



RERA DOSSIER

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INTRODUCTION

As the pages of time turn and the landscape of real estate continues its dynamic evolution, Volume 4 stands as a testament, embracing a thoughtfully curated compendium of significant judgments and orders, spanning the duration from **October 2022 to March 2023**. Within these decisions lie the imprints of the RERA authorities entrusted with the responsibility of interpreting the RERA Act, shaping the contours of our legal landscape.

Amidst the interplay of market dynamics, regulatory frameworks, and the shifting aspirations of consumers, a panorama takes shape, demanding our unwavering attention. This Dossier provides pivotal judicial interpretations on issues like allottee's entitlement to claim interest under Section 18 of RERA post-possession, purchasers' eligibility for refunds in

cases of delayed possession despite obtaining the Occupation Certificate, considerations while determining possession dates, the ramifications of authority-extended project completion on claims of delayed possession etc. This Dossier also encompasses legal position developed in this period on important issues like non-negotiable clauses within agreements, Deregistration of Projects, Additional conditions for project extensions, etc.

We sincerely wish that you discover this edition of the Dossier to be both captivating and enlightening. Your feedback and suggestions on this Dossier are highly valued, and we eagerly anticipate hearing from our readers.

Stay tuned for the next Volume!

IMPORTANT JUDGMENTS PASSED BY REAL ESTATE REGULATORY AUTHORITIES AND TRIBUNALS

MahaRERA/MahaREAT

Allottee can claim interest under Section 18 of RERA even after accepting possession.

Ashley Neil Sarrao Vs. Propel Developers Pvt. Ltd.

Ashley Sarrao, (“**Allottee/Complainant**”), had booked a flat with Propel Developers Pvt. Ltd., (“**Promoter/Respondent**”).

However, Promoter failed to hand over possession of the flat by December 2015 as agreed in the registered agreement. In July 2018, Allottee was called upon by the Promoter to take possession of the subject flat. However, the Promoter informed the Allottee about an increase in the carpet area and demanded additional consideration. The Promoter ignored the queries of the Appellant in regard to the additional area and at the same time sent reminders for payment towards purported extra area. Being disgruntled, Allottee filed a complaint before MahaRERA seeking possession and compensation for the delay in handing over possession under Section 18 of the RERA Act. The Promoter remonstrated the claim of Allottee contending that the Complainant was offered possession of the subject flat on July 11, 2018 after receipt of OC on July 7, 2018. The complaint was filed after possession was offered by the Promoter. MahaRERA denied relief of interest to Allottee for the reasons that default for delay in possession continues only until promoter is unable to give possession and once OC is obtained and possession is offered, Section 18 of RERA Act would not apply.

Dissatisfied with this decision, the Allottee filed an appeal before MahaREAT. The Allottee argued that due to the breach of the agreement by the Promoter, Allottee did not waive his statutory rights, even though possession was eventually handed over with a delay. The Promoter claimed that the Allottee was made aware of the revised possession dates and also his right to ask for refund. However, the Complainant having knowledge of his rights, knowingly accepted the benefits of the contract, and therefore, he is estopped from denying the binding effect of such contract.

Held: The MahaREAT held that the Allottee could still claim interest under Section 18 of RERA Act even after accepting possession, as the right to claim relief is not abandoned unless expressly waived.

You can view the order [here](#).

Purchasers can claim refund if promoter fails to handover possession by agreed date despite OC being received by promoter.

MahaREAT

Mr. Bijon Dharendra Talukdar & Mrs. Shanta Talukdar Vs. Dhruva Woolen Mills Pvt. Ltd.

Mr. Bijon Dharendra Talukdar and Mrs. Shanta Talukdar (“**Appellants / Allottees**”), booked a flat in project “Eirene” undertaken by Dhruva Woolen Mills Pvt. Ltd., (“**Respondent/ Promoter**”). Though the e-mail communication dated April 15, 2019 exchanged between the parties indicated date of possession as June 2020 including a six months’ grace period, no such date was mentioned in the letter of allotment issued on June 19, 2019.

Since the Promoter could not handover possession by June 2020, the Allottees served 2 separate notices to the Promoter to handover possession failing which to refund the monies paid with interest. Thereafter, the Promoter informed the Allottees about receipt of OC dated February 9, 2021. As the demand for refund with interest was declined by the Promoter, Allottees filed complaint seeking refund of the amount under Section 18 of RERA Act for delay in possession. The MahaRERA dismissed the complaint on the ground that, since the project was completed with OC on the day of filing the complaint, no case of violation of Section 18 of the RERA Act was made out on the date of filing the complaint.

Being aggrieved by the order, Appellants filed an appeal before the MahaREAT *inter alia* on the grounds that various affidavits filed by the Promoter in the complaint and in the appeal, the Promoter had clearly stated that the date promised to the Allottees for possession was undisputedly and admittedly December 2019. Once the agreed date of possession was expired, the Allottees were entitled to enforce their right under Section 18(1) of the RERA Act notwithstanding, any purported grace period. Accordingly, once the Promoter had failed to handover possession by December 2019 the Allottees had unqualified right to seek refund of the amount paid with interest at the prescribed rate. Even assuming that the Promoter was entitled to a six months’ grace period, the Promoter was liable to handover possession by June 2020. However, the OC was obtained only on February 9, 2021 i.e. almost 7 months after June 2020.

