arguing the case for Sinha, pointed out the provisions of Section 55 of RERA which states that no act or proceeding of the Appellate Tribunal shall be invalid merely due to any vacancy or any defect in the constitution of the tribunal or any other irregularity in the tribunal procedure not affecting the merits of the case.

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: **BOMBAY HC**

The court felt that a conjoint reading of Section 43 (3) and Section 55 (C) of RERA will make it clear that the orders passed by a Tribunal sitting singly will not stand validated by virtue of Section 55 as this could violate the plain language of Section 43(3).

Justice Karnik also referred to the Supreme Court's order in the 1996 case – Gulzari Lal Agarwal vs. Accounts officer, which held that every provision in an Act needs to be constructed harmoniously with a view to promote the object and spirit of the Act, but while doing so, no violence should be done to the plain language used in the section. Advocate Manek then pointed out that in the Man Global Case, the order was given by an Administrative member of the Tribunal, while in this case, the order was passed by a Judicial member sitting singly.

"This submission can only be stated to be rejected in view of the language used in sub section 3 of Section 43 of the same Act, which does not make a distinction between a Judicial or Administrative member and that for the composition of the bench of the Appellate tribunal, the requirement of law is that it shall consist of at least one Judicial member and one Administrative or Technical member," observed Justice Karnik, setting aside the Tribunal order by Judicial member Sumant Kolhe. He remanded the matter back in the Tribunal for a fresh hearing on its merits.

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: BOMBAY HC

MGL had appealed against an order dated May 2, 2019 passed by SS Sandhu, the administrative member of the Tribunal, refusing to condone the delay of 62 days in filing an appeal against a MahaRERA order.



MUMBAI: The [Bombay High Court](#) quashed and set aside a ruling by the administrative member of Maharashtra Real Estate Appellate Tribunal on Tuesday, and ruled that as per the [Real Estate \(Regulation and Development\) Act \(RERA\)](#) provisions, a sole member of a tribunal bench has no jurisdiction to dispose of appeals or applications.

Hearing two second appeals by developer [Man Global Ltd \(MGL\)](#) against Bharat Prakash Joukani and Ram Prakash Joukani, Justice RD Dhanuka delved into the question of law – whether a sole member of the Tribunal can decide any appeal or application under RERA provisions or the same has to be heard and decided by a bench comprising two members, including one judicial member.

MGL had appealed against an order dated May 2, 2019 passed by SS Sandhu, the administrative member of the Tribunal, refusing to condone the delay of 62 days in filing an appeal against a MahaRERA order. On September 24, 2018 MahaRERA had directed MGL to pay each of the two complainants a 10.5 per cent interest on a sum of Rs 5.14 crore from July 2016 till the date of handing over possession of their flats, and refund Rs 61.73 lakh for lift lobby area of 118 sq ft.

MGL had filed an appeal against the directive with the Appellate Tribunal, but there was a 62-day delay which it requested the tribunal to condone. Sandhu in his ruling refused to condone the delay and rejected their application. Man Global Ltd then filed a second appeal with the Bombay High Court.

Senior advocate Prasad Dhakephalkar, appearing for MGL, cited Section 43 (3) of the RERA which states that 'every bench of the Appellate Tribunal shall consist of at least one Judicial Member and One Administrative or Technical Member.'

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: BOMBAY HC

ORAL JUDGMENT

Admit on the following substantial question of law :-

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

2. By consent of parties, both the appeals were heard finally and are being disposed off by a common order.

3. By these two second appeals filed under section 58 of the Real Estate (Regulation and Development) Act, 2016, the appellant has impugned the order dated 2nd May, 2019 passed by the Administrative Member of the Maharashtra Real Estate Appellate Tribunal, Mumbai refusing to condone the delay of 62 days in filing an appeal by the appellant.

4. Mr.Dhakephalkar, learned senior counsel for the appellant invited my attention to the section 43 of the Real Estate (Regulation and Development) Act, 2016 and in particular section 43(3) thereof and would submit that though the application for condonation of delay was made by the appellant before the Real Estate Appellate Tribunal, under section 43 of the said Act, which has to consist atleast one judicial member and one administrative member or technical member, the application for condonation of delay was heard by the non-judicial member alone. He also strongly placed reliance on the judgment of this court in case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors., 2017 SCC OnLine Bom 9302* and in particular paragraph 339 in support of the submission that the Maharashtra Real Estate Appellate Tribunal would always consist of two members i.e. one judicial member and another either administrative member or technical member. He submits that the entire order thus passed by the one of the member of the Tribunal is totally without jurisdiction and thus deserves to be set aside on this ground alone.

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: BOMBAY HC

5. Mr.Dave, learned counsel for the respondents could not point out any provision under the said Act empowering one member of the said Tribunal to decide any appeal or any application.

6. A perusal of the section 43(3) of the Act clearly indicates that every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative or technical member.

7. In case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr.* (supra) this court has held that two member bench of the Tribunal shall always consist of a judicial member. It is also held that in the constitution of the Tribunal, majority of the members shall always be judicial members. The judgment of the Division Bench of this court in case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr.*(supra) applies to the facts of this case. On plain reading of section 43(3) of the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. The impugned

the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. The impugned order thus passed by the Administrative member alone is without jurisdiction and deserves to be set aside on this ground alone. Substantial question of law formulated aforesaid is answered accordingly in aforesaid terms.

8. I, therefore, pass the following order :-

(a) The impugned order dated 2nd May,2019 passed by the Administrative Member of the Maharashtra Real Estate Appellate Tribunal, Mumbai is quashed and set aside.

(b) The application for condonation of delay is restored to file and to be heard by the Real Estate Appellate Tribunal comprising of one judicial member and one administrative or technical member as contemplated under section 43(3) of the Act. The application for condonation shall be disposed of within 30 days from the date of communication of this order.

SINGLE-MEMBER BENCH CAN'T DECIDE RERA APPEALS: **BOMBAY HC**

(c) This court has not expressed any views on the merit of the application for condonation of delay.

9. Both the second appeals are allowed in the aforesaid terms. No order as to costs.

10. In view of disposal of the second appeals, civil applications do not survive and are accordingly disposed of.

[R.D.DHANUKA, J.]

KERALA HIGH COURT

**LAWYERS STATEMENT – CLIENT NOT BOUND BY THE LAWYER'S STATEMENTS OR
ADMISSION AS TO MATTER OF LAW OR LEGAL CONCLUSION [KERALA BUILDING
(LEASE AND RENT CONTROL) ACT, 1965, S. 11]**

CENTRAL BANK OF INDIA AND ORS. VS. BEENA THIRUVENKITAM, AIR 2019
KERALA 164

7

Lawyer's statement – Client not bound by the lawyer's statements or admissions as to matters of law or legal conclusions [Kerala Buildings (Lease and Rent Control) Act, 1965, S. 11]

Central Bank of India and Ors. vs. Beena Thiruvenkilam, AIR 2019 Kerala 164

A lease agreement had been entered into between the bank and the then owners of the building. After the respondent became the owner of the building, the appellant (tenant-bank) paid the rent of the building to the respondent and she had received it. After the lease period expired, the

CENTRAL BANK OF INDIA AND ORS. VS. BEENA THIRUVENKITAM, AIR 2019
KERALA 164

respondent informed the bank that she was not willing to renew the lease. The bank informed the petitioner that since a currency chest is attached to the branch, a suitable place will have to be found by the bank to house its branch and as and when a suitable place is found, they will surrender the tenanted premises. A writ petition was filed alleging that despite the undertaking made, the bank is not making any efforts to surrender the leased premises. The petitioner, therefore, sought appropriate directions from the court. Before the court it was stated by the learned senior counsel for the bank that the premises will be surrendered immediately after the construction of the currency chest. However, the senior counsel for the bank had not given any undertaking before the court that the premises shall be vacated within any specific time.

The learned single judge disposed of the writ petition by directing the bank to surrender vacant possession of the building occupied by it to the respondent within four months from the date of the judgement. The aforesaid judgement was under challenge in the appeal.

The senior counsel for the appellant bank contended that the writ petition filed by the respondent was not maintainable. He contended that no direction could be issued by the court to a tenant, in exercise of its writ jurisdiction under Article 226 of the Constitution, to surrender vacant possession of the building occupied by the tenant to the landlord. The respondent landlord contended that, when the writ petition came up for hearing (before the single judge) the counsel who appeared for the bank had submitted that the bank was ready to surrender possession of the premises to the respondent and it was on the basis of such undertaking that the writ petition was disposed of. He submitted that the appellants cannot now turn around and contend that the writ petition filed was not maintainable.

CENTRAL BANK OF INDIA AND ORS. VS. BEENA THIRUVENKITAM, AIR 2019
KERALA 164

As per section 11, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of the Kerala Buildings (Lease and Rent Control) Act.

It was observed by the court that neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. Consequently, the appeal was allowed.

DELHI HIGH COURT

REMEDIES TO HOMEBUYERS UNDER CONSUMER PROTECTION ACT
AND RERA ARE CONCURRENT

REMEDIES TO HOMEBUYERS UNDER CONSUMER PROTECTION ACT AND RERA ARE CONCURRENT, DELHI HC

The Delhi High Court recently ruled that a home buyer is allowed to approach the NCDRC and RERA concurrently.

A division bench of the High Court of Delhi (High Court) by judgment dated September 4, 2019 in Messrs M3M India Private Limited & Anr v. Dr Dinesh Sharma & Anr (CM (M) 1244 of 2019 & CM APPL 38052-38053 of 2019) along with other connected matters, held that remedies to homebuyers under the Consumer Protection Act, 1986 (CPA) and the Real Estate (Regulation and Development) Act, 2016 (RERA) are concurrent. This judgment allows flat purchasers aggrieved by errant developers to choose between redressal authorities established under the CPA or the RERA.

The High Court's view was that the judgment in the case of Pioneer (supra) constitutes the law declared by the Supreme Court, even with respect to the question raised in the petitions before the High Court in case of Messrs M3M (supra).

REMEDIES TO HOMEBUYERS UNDER CONSUMER PROTECTION ACT AND RERA ARE CONCURRENT, DELHI HC

Findings of the High Court

The High Court, while holding that remedies available to homebuyers under the CPA and RERA are concurrent, made the following observations from the judgment of the Supreme Court in Pioneer (Supra):

- Although the petitioners' principle question before the Supreme Court was the remedies between the IBC and RERA, the issues arising out of the CPA were also pointed out to the Supreme Court.
- The Supreme Court in the case of Pioneer has arrived at its conclusion after considering the statement of objects and reasons of RERA, which refers to the remedies available under the CPA and after considering the provisions of Sections 79, 88 and 89 of the RERA.
- There is no warrant for limiting the Supreme Court's conclusion that concurrent remedies are applicable only to cases where complaints under the CPA were instituted prior to RERA coming into force by reference of Section 71 of the RERA. Section 71 was used as an example of a parallel remedy and doesn't intend to reach a conclusion for only pending CPA complaints and not for ones instituted in future.