Held: MahaREAT observed that in case of failure to give possession within stipulated time period, regardless of unforeseen events or stay order of the court/tribunal, which

were in either way not attributable to the Allottees, the Promoter was liable to refund the amount on demand with interest. With regards to Promoter's contention that once the OC was obtained or possession was offered, the Section 18 would no longer be applicable, MahaREAT observed that the said contention has consistently been ruled to be contradictory to the letter and spirit of the RERA Act. MahaREAT further held that it is the right of the Allottees to take refund of their own amount as provided under Section 18, once the Promoter fails to handover possession by the agreed date and directed the Promoter to refund the amount paid by the Allottees with interest at the rate of the highest MCLR of SBI plus 2% from the date of receipt of payment till the date of actual realisation of amount.

You can view the order [here](#).

Promoter ought to consider various factors while specifying date of possession in the agreement.

MahaREAT

Vinay Agarwal Vs. Babji Munagala (common judgement)

Vinay Agarwal, proprietor of M/s. Balaji Symphony ("Appellant/Promoter") had filed several appeals against the orders of MahaRERA, which required him to pay interest as per the dates mentioned in respective agreements to the various allottees ("Allottees/Respondents") of the project 'Balaji Symphony' for delay in handing over possession of the flats under Section 18 of the RERA Act.

Before the MahaREAT, Appellant claimed that the delay was due to rejections of applications for obtaining a Completion Certificate and non-functionality of the special planning authority i.e. Navi Mumbai Airport Influence Notified Area ("NAINA"). The Respondents contended that the project was registered under the RERA Act, and the date of completion declared under Section 4(2)(l)(c) can be enforced by the Allottees under Section 19(3) of RERA Act to claim interest for the delay in possession.

The Allottees had booked flats in 'Balaji Symphony' between February 2014 and May 2016, and the Appellant failed to give possession as per the agreed dates mentioned in the agreement for sale.

Held: MahaREAT vide common judgment held that the provisions under the RERA Act are applicable only to pending projects with a promised possession date after May 1, 2017 i.e. commencement of RERA Act. The MahaREAT determined that the delay in obtaining the CC was due to the Appellant's failure to comply with the necessary requirements and the blame could not be placed solely on NAINA. The MahaREAT emphasized that the Appellant should have assessed the likely timelines for

possession and anticipated delays caused by factors such as NAINA. The Appellant cannot escape the obligation to hand over possession as per the dates mentioned in the agreements, thereby depriving the Allottees of their right to claim interest for the delay in possession under Section 18 of the RERA Act. Therefore, the Allottees are entitled to receive interest as per the dates mentioned in the agreements.

You can view the order [here](#).

Promoter has to obtain consent of 2/3rd allottees for change in the layout/usage of the project.

MahaREAT

Dilip J Mehta Vs. Akshar Developers & Ors.

Dilip J Mehta ("Complainant/Appellant") booked two units numbered 67 and 68 admeasuring approximately of 4090 sq. ft. each ("said Units") in Akshar Decorum Business Park- phase I ("said Project") being developed by Akshar Developers ("Promoter/ Respondent"). No agreement for sale was executed between the Complainant and the Promoter. According to clause 14 of the allotment letter August 9, 2006 issued by the Promoter ("Allotment Letter"), possession of the said Units was agreed to be handed over by March, 2009 subject to certain reasonable extension as mentioned in the Allotment Letter.

Owing to change in the project layout/plan, further extension of the possession delivery date and failure to deliver possession of the said Units before the agreed date, the Complainant filed a complaint before MahaRERA seeking various reliefs inter alia to direct the Promoter to execute the agreement for sale, deliver possession of the said Units and to pay interest for delay in delivery of possession.

Authority dismissed the complaint for lack of merits vide Order dated August 22, 2019 ("Impugned Order"). Complainant filed an appeal before Hon'ble MahaREAT challenging the Impugned Order. The Promoter contended that the Complainant has given an express consent for any change in the sanctioned plans in view of Clause 6 of the Allotment Letter which tantamount to an express waiver for changes in the project. Rejecting this contention, MahaREAT held that the consent provided as per Clause 6, is apparently only for change in plan and not for any change in end usage of the project altogether. Whereas, in the present case, changes undertaken are not only in the plan and layout but also in the project usage itself, which has altered the very nature of the project from warehouse to commercial. MahaREAT observed that Clause 6 of the Allotment Letter further shows that the consent provided therein, is of general nature and a blanket consent secured upfront in the beginning itself without even sharing the information for proposed changes as well as without full disclosures of underlying exact and specific expected changes. MahaREAT also observed

that Respondent had not taken any mandatory prior consent of 2/3rd of allottees under Section 14 of the RERA Act before undertaking such a major change in the layout/ plans and in project usage.