REMEDIES TO HOMEBUYERS UNDER CONSUMER PROTECTION ACT AND RERA ARE CONCURRENT, DELHI HC

Decision of the High Court

Based on the above discussion, the High Court arrived at an unequivocal finding that remedies available under the CPA and RERA to the home buyers are concurrent and there is no ground for interference with the view taken by the National Commission in the judgment impugned before the High Court. Thus, the High Court dismissed the petitions filed by the petitioners.

From the recent judgments passed by the High Court, the Supreme Court and even the authorities under RERA, CPA and IBC, the judicial sentiment seems to favour the home buyer. From a conjoint reading of the judgment of the Supreme Court in the case of Pioneer (supra) or the Court in the case of Messrs M3M (supra), the judiciary has armed an aggrieved home buyer with a host of remedies to seek relief against a developer.

BUILDERS WANT HOMEBUYERS' PLAINTS
TO GO TO RERA FIRST

BUILDERS WANT HOMEBUYERS' PLAINTS TO GO TO RERA FIRST

With most cases in the National Company Law Tribunal pertaining to real estate, several projects have been stalled and developers and the industry body have called for changes in the law. According to the Confederation of Real Estate Developers As...



NEW DELHI: Property developers in the country are pushing for the Real Estate Regulatory Authority to be the first point for redressal of complaints by homebuyers.

With most cases in the National Company Law Tribunal pertaining to real estate, several projects have been stalled and developers and the industry body have called for changes in the law.

According to the Confederation of Real Estate Developers Association of India, 65% of the cases in the NCLT are related to real estate projects. “Buyers are unnecessarily dragging cases to the NCLT and that is why we are demanding that RERA should get exclusive rights to deal with complaints related to the sector,” said Jaxay Shah, managing director of Ahmedabad-based Savvy Infrastructures.

BUILDERS WANT HOMEBUYERS' PLAINTS TO GO TO RERA FIRST

Shah is also chairman of the Confederation of Real Estate Developers Association of India. After the government announced a Rs 25,000-crore realty fund to salvage stalled housing projects, developers are now asking for RERA to be the first point of complaint for homebuyers. At a recent RERA conclave, buyers acknowledged that individuals approaching the NCLT was a problem.

“We have been advising the government to create an escalation mechanism and let RERA act and decide first and if you are unhappy, you can go to another available forum. Today, people are going to RERA, NCLT and the consumer forum, which is not ideal,” said Nimish Gupta, MD, South Asia RICS (Royal Institution of Chartered Surveyors), a professional body that represents the interests of all stakeholders in the sector.

SUPREME COURT

1) PASS AN ORDER WHICH WE CAN UNDERSTAND,
SC 'REQUESTS' BOMBAY HC

1) PASS AN ORDER WHICH WE CAN UNDERSTAND, SC 'REQUESTS' BOMBAY HC

"We could not decipher what has been decided by the High Court."

Pass an order which we can understand, the Supreme Court 'requested' the Bombay High Court while it dealt with a special leave petition impugning its order.

In a brief order, the bench of **Justice Deepak Gupta** and **Justice Aniruddha Bose** said that the order of the High Court is unintelligible. *We could not decipher what has been decided by the High Court*, it said.

The bench then set aside the order and remitted the case to the High Court.

1) PASS AN ORDER WHICH WE CAN UNDERSTAND, SC 'REQUESTS' BOMBAY HC

The SLP was filed against an order passed in a Criminal Writ Petition filed before Aurangabad Bench of the Bombay High Court. A reading of the said two paged order does not give any idea about what the case was about, and what has been decided by the Court.

The Supreme Court has made similar remarks about High Court judgments earlier also. In 2017, it had **set aside a judgment passed by the Himachal Pradesh** High Court, because of the convoluted English used in the judgment.

1) PASS AN ORDER WHICH WE CAN UNDERSTAND, SC 'REQUESTS' BOMBAY HC

In another instance, the Apex Court had set aside a Rajasthan High Court judgment which did not set out even the factual controversy nor dealt with the submissions urged by the parties before it and nor did it examine the issues in the context of relevant provisions of the Act that governed the controversy. The least which is expected of is that the order which decides the lis between the parties should contain the brief facts involved in the case, the grounds on which the action is impugned, the stand of the parties defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the lis, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be, the Court had said.

WE HAVE A POWERFUL LAW.
TIME TO USE IT

WE HAVE A POWERFUL LAW. TIME TO USE IT

There is a fairly powerful law in Maharashtra that could bring a significant change in the governance of the state. Most citizens are unaware of its existence and its potential. It has a long name – ‘Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’ – but is commonly known as the ‘Transfers, Charters and Delays Act 21, 2006’. The Act was passed in 2006 but its rules were framed only in 2013. If we ensure reasonable implementation of this law it could ensure better responsiveness and reduce corruption. RTI worked because citizens used and spread it. This law has a greater potential. Instead of cribbing about bad governance, citizens should use this law. Most laws are enforced by government officers and have to be followed by citizens. Some laws like this and RTI have to be enforced by citizens to ensure that government officers follow them.

There are three important aspects of this law, but for the purpose of this article we will focus only on one relating to delay in discharge of official duties. Section 10 of the Act states that decision and necessary action on any file must be taken within 45 days if a matter has to be decided within a department. If more departments are involved the limit is 90 days. Most decisions must be taken within three levels and no officer can keep a file on his table for more than seven working days. Section 10(3) states that in case of delay, the competent authority must fix responsibility on the officers concerned and take disciplinary action on any officer guilty of negligence. This law does not apply directly to municipal corporations, but there is an identical provision: Section 64C in the Mumbai Municipal Corporation Act or Section 72 C in the Maharashtra Municipal Corporations Act.

WE HAVE A POWERFUL LAW . TIME TO USE IT

Thus for any matter where a representation, complaint or application has been made, a decision has to be conveyed within 45/90 days. Every application, complaint or representation given by a citizen is a file. Failure to respond to these within the specified time is a violation of the law. When such an eventuality is brought to the attention of the head of an office or department, a preliminary enquiry must be conducted. If “any intentional delay or negligence” has taken place, then disciplinary action must be initiated against the responsible officer. A public servant fears disciplinary action more than a financial penalty. Most citizens are unaware about the powerful provisions of this law. The few who are aware and have tried to invoke its provisions have generally met with arrogant indifference and pompous disdain.

Even proposals from one department to another are neglected, and the working continues in a haphazard manner. One example of this is that even when sanction to prosecute officers guilty of corruption is sought by the Anti-Corruption Bureau, it languishes for years without any response. Reasonable efficiency in government working, which this law tries to ensure, is being subverted by the bureaucracy’s reluctance to implement it.

Every complaint, application or representation by a citizen is a file. Generally officers do not respond to these and treat them with disdain. This is an affront to the respect that a citizen is entitled to. A citizen has a right to a response. If this not done citizens should write to the head of the department or secretary drawing his attention and demanding a preliminary enquiry. We have a very powerful law. We need to use it.

WE HAVE A POWERFUL LAW. TIME TO USE IT

Below is a format for filing this complaint:

*For Maharashtra state government bodies
The Secretary, (... department) /Head of Department
Mantralaya, Mumbai 400032*

Dear Sir,

I had given my application/complaint/representation for on (copy enclosed). Since then I have received no communication. I would like to draw your attention to Section 10 of the Transfers, Charters and Delays Act 21 of 2006# which mandates that no decision can be kept pending for over 90 days. In the instant case, no decision has been communicated to me despite the lapse of..... days. I request you to conduct a preliminary enquiry within 15 days to fix responsibility on the officers responsible for this delay and take appropriate disciplinary action against them. I request that the report of the enquiry may please be sent to me.

I look forward to your early action in the above matter

Yours truly

Name

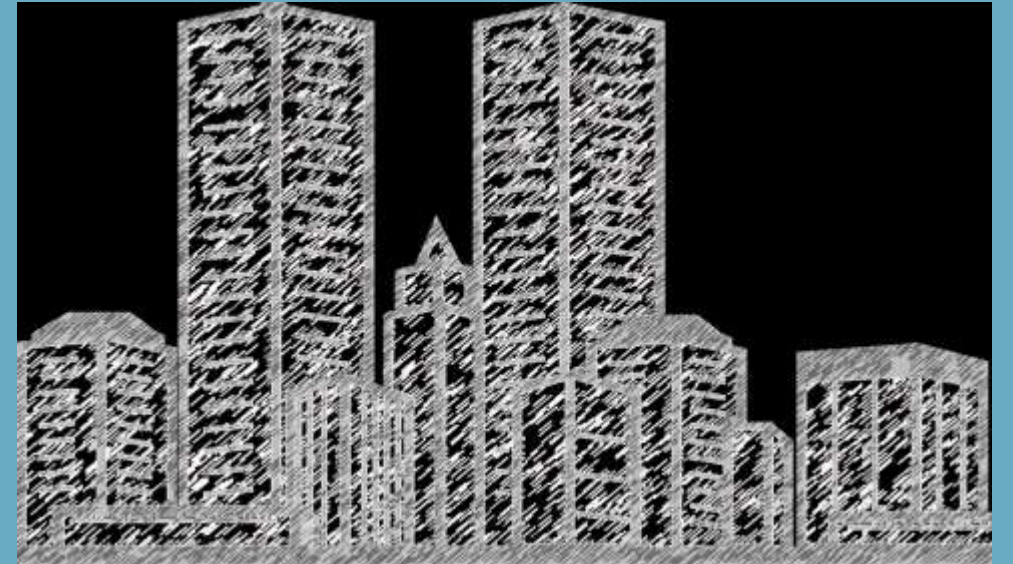
Enclosed: Copy of application/complaint/representation and proof of receipt in your office.

#Substitute: Section 64C in the Mumbai Municipal Corporation Act OR Section 72 C in the Maharashtra Municipal Corporations Act.



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (MAHARERA)

ANNUAL REPORT 2019



ANNUAL REPORT 2019

5. Statement on the periodical survey conducted by the Authority to monitor the compliance of the provisions of the Act by the promoters, allottees and real estate agents

In order to ensure compliance of the provisions of the Act, the authority on monthly basis undertakes the following survey and activities:

| S.No | Details |
|------|---|
| 1. | Every 1 st and 15 th Day of the Month, list of all the promoters who have not updated their projects in the past three months is extracted and reminder mail is sent to them for compliance |
| 2. | Every 5 th Day of the Month, list of all projects whose validity is about to be completed in next three months is extracted and reminder mail is sent to them to upload Form 4 or apply for extension |
| 3. | Every 10 th Day of the month, All promoters are sent a mail listing Guidelines on Advertisements of Projects |
| 4. | Every 20 th Day of the month, List of all projects where booking is more than 51% is extracted and reminder mail is sent for society formation, if applicable |
| 5. | Every 25 th Day of the month, All promoters are sent a mail listing Guidelines on Agreement for Sale |

ANNUAL REPORT 2019

Apart from this, Every 21st Day of the Month, monthly meeting with promoters association is held for review of compliance of provisions of act by promoters and to plan next steps for enhanced compliance.