Held: The MahaREAT, directed the Promoter to deliver possession of alternative units in lieu of units already booked of equal area at the already agreed price of total consideration as per the Allotment Letter. The MahaREAT also allowed to adjust the payments already made and interest accrued in favour of the Complainant.

You can view the order [here](#).

Buyers can change reliefs from seeking possession to refund with interest if due process of law is followed.

MahaREAT

Naresh Joshi and Sarang Joshi Vs. Nahar Homes LLP (common judgement in 2 appeals)

Naresh Joshi and Sarang Joshi ("**Complainants**") had executed registered sale agreements dated March 31, 2015 ("**Agreements**") for booking 2 (Two) flats bearing numbers 703 and 803 ("**Flats**") in B1-Building, "F- Residences" at Haveli, Pune ("**Project**") being developed by Nahar Homes LLP ("**Promoter**"). A housing loan was provided by Indiabulls Housing Finance Limited under 10:80:10 subvention scheme by executing tripartite agreement with the respective Complainants and the Promoter ("**Tripartite Agreements**"), wherein the Promoter agreed to pay pre-EMI interest till the handing over of the possession of the Flats to the Complainants.

Aggrieved by delay in handing over timely possession along with an OC and the default in payment of the pre-EMI by the Promoter, Complainants filed complaints before the MahaRERA on October 31, 2019, seeking various reliefs including a direction to the Promoter to comply with the terms and conditions of the Tripartite Agreements, handing over the possession of the Flats along with parking and OC. The relief sought was later amended to refund of monies with interest instead of the aforementioned reliefs.

The Adjudicating Officer ("**AO**") through 2 (Two) separate orders dated April 3, 2019, allowed the Complainants to withdraw from the Project and directed the Promoter to refund the amounts paid by each of the Complainants along with an interest. These orders were subsequently rectified by the AO vide 2 (Two) separate orders dated May 3, 2019 to include refund of the relevant taxes paid by the Complainants. Aggrieved by these orders, the Complainants preferred 2 (Two) separate appeals before the MahaREAT which were disposed of by the MahaREAT through 2 (Two) separate orders dated February 15, 2020 and the complaints were remanded back to MahaRERA to decide afresh.

The Chairperson of the MahaRERA disposed of the complaints through an order passed in May 2021 ("**Impugned Order**") observing that the Complainants could not amend the reliefs sought at such a belated stage to withdraw and seek refund of monies from the Promoter. MahaRERA also observed that withdrawal from the Project would be guided by the terms and conditions of the respective Agreements and held that if Complainants intended to continue in the same Project, then the Promoter was directed to handover possession of the Flats at the earliest. Aggrieved by the Impugned Order, the Complainants filed appeals before MahaREAT.

Held: The MahaREAT held that Section 18 of the RERA Act neither bars nor imposes any restriction, whatsoever, against such switch of prayers by Complainants, if due process of law has already been followed. Amendment applications for withdrawal from the Project were filed in the complaint proceedings itself, much before the final decision in Impugned Orders and amendments have already been allowed before the final decision. Therefore, denying the prayers on the basis of the purported belated stage is not tenable in terms of the provisions of Section 18 the RERA Act.

You can view the order [here](#).

Recognition of mitigating circumstances beyond control of Promoter.

MahaRERA

Anil Ghelani Vs. Lokhandwala Kataria Construction Pvt. Ltd. alongwith 5 other complaints

The complainants, who had booked flats in the project called "**Minerva**" ("**Project**") filed six separate complaints seeking direction from MahaRERA to Lokhandwala Kataria Construction Pvt. Ltd. ("**LK Constructions**") for reliefs under Section 18 of the RERA Act. The common complaint of all the complainants was that LK Constructions failed to deliver the possession of their respective flats on the date as mentioned in their agreements for sale.

LK Constructions argued that reasons for delay in completion of the Project were beyond its control and the same were covered under force majeure clauses cited in the respective agreements for sale. Further, LK Constructions argued that the Project got delayed due to the delay on part of the competent authority as well as other statutory government authorities for granting timely permissions.

Held: MahaRERA observed that there was substance in the justifications given by LK Constructions and there were mitigating circumstances due to which the Project got delayed. Accordingly, the MahaRERA in case of complainant No. 4 and 5 dismissed the complaint as being premature as the date of possession mentioned in the agreement for sale was yet to come. As regards to the remaining Complainants, MahaRERA

noted that there was delay in handing over possession of the flats as per the agreements for sale executed with the said Complainant Nos. 1, 2, 3 and 6.