ANNUAL REPORT 2019

23. Way Forward

MahaRERA aspires to develop a vibrant prosperous real estate ecosystem in Maharashtra wherein every family gets their dream home, professionals and labour force are empowered with requisite skills and resources, All stakeholders including promoters, Agents are thriving in an hassle-free, transparent , trusting and user-friendly environment. MahaRERA is committed to greater transparency and professionalism, wherein all stakeholders' interests are protected and trust and confidence is established

COMPENDIUM OF BEST PRACTICES



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (MAHARERA)

OCTOBER 2019



COMPENDIUM OF BEST PRACTICES

1) Information Asymmetry: There was a lack of transparency in the sector. Flow of information was very restricted. Information provided was only in accordance with the whims and fancies of the developers. Basic information like the facilities and amenities in the real estate project, access to specifications of fixtures, project completion date etc. remained elusive to customers.



Information asymmetry to the citizen

No Proper Forum for Grievance Redressal for Consumers

Real Estate Transactions were lopsided and heavily in favour of developers

Sundry Abuses and Malpractices

Huge Delays in Real Estate projects completion



COMPENDIUM OF BEST PRACTICES

2) Grievance Redressal: Even though, statutes, which were meant to provide the grievance redressal mechanism to the customers of a real estate projects, did exist, customers were not clear, which forum to approach. The time taken for resolution of the grievances, led to further exasperation for the customers.

3) Lopsided Transactions: The stakeholders were also suffering heavily from lopsided agreements and transactions. The documents were usually in the favour of the developers and the customers in most of the cases were made to sign on dotted lines.

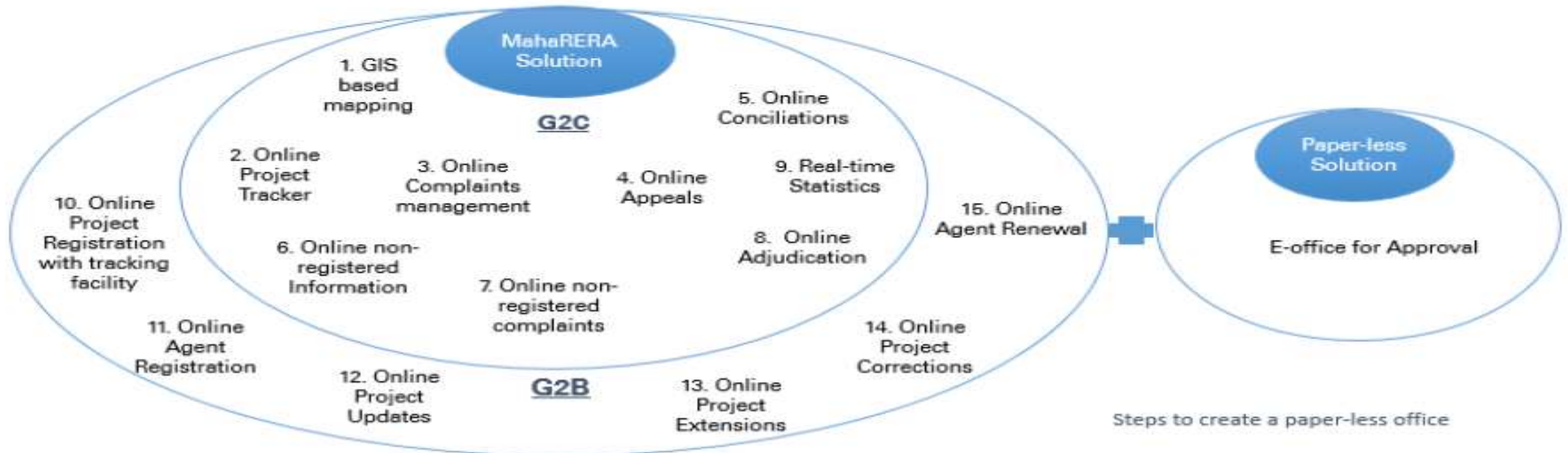
4) Sundry Abuses and Malpractices: Violation of rights of the customers was quite prevalent in the industry. There were malpractices including financial malpractices. The money collected for a project would be diverted for other purposes, delaying the completion of the project for which the money was collected. This further led to widening of the trust deficit between the home buyers and the developers.

5) Delays in Completion: Due to reasons mentioned above and various other reasons, the projects languished in various stages of incompleteness. This not only caught the home buyers in a financial bind but also brought the developers into a financial stress along with reputational risks.

COMPENDIUM OF BEST PRACTICES

1.3.3. 100% Digital Platform

MahaRERA is a 100% Digital platform. All of its G2C and G2B services are completely online including: Online Project Registration with tracking facility, Online Agent Registration, Online Project Updates, Online Project Extensions, Online Project Corrections, Online Agent Renewal, GIS based mapping, Online Project Tracker, Online Complaints management, Online non-registered Information, Online non-registered complaints, Online Appeals, Online Adjudication, Real-time Statistics and Online Conciliations.



COMPENDIUM OF BEST PRACTICES

2.5. Impact

MahaRERA conciliation and dispute resolution forum is first-of-its-kind initiative wherein neutral conciliators from promoters and consumers association guide the parties towards amicable settlement. The impact of MahaRERA Conciliation Forum is as follows:

- ✓ 28 conciliation panels established across Maharashtra on public demand and this number is increasing with time.
- ✓ More than 400 families' resolved their issues amicably and they find it difficult to believe that such a quick resolution to their long-pending dispute could have been



**IMPACT OF MAHARERA
CONCILIATION AND DISPUTE
RESOLUTION FORUM**



COMPENDIUM OF BEST PRACTICES



28

28 Conciliation Panels established across the state



400

400 families resolved their issues and grievances amicably



Reputed Industry Leaders

Renowned and eminent Industry leaders are conciliators with MahaRERA



60 Requests per month

On an average MahaRERA receives about 60 conciliation requests per month



200 Cr

More than 200 Crores of financial investment which was involved in dispute cleared amicably through the conciliation panels



Huge Cost Saving

Huge Cost savings for consumers and promoters as they do not have to hire lawyers and this mechanism provides a quick turnaround

**FM ANNOUNCES COMPREHENSIVE
MEASURES TO BOOST HOUSING SECTOR**

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

The mammoth fund is to meet the funding requirements of 1,600 stalled projects where money of 4.58 lakh homebuyers are stuck, Finance Minister Nirmala Sitharaman said.

Finance Minister Nirmala Sitharaman announced on Wednesday that the Centre has committed up to Rs 10,000 crore for completing housing projects that have been stuck for years.

This special window, which will function as an Alternative Investment Fund (AIF), would provide priority debt financing for the completion of stalled housing projects in the affordable and middle-income housing sector. While Rs 10,000 crore would come from the Centre, the remaining would come from SBI and LIC, and others may join too, the FM indicated. The total size of the fund is expected to be around Rs 25,000 crore.

The mammoth fund is to meet the funding requirements of 1,600 stalled projects where money of 4.58 lakh homebuyers are stuck, Finance Minister Nirmala Sitharaman said while briefing the media after the Cabinet meeting. This fund will also cover projects that are Non-Performing Assets (NPAs) and those that have ongoing NCLT proceedings.

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

Here's a lowdown of what this fund actually entails and if it does serve the purpose of reviving the real estate sector

WHAT CLASSIFIES AS AFFORDABLE, MIDDLE-INCOMING HOUSING:

- Homes that do not exceed 200 sqm. carpet area.
- Homes that are upto or less than Rs 2 crore in the Mumbai Metropolitan Region.
- Homes that are upto or less than Rs 1.5 crore in National Capital Region, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad.
- Upto or less than Rs 1 crore in the rest of India.

WHO CAN RECEIVE THIS FUNDING:

- Projects that have been stalled for lack of adequate funds.
- Projects that classify as affordable, middle-income housing (as listed above).
- Net worth positive projects — projects where the value of the sold and unsold inventory put together will be more than the amount of cost of completion and any dues that have to be paid.
- Projects that are registered under the Real Estate (Regulation and Development) Act.
- The government also informed that projects that are nearing completion will be prioritised.

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

SOLUTION FOR REAL ESTATE SLUMP:

The government has been trying to boost the real estate sector in the last few months, and provided additional deduction up to Rs 1,50,000 on interest paid on loans borrowed up to March 31, 2020, for purchase of houses valued up to Rs 45 lakh to customers. In September, Nirmala had announced that a special window for affordable and middle-income housing will be created for providing last-mile funding for housing projects which are stressed.

According to the Finance Minister, funds provided to stalled housing projects will enable them to complete unfinished projects and ensure delivery of homes to a large number of homebuyers. She added that the move would reduce the financial stress faced by a large number of middle class home buyers who invested their money in these projects but haven't gotten possession of the house.

Nirmala also said that RBI issued a clarificatory note that would allow banks to release pending loan amounts of home buyers whose money got stuck in stalled projects.

However, this mammoth fund won't necessarily solve the woes of India's real estate sector, including a severe cash crunch as builders are unable to repay loans to NBFCs (where a chunk of loans to developers are from).

According to Bloomberg, this mammoth fund can help complete just 6% of overall stalled housing projects. The report states that housing projects of \$63 billion are presently stuck, while the fund is \$3.5 billion.

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

Real estate services company, ANAROCK, in a report, stated “approximately 220 projects with 1.74 lakh homes, which were launched in 2013 or earlier, are stalled in the top 7 cities due to funding issues or some litigations. The total value of these projects is estimated to be more than Rs 1.77 lakh crore. Almost 66% of these stalled units have been sold, which are valued at approximately Rs 1.11 lakh crore.”

Additionally, unsold inventory has also piled up. As of September 2019, the top seven cities — Mumbai, NCR, Pune, Bengaluru, Chennai, Hyderabad and Kolkata — have nearly 6.56 lakh unsold units. Additionally, according to ANAROCK, 19 lakh units in these seven cities are in various stages of construction as of the end of September 2019.

According to a Livemint report, projects worth an estimated \$25 billion are currently facing insolvency proceedings.

The government seems to understand that this alone may not rescue it from the slowdown in the economy. In a press release, the government stated that the real estate industry is “intrinsically linked with several other industries, growth in this sector will have a positive effect in releasing stress in other major sectors of the Indian economy as well.”

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

WHAT ANALYSTS HAVE TO SAY:

“It is fair to assume that the AIF will be inundated with funding requests from day one and how it evaluates and decides on potential recipients will be critical,” a fund manager told Mint.

A lack of clarity at the current stage may even prove to be a non-starter for an announcement with the magnitude such as this.

“Several recent initiatives announced by the government have been non-starters for lack of clarity. The bailout fund targets to aid last-mile funding, but there are many grey areas that may create roadblocks for smooth execution,” Ajit Mittal, executive director, Indiabulls Housing Finance told Fortune.

India Ratings and Research, a Fitch Group Company, stated that the scheme will not impact demand, which, in turn, may distort the market currently correcting itself.

Credit rating agency ICRA stated that this current fund size will not cover the cost of construction, and estimated that 4.58 lakh units are to be completed — for which Rs 35,000-45,000 crore would be required.

“While the revisions in eligibility criteria appreciably expand the project coverage under the fund, especially given the large number of stressed projects which have been referred to NCLT or classified as NPA already, our initial concerns on the adequacy of the fund, the efficacy and timeliness of implementation, and demand risks for the unsold inventory associated with these projects, remain,” Shubham Jain, Senior Vice President and Group Head at ICRA, said.