However, MahaRERA noted that the mitigating circumstances were beyond the control of LK Constructions. With an aim to ensure that the Project is not jeopardised due to the outflow of finances and keeping in mind the interest of the other buyers of the Project at large, MahaRERA directed that Complainant Nos. 1 and 2 shall be paid refund amount along with interest and Complainant Nos. 3 and 6 shall be paid interest amount only by LK Constructions to the complainants after obtaining the full occupancy certificate. Also, with regards to the payment of interest to the complainants, MahaRERA further directed that LK Constructions is entitled to claim the benefit of "moratorium period" as mentioned in the notifications / orders nos. 13 and 14 dated April 2, 2020 and May 18, 2020 issued by the MahaRERA and the notification/order which may be issued in this regard from time to time.

You can view the order [here](#).

Allotees liable to pay interest on failure to take possession of flats.

MahaRERA

Mr. Mahesh Patil and 28 ors. Vs. Vihang Infrastructure Private Limited.

The complainants, Mr. Mahesh Patil and 28 others ("**Complainants**") in the present case filed 29 separate complaints seeking directions from MahaRERA to the respondent, Vihang Infrastructure Pvt. Ltd. ("**Vihang Infrastructure**") for (i) handover of the possession of their respective flats as the Complainants chose to stay in the Project (defined below) and (ii) for payment of interest for the delayed possession as per the provisions of Section 18 of the RERA Act in respect of the booking of their respective flats in Vihang Infrastructure's project known as "Vihang Valley" located at Owale, Dist. Thane ("**Project**").

The complaints were filed mainly on the grounds that (i) there was delay in handing over possession of the flats by Vihang Infrastructure, (ii) Vihang Infrastructure failed to provide amenities as mentioned in the brochure and the respective agreements for sale, (iii) there was difference in actual carpet area and (iv) GST input tax credit was not refunded to Complainants. Aggrieved by the same, the Complainants approached MahaRERA.

Vihang Infrastructure on the other hand contended that delay in construction of the Project was on account of amendments in the provisions of Maharashtra Land Revenue Code, 1966 ("**MLRC**") resulting in delay of obtaining non-agricultural order ("**NA Order**") in relation to land on which Project is constructed.

Vihang Infrastructure submitted that it faced various other difficulties such as demonetization, introduction of Goods and Services Tax and the RERA Act and Covid-19 pandemic. As regards the alleged difference in carpet area of flats, Vihang Infrastructure contended that it is only because difference in measurement of area as per the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**") and the RERA Act. Further, it submitted that they have provided all amenities as mentioned under the respective agreements for sale. As far as issues of VAT and GST raised by the Complainants, Vihang Infrastructure stated that it had not received any input credit for VAT and GST and actual taxes as per the prevailing law at that time had been paid to the Government.

The question before MahaRERA was to decide, whether for such an act to be considered an Act of God or pandemic or cash crunch or amendment in MLRC as well introduction of new laws by the Government of Maharashtra, if Vihang Infrastructure can be held liable under section 18 of the RERA Act.

MahaRERA was of the view that (i) there is no explicit provisions under the RERA Act to deal with issues of GST/VAT, as the same falls within the jurisdiction of appropriate tax authority; (ii) as regards the discrepancy in the carpet area, Vihang Infrastructure has obtained occupancy certificate ("**OC**") for the Project as per the approved plans and deficiency in area is on account of change in definition of carpet area as per MOFA and the RERA Act; (iii) there is no substance in the allegation made by the Complainants that amenities were not provided as per the agreements for sale; (iv) the reasons of delay cited by Vihang Infrastructure seem to be justified reasons which caused delay in handing over possession of the said flats to the Complainants. On the other hand, the Complainants have violated provisions of the RERA Act by failing to take possession of their flats and not making payment of outstanding amounts and as such the Complainants are not entitled to seek any reliefs under Section 18 of the RERA Act beyond the date of the OC.

Held: In view of the above, MahaRERA held that Vihang Infrastructure is entitled to seek relief from MahaRERA for at least the period during which the application for grant of NA Order was pending before the Collector/Thane. For further period, MahaRERA directed that Vihang Infrastructure is liable to pay interest for the delayed possession as per the provisions of Section 18 of the RERA Act and prayers for grant of compensation stood rejected. Further, the Complainants were also directed to pay interest for the delayed payment from the dates such payments were due till the actual payments are made to Vihang Infrastructure at the rate prescribed under the provisions of section 18 of the RERA Act and the rules thereunder.

You can view the order [here](#).

Crystallization of role of promoter and landowner on the date of RERA Act coming into effect.

MahaREAT

CCI Projects Pvt. Ltd & Rivali Park Wintergreen Buyer's Association Vs. Cable Corporation of India Limited alongwith one more appeal

Cable Corporation of India Limited in the present case is an association of flat purchasers ("**Association**") in the project called "Winter Green Rivali Park" ("**Project**") developed by Rivali Park Wintergreen Buyer's Association ("**Promoter**") and CCI Projects Pvt. Ltd. ("**Landowner**"). As the Promoter and Landowner failed to handover possession of the flats as per the agreed timelines, the Association filed a complaint seeking possession of flats and interest for delay in possession. The Association also alleged that Promoter and Landowner had siphoned off allottees funds that ultimately led to delay in completion of Project.