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

REAL ESTATE PROJECTS INVOLVED IN FRAUD WON'T GET ANYTHING FROM RS.25,000 CRORE FUND:

Government has clarified that housing projects involved in fraud or diversion of funds may not be considered for the real estate distress fund. This is meant to avoid any misappropriation or cornering of funds by builders.

Addressing concerns over misuse of the fund, finance ministry has clarified that projects involving fraud or diversion may not be considered by AIF. The ministry has mentioned that all applications for financing under AIF would be reviewed by the investment committee of the fund for approval, after due-diligence and discussions with existing lenders and legal advisors

"Project and developer selection shall be the prerogative of the investment manager and the investment committee of the fund. The investors including the Government will not be interfering with the financial objectivity of that process. The decision of the Investment Committee shall be guided by the investment objective of the fund as agreed in the contribution agreement entered into with the investors," the ministry has said in a statement

Elaborating on the due diligence that will be conducted for investments under AIF, finance ministry said that investment manager SBICAP Ventures will first complete an internal financial analysis to see if the project meets the fund's investment criteria. This will be further supplemented by external due diligence agencies to cover areas such as title, financial, real estate and legal, among others, including consultation with existing lenders, the ministry added.

"The capital provided by the fund would be used only for completion of the stalled projects. This should benefit all the stakeholders in the project," finance ministry has asserted.

FM ANNOUNCES COMPREHENSIVE MEASURES TO BOOST HOUSING SECTOR

NEW MEASURES ADOPTED TO BOOST REAL ESTATE SECTOR:

Relaxation of ECB guidelines for Affordable Housing:

In consultation with the RBI, the government proposes to ease the ECB guidelines to enable financing of home buyers for people who are eligible under Pradhan Mantri Awaas Yojana (PMAY).

House Building Advance:

The interest rate on House Building Advance will be lowered and connected to the 10 year G Sec yields. The government believes that this move will encourage more government employees to buy new houses.

Special Window for affordable and middle-income Housing:

The government will provide a special window for last-mile funding for housing projects which are non-NPA and non-NCLT projects and are Net worth positive in the affordable and middle-income category. The primary objective to focus on the construction of the unfinished units. The government of India, similar to NIIF, will contribute to the fund while the rest of it will be invested by LIC and private capital from banks/sovereign funds/DFIs etc. Rs 10000 crore to be invested by the government, while the approximately same amount will come from the outside investors.

**ECONOMIC OFFENCE WING (EOW) CAMP,
AUGUST 2019**

ECONOMIC OFFENCE WING (EOW) CAMP AUGUST 2019

This is to inform all the Citizens that, there are 38 Crimes registered by us against Kamala Landmark Group Companies along with its sister concerns, having office address Terminal-9, Jawaharlal Nehru road, Vile Parle (east), Mumbai 400057 & Shanti Vimal Appt. Pherozshah Mehta road, Vile Parle (east), Mumbai 400057. Main accused in the crime are 1. Jitendra Ramesh Jain, Age-41 years, 2. Jinendra Ramesh Jain, age 38 years residing at Manas Bldg, NS Road No 6, JVPD Scheme, Vile Parle, Mumbai 56 & 35 Udgeet Bldg., 3 NS Road, JVPD Scheme, Vile Parle, Mumbai 56 & Ketan Anandilal Shah, age-43 years residing at Chandanbala Apt. Riz road, Malbar Hill, Mumbai 06 and other co-accused.

During investigation of the crime it is revealed that there are at least 1000 no. Of flat purchasers who have paid consideration towards the flat either in cash or cheque to above mentioned main accused persons or office bearers of the Kamala Landmark Companies and its sister concerns companies. It has further revealed that inspite of payments made by the flat purchasers they have not got possession of the flats from the above mentioned accused persons.

We call upon all such flat purchaser citizens to come forward and give us your complaints along with relevant documents against the accused persons. For convenience of the aggrieved persons we are holding camp for accepting your complaints by our officers against Kamala Landmark Group & its sister concerns companies. The camp will be organised on 29 Aug 2019 to 30 Aug 2019 from 11.00 am to 5.00 pm at Prerana Hall, Near Azad Maidan Police station, Near CST Station, Mumbai 400001.



**RERA SAYS MOU PROOF ENOUGH FOR
OWNERSHIP**

RERA SAYS MOU PROOF ENOUGH FOR OWNERSHIP



IMAGE USED FOR REPRESENTATIONAL PURPOSE ONLY

per cent interest from 2012.

According to the complaint, Krishna and Veena Agarwal had booked flat no 2202 in Verona Tower S3 in Oshiwara, a project by Sahyog Homes Ltd, in 2012 and paid Rs 82.95 lakh out of the flat cost of Rs 89.41 lakh. The complaint said the developer had assured possession in 2016, but in 2017, unilaterally changed the possession date to July 31, 2022. The complaint also said that on the MahaRERA portal, the developer has mentioned that 40 floors are proposed, 28 are completed, but the Commencement Certificate is only till 27th floor; therefore, the Agarwals want to withdraw from the project and seek refund of their investment with interest.

Orders builder to refund Rs 83 lakh with 10.75 per cent interest to two homebuyers.

Though two homebuyers had only a Memorandum of Understanding (MoU) as evidence that they invested in a flat in an Oshiwara highrise, the Maharashtra Real Estate Regulatory Authority (MahaRERA) has ruled that it is proof enough of ownership and directed the developer to refund Rs 82.95 lakh with 10.75

During the hearings, the developer claimed that the Agarwals were not homebuyers but investors and that the MoU was not registered.

MahaRERA member Madhav Kulkarni observed that the Appellate Tribunal had held that even in the absence of a registered agreement, such complaints are maintainable. Stating that the developer should not have accepted such a huge amount when the project was not progressing as per schedule, Kulkarni held that the builder had failed to deliver possession of the flat as per agreement and directed the company to refund the paid amount from the date of payment till final realisation.

Advocate Tanuj Lodha from Lodha and Lodha Advocates, who represented the home buyers, said "The RER Act does not discriminate against the allottee who does not have an agreement for sale. Under the Act, all rights flow from the fact that the homebuyer is an allottee. Further RERA provides specific remedy in case of misrepresentations to the homebuyers whether supported by agreement for sale or not." Aggrieved parties are entitled to appeal against MahaRERA orders before the Maharashtra Real Estate Appellate Tribunal (MREAT) within 60 days.

PMC BANK AUDITOR'S ARRESTED

MAHARASHTRA: 2 PMC BANK AUDITORS SENT TO POLICE CUSTODY TILL NOVEMBER 15



Depositors protest outside a PMC Bank branch (File Photo)

MUMBAI: Statutory auditors of Punjab and Maharashtra Cooperative (PMC) bank, Ketan Lakdawala (60) and Jayesh Sanghani (61), arrested for their role in the Rs 6,500-crore loan fraud case, were on Wednesday produced before Esplanade court and remanded to police custody till November 15. Lakdawala and Sanghani were summoned for questioning on Tuesday and

later arrested. An officer from city economic offences wing (EOW) said the two were arrested for negligence and flouting certain rules in the audit process.

The number of arrests in the case has gone up to seven. EOW had arrested HDIL father-son directors Rakesh and Sarang Wadhawan, and the bank's ex-chairman, Waryam Singh and bank's ex-MD Joy Thomas among others.

**SUGGESTIONS RECEIVED AT NATIONAL RERA
CONCLAVE TO BE FINALISED BY NOV-END**

SUGGESTIONS RECEIVED AT NATIONAL RERA CONCLAVE TO BE FINALISED BY NOV-END: UP RERA CHAIRMAN

Suggestions have been received from consumers, chiefs of financial institutions, real estate developers and other stakeholders.

Several suggestions received at the recently concluded National RERA Conclave held in Lucknow on how to make RERA more effective, avenues available for financing stuck projects and synergies that can be created between legal forums such as RERA, consumer courts and NCLT to avoid confusion, would be finalized by the end of the month.

"An action plan would be ready within a week and a decision would be taken by the end of the month to finalize these recommendations. We will be circulating these suggestions among members of the newly formed All India Forum for RERA Authorities that comprises chairmen of the regulatory body from across the country. We have called a meeting on November 29 to take a call on all the recommendations received at the conclave," Rajiv Kumar, Chairman, UP RERA, told Money control.

Suggestions have been received from consumers, chiefs of financial institutions, real estate developers and other stakeholders. These have to do with enhancing the implementation of RERA orders, status of stakeholders such as authorities that are not yet covered under the Act and creating better synergies between different legal remedies available to homebuyers, he said.

In August this year, the Supreme Court had said that the RERA act, which regulates the real estate sector, should be read in harmony with the IBC amendments. RERA is not in derogation of any act, and in case of conflict between RERA and IBC, IBC prevails.

SUGGESTIONS RECEIVED AT NATIONAL RERA CONCLAVE TO BE FINALISED BY NOV-END: UP RERA CHAIRMAN

The consumers have the option of seeking remedy under any provision the Consumer Protection Act, IBC or RERA, it had said.

“The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code,” the order had said.

Balwinder Kumar, Member, UP RERA, said that the NCR has an unsold inventory of 1.8 lakh unsold units from which almost Rs 30,000 crore could be realized in the future.

"We are working at a possible solution to help monetize the unsold inventory and utilize the proceeds to finish the stuck projects," he said.

For the uninitiated, after receiving the initial approvals for the construction activities, the promoters are required to approach various authorities and local government bodies for approvals, which are required in the later stage of the construction.

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The approvals vary from commencement certificate for higher floors to electricity connection, to water connection to procuring occupancy certificate for a completed project. These approvals too, are difficult to be obtained in a timely manner which in turn adds to the time factor of money, on to the project, leading to increase in the project overall costs. Many a times, the building construction comes to a grinding halt as the approvals are not received. Issues like these, push the project deadlines beyond manageable limits, leading to unachievable tasks.

Another challenge is to do with implementing RERA orders. Currently, this forms the weakest link in RERA. The orders passed by RERA cannot be executed unless powers to ensure implementations are provided to the authority. RERA, as per the act, can take assistance from the collectors to recover any arrears which arise out of penalties, unpaid fees or any order passed by RERA which is converted into a recovery warrant.

When RERA passes any recovery warrant, the same is to be manually sent to the collector for execution. If the collectors are provided with an access to view these warrants on a real time basis, they can enforce them properly and in a timely manner. As RERA does not have any powers to provide directions to any department, it becomes difficult to ensure that proper steps are taken by the relevant department or authority in this regard.

It is imperative that RERA receives feedback from the collectors on the status of the warrant issued by them, well in time. An online interactive portal will no doubt provide this much needed link to both the RERA and the Collector's office, the white paper on RERA and Government: Transforming Realty Through Synergies, released at the Conclave, said.

THANK YOU



Firm Name : Atul Purani & Associates
Chartered Accountants

Office Address: 8, Vireshwar Kutir,
57-A, St. Mary Road,
Vile Parle – West
Mumbai - 400 056



Tele No : 022 26171040
Mobile No.: 9223346589



Email ID : atulpurani@hotmail.com

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