MahaRERA passed an order directing the Promoter to *interalia* register the Landowner as Promoter under the RERA Act within 7 days. Promoter filed a review application against the said order. MahaRERA, while disposing off the review application, reiterated its direction to Promoter failing which it reserved the order for imposing penalties for contravening provisions of the RERA Act. The Promoter and Landowner have challenged the earlier order passed by the MahaRERA related to the registration of the landowner as a promoter in the Project.

The Promoter and the Landowner contended that firstly, Landowner should not be considered a promoter during the period under MOFA, as there was no privity of contract between the Landowner and the flat purchasers. The execution of agreements with the flat purchasers was done on a "principal to principal" basis, with no role or liability of the Landowner. Secondly, under the RERA Act, a Landowner is held to be a promoter as per Order dated December 4, 2017 ("**said Order**") (applicable from May 11, 2017) only in case of revenue or area sharing. As Landowner was only entitled to lumpsum consideration on the date the said Order came into force, Landowner was not a promoter under the said Order and the RERA Act and there is no fraud played by the Promoter and the Landowner. Thirdly, the Promoter and the Landowner contended that, the complaint itself is not maintainable as the Association is unregistered and the explanation under Section 31(1) of the RERA Act requires the association to be registered in order to be considered an aggrieved person entitled to file the complaint.

Held: MahaREAT held that (i) the definition of "Person" under Section 2(zg) and Section 31 of the RERA Act do not require the association of purchasers to be registered and the requirement of registration as per explanation under Section

31(1) of the RERA Act applies to consumer association. As such, the Association is not required to be registered and the complaint filed by the unregistered Association in the present case is maintainable. (ii) As regards the issue whether Landowner is liable to be registered as promoter under the RERA Act, MahaREAT held that, the Landowner is a promoter on the ground of being a confirming party and signatory to the agreements between Promoter and purchasers and assuming certain obligations under the agreements. Further, MahaREAT observed that substitution of revenue sharing arrangements between Promoter and Landowner with lumpsum consideration by entering into amendment agreements to seek refuge of said Order is of no avail, subsequent to crystallisation of rights of parties on the date the RERA Act came into effect i.e. on May 1, 2017. MahaREAT partly allowed the appeal and directed the Landowner to be registered as a Promoter within 30 days from passing of the order.

You can view the order [here](#).

Promoter allowed deferred payment of interest/ refund on account of delay beyond its control.

MahaRERA

Chandranarayan Singh Vs. Supreme Construction and Developers Pvt Ltd alongwith 10 complaints

In the present case, the respondent, M/s. Supreme Construction and Developer Pvt. Ltd. ("**Respondent**") undertook the rental housing project at Rohinjan, Dist. Raigarh in the name of "Clan City". After commencement of the RERA Act, the project "Clan City" was registered in 9 different phases ("**9 Projects**").

Out of these 9 Projects, few of the allottees/complainants, Mr. Chandranaryan Singh & 10 ors. ("**Complainants**") filed complaints seeking relief under Section 18 of the RERA Act *interalia* for handing over of possession, along with interest and compensation/ refund along with interest and compensation on account of the delay in handing over of possession of their respective flats in the Projects. The Complainants also objected to the escalation in price sought by the Respondent stating that, it is illegal and bad in law.

The Respondent contended that the offsite infrastructure was to be provided by MMRDA (Nodal Agency), CIDCO/ Panvel Municipal Corporation as per the scheme of rental housing announced by the State Government. As such, the Respondent cannot be held responsible for the said delay in handing over possession because of the delay in providing such offsite infrastructure. Further, the Respondent stated that the 9 Projects were delayed due to various reasons such as administrative uncertainty, policy paralysis of statutory authorities since this was the first project of rental housing scheme of MMRDA in Navi Mumbai. The Respondent said, as a result of the delay, it filed a writ petition in the BHC against MMRDA and others for delay

and lapses on their part and the petition is pending. MahaRERA whilst hearing the matter called for a report from the MMRDA being Nodal Agency and Panvel Municipal Corporation being competent authority with respect to the 9 Projects.

MahaRERA was of the view that there is substance in the reasons for delay cited by the Respondent and the said delay was beyond its control being the maiden attempt at implementing rental housing scheme. Keeping in view the mitigating circumstances beyond the control of the Respondent, MahaRERA observed that it cannot lay emphasis on the regulatory functions of the RERA Act itself, but it has to see the other object of the RERA Act i.e., development.

Held: MahaRERA held that although the Complainants in this case are entitled to seek relief under section 18 of the RERA

Act, equity also warrants that the Respondent is also entitled to seek some sort of relief. As such, MahaRERA directed that the Respondent is entitled to seek extension in the date of possession mentioned in the agreements for sale duly signed with the Complainants for 3 years from the date of possession mentioned in the said agreements for sale. Thereafter, the respondent is liable to pay interest for the delayed possession to the Complainant allottees till the actual date of possession after obtaining the full OC. MahaRERA further directed that Respondent is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications /Orders nos. 13 and 14 dated April 2, 2020 and May 18, 2020 issued by MahaRERA and the Notification/Order which may be issued in this regard from time to time.

You can view the order [here](#).



Delhi RERA

No case made for delayed possession in case the authority extends the completion of the project.

M/s DCM Nouvelle Ltd. Vs. M/s Purearth Infrastructure Ltd. & M/s. Basant Projects Ltd.

M/s DCM Limited had entered into 4 (four) Agreements for Sale ("AFS") for the apartments in the project called "**Amaryllis, Phase-1**" ("**Project**") developed by the respondent companies M/s Purearth Infrastructure Ltd. & M/s. Basant Projects Ltd. ("**Respondents**"). Thereafter, M/s DCM Limited vide endorsement agreement transferred all rights and liabilities under the AFS in favour of the complainant company, M/s DCM Nouvelle Ltd. ("**Complainant**"). The Respondents were to deliver the possession of the apartments by January 31, 2020. It was alleged that in breach of the RERA Act, the Respondents made the Complainant sign a possession letter on December 14, 2021 without actually handing over the physical possession of the apartments.

Being aggrieved, Complainant filed 4 (four) separate complaints against the Respondents before Delhi RERA, seeking possession of the apartments along with interest and direction to hand

over the registered sale deeds and copies of the maintenance agreements to the Complainants which were lying with the Respondents. The Respondents, on the other hand, applied for an extension of the validity of registration with Delhi RERA in view of the orders passed by the SC and delays caused by COVID-19. The extensions were granted to the Respondents by Delhi RERA vide reasoned order as such delays were beyond the control of the Respondents. Delhi RERA observed that allegation of delayed possession was infructuous in light of the existence of the possession letter. As regards the delay, Delhi RERA observed that since the AFS and the possession letters were signed by the Complainant themselves, they were aware of the process. The case for delayed possession cannot be made out as Respondents had followed the due process of law for handing over the possession and any possession is valid possession if: (i) it is offered after obtaining OC/CC; (ii) the subject unit is in a habitable condition; and (iii) possession is not accompanied by unreasonable additional demands.

Held: In the present case, all these conditions were being met by the Respondents along with valid extension of the Project due to reasons beyond the control of the Respondents. Therefore, the Complainant is bound by the extensions granted and accordingly, no case of delayed possession could be made out. Delhi RERA rejected the prayers for interest on account of delay in the possession as per Section 18 of the RERA Act.

You can view the order [here](#).



Haryana RERA

Calculation of interest on delay in handing over of possession.

Mrs. Satya Wanti and Ors. Vs. M/s. Ramprashtha Promoters and Developers Pvt. Ltd. and Ors.

Mrs. Satya Wanti and Mr. Deepak Gulia ("**Complainants/ Allottees**") were allottees in the project called "SKYZ", Gurugram ("**Project**") being developed by M/s Ramprashtha Promoters and Developers Private Limited and M/s Bluebell Proptech Private Limited ("**Respondents/Promoters**"). The Complainants booked one unit in the Project for which agreed possession date was August 31, 2014. There was a delay of almost 8 (eight) years in handing over the possession of the unit for which the Complainants approached HRERA seeking directions against the Respondents to provide possession of the unit, provide interest on delay in handing over the possession and to execute the conveyance deed.

The Respondents stated that there were multiple reasons for such delay which were beyond the control of the Respondents. However, the HRERA rejected such contentions of the Respondents and observed that the Respondents have failed to even apply for an OC even after 8 years have elapsed from the agreed date of possession and that the Promoters are duty bound to obtain the OC and hand over the possession of the unit to the Complainants. Further, Complainants were never in default under any provisions of the agreement entered into with the Respondents and in fact, such agreement was heavily tilted in the favour of the Respondents.

Held: Accordingly, the HRERA passed an order in the favour of the Complainants, directing the Respondents to pay an interest at the prescribed rate of 10.60% per annum (MCLR + 2%) as per Section 18(1) of the RERA Act for every month of delay calculated from the due date of the possession as per the agreement entered between the Complainants and the Respondents which was August 31 2014 till the date of actual handing over possession of the unit after obtaining the OC from the concerned authority. Additionally, the Respondents were directed to pay the arrears of interest due from August 31, 2014 till the date of the order issued by HRERA and such amount was to be paid within 90 (ninety) days from the date of the order. Here, the HRERA was very clear with the calculation of the interest payable for the delayed possession and such duration of interest lies between the committed date of possession and the actual date of possession.

You can view the order [here](#).

Cost escalation to be limited.

Surinder Kumar Agarwal v. M/s BPTP Limited

Surinder Kumar Agarwal ("**Complainant /Allottee**") was an allottee in the project called "Park Generation, Sector 37D, Gurugram ("**Project**") being developed by the respondent BPTP Limited ("**Respondent**"). The Complainant had booked a unit in the Project for which the committed date of possession was November 5, 2015.

In the year 2019, the Respondent issued a demand cum possession letter consisting of various charges, club membership charges, cost escalation charges and value added tax along with annual maintenance charges against which the Complainant paid the complete amount. The Respondent, after obtaining the charges under demand letter issued another demand notice demanding additional amounts.

Being aggrieved by such demand, the Complainant approached HRERA seeking directions against the Respondent to pay charges for delayed possession along with the interest and refund all the miscellaneous charges including certain cost escalation charges imposed by the Respondent on the Complainant. The Respondent took a plea that the Complainant has not taken possession and that the Complainant also agreed to pay the charges including cost escalation charges in addition to the consideration of the unit as per the agreement entered into between the Complainant and the Respondent. The Respondent further stated that the construction of the Project has been completed and the OC has also been received. As similar issues in relation to cost escalation and other charges arose before HRERA, therefore, a committee had deliberated upon such issues that were referred to by HRERA in this instant case.

Since the Complainant pleaded that the Respondent had imposed cost escalation which as per the Respondent was agreed by the Complainant, the HRERA observed that after seeing the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure for the years 2010-2014, the escalation comes down to INR 374.76 sq. ft. from the demanded cost of INR 588 per sq. ft. over which neither party raised any issue. The committee, while recommending a decrease in the escalation cost, had gone through the relevant documentation and the issues which were raised by the promoters to justify the increase in cost.

Held: The HRERA concurred with the findings of the report of the committee and directed that only limited escalated cost can be charged only up to INR 374.76 sq. ft. instead of INR 588 per sq. ft. as demanded by the Respondent.

You can view the order [here](#).

Rajasthan RERA

Modification of statutory Form - G - Agreement for Sale by Promoter violative of statutory provisions.

Pramod Kumar Vs. Jaipur Dream Buildcon Pvt. Ltd.

Pramod Kumar (“**Complainant/Allottee**”) had booked a flat in project named ‘Unique New Town Phase II’ and executed an agreement for sale (“**AFS**”) with Jaipur Dream Buildcon Pvt. Ltd (“**Jaipur Dream/Respondent**”). Pursuant to execution of AFS, Complainant could not arrange for funds in respect of the flat. Hence, the Complainant approached Respondent for cancellation of flat and sought refund of the amount paid. Respondent, upon receiving request from Complainant, agreed to refund the amount paid by the Complainant, but in accordance with the resale policy as specified in the AFS.

The Complainant was not satisfied with the response of Jaipur Dream regarding refund of amount after resale of the Flat. Hence, the Complainant filed a complaint before Rajasthan RERA for refund of amount along with the interest.

Rajasthan RERA after hearing contentions of both the parties, was not convinced with the contention of Jaipur Dream with

regard to refund of amount after resale of the flat as mentioned in the clause 7.4 of AFS. Accordingly, Rajasthan RERA examined the clause on cancellation by allottee in both i.e Form - G - agreement for sale (“**Form G**”) envisaged under Rajasthan Real Estate (Regulation and Development) Rules, 2017 (“**Rajasthan RERA Rules**”) and the AFS and found lot of variations in Form G and AFS. Upon observing disparity in the cancellation clause in AFS and Form G, Rajasthan RERA further examined whether the Respondent was competent enough to amend/modify Form-G on its own or some authority was given to the Respondent to amend the Form – G while approving the project registration. Negating the issue, Rajasthan RERA held that the Respondent is not empowered to amend/alter the provisions of Form-G and Form G having a statutory value, can only be amended or modified by the state government. The Rajasthan RERA stated that, the Respondent is not allowed to subsume the benefits legally available to the Complainant under garb of clause 7.4 of AFS modified illegally. Therefore, Rajasthan RERA after legal scrutiny determined that clause 7.4 of AFS is null and void.

Held: In view thereof, Rajasthan RERA held that modification/ alteration of agreement for sale by Respondent constitutes a flagrant violation. In light of this, Respondent was penalized for making modification in Form G and AFS clause relating to cancellation and refund was declared as *non est and void ab initio*.

You can view the order [here](#).



IMPORTANT CIRCULARS, ORDERS AND DIRECTIONS ISSUED BY MAHARERA

Non-negotiable clauses in the agreement for sale.

The MahaRERA has vide its Order dated December 13, 2022 bearing no. 38 of 2022 ("**Order no. 38**") issued directions stating that the following two clauses in model form of agreement at Annexure 'A' of Rule 10(1) of the MahaRERA Rules are not permitted to be modified and are considered by the MahaRERA as non-negotiable:

- i. *"The promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area, subject to a variation cap of three percent. The total price payable for the carpet area shall be recalculated upon confirmation by the promoter. If there is any reduction in the carpet area within the defined limit, then the promoter shall refund the excess money paid by the allottee within forty-five days with annual interest at the rate specified in the MahaRERA Rules, from the date when such an excess amount was paid by the allottee. If there is any increase in the carpet area allotted to the allottee, the promoter shall demand an additional amount from the Allottee as per the next milestone of the payment plan. All these monetary adjustments shall be made at the same rate per square meter as agreed in Clause 1(a) of this Agreement."*
- ii. *"Without prejudice to the right of the promoter to charge interest in terms of the clause above, on the allottee committing default in payment on the due date of any amount due and payable by the allottee to the promoter under this Agreement (including his/her proportionate share of taxes levied by the concerned local authority and other outgoings) and on the allottee committing three defaults of payment of instalments, the promoter shall, at his own option, may terminate this Agreement: Provided that the promoter shall give notice of fifteen days in writing to the allottee, by Registered Post AD at the address provided by the allottee and mail at the email address provided by the allottee, of his intention to terminate this agreement and of the specific breach or breaches of terms and conditions in respect of which it is intended to terminate the agreement. If the allottee fails to rectify the breach or breaches mentioned by the promoter within the period of notice, then at the end of such notice period, the promoter shall be entitled to terminate this agreement. Provided, further that upon termination of this agreement as aforesaid, the promoter shall refund to the allottee (subject to adjustment and recovery of any agreed liquidated damages or any other amount which may be payable to the promoter) within*

a period of thirty days of the termination, the instalments of the sale consideration of the apartment which may till then have been paid by the Allottee to the promoter."

Order no. 38 further provides that if there is any deviation in the above two clauses then such clauses of the agreement for sale shall be considered as void-ab-initio.

Order no.38 can be accessed [here](#) which came into effect from December 13, 2022.

Procedure in the matter of registration, extension and correction of projects.

The MahaRERA has vide its Circular dated December 13, 2022 bearing no. 42 of 2022 ("**Circular no. 42**") directed that following procedure should be followed to enable expeditious process of applications for registration, extension and correction of real estate projects:

- i. Self-Regulatory Organizations (SROs) registered with MahaRERA shall nominate two persons who shall attend MahaRERA Office, and the names of such nominated persons shall be given to secretary/MahaRERA within 7 days. Any change in the name of the nominated persons shall be immediately intimated to MahaRERA;
- ii. The persons so nominated shall give the following information:
 - a. SRO registration number of the promoter;
 - b. The number of the application submitted by the promoter;
 - c. The scrutiny remarks issued by MahaRERA;

The above information shall be given only to the nominated persons of such SROs with whom the promoter is registered.
- iii. The nominated persons shall then follow up with such of the promoters registered with respective SRO and ensure that scrutiny remarks are complied with.
- iv. Liaisoning agents shall not be permitted to attend MahaRERA office for updates in the matter regarding real estate project registration, extension and correction;
- v. The promoter shall be permitted to attend MahaRERA office either personally or through a representative only in exceptional and complex cases in a manner as elaborately provided in the said Circular no. 42.

Circular no. 42 can be accessed [here](#) which came into effect from January 1, 2023.

Commencement Certificate and Occupation Certificate for development of land into plots.

The MahaRERA has vide its Order dated December 13, 2022 bearing no. 37 of 2022 ("**Order no. 37**") clarified as to what would be construed as commencement and completion of plotted development projects. In light of the same, the following directions were issued by MahaRERA:

Issuance of non-agricultural permission along with a sanad in the form in Schedule IV or Schedule V in accordance with Rule 4 and Rule 7 of the Maharashtra Land Revenue (Conversion of Use of Land and Non-Agricultural Assessment) Rules, 1969 ("**MLRC Rules**") by the concerned authority shall be considered as commencement certificate for plotted development projects.

- i. Receipt of the intimation of the Tahsildar given as an acknowledgement of having received the intimation of the date of commencement of non-agricultural use after completion and execution of all conditions as may have been imposed by the Competent Authority (Tahsildar) in compliance of Rule 11-A of the MLRC Rules along with Form IV signed by the project architect shall be considered as occupation certificate/completion certificate for plotted development projects.

Order No.37 can be accessed [here](#) which came into effect from December 13, 2022.

Disclosure of Interest in other real estate organizations.

The MahaRERA has vide its Order dated December 27, 2022 bearing no. 39 of 2022 ("**Order no. 39**") issued directions to the promoters stating that while applying for project registration, promoters shall upload a self-declaration in a format as provided in Annexure A of the Order no. 39. The self-declaration shall clearly disclose if the promoter, in its capacity either as a director/ designated partner/ partners of one real estate organization, has any interest in any other real estate organization whose projects are registered with RERA authority across the country.

Order no. 39 has been issued by MahaRERA to ensure that homebuyers/allotees make an informed decision while purchasing a unit of a project as regards interest of the promoters in other real estate organization.

Order no. 39 can be accessed [here](#) which came into effect from January 1, 2023.

Extension of validity of registered projects under Section 7 (3) of the RERA Act.

The MahaRERA has vide its Order dated December 27, 2022

bearing no. 40 of 2022 ("**Order no. 40**") reiterated that vide Order dated February 8, 2019 bearing no. 7 of 2019 ("**Order dated February 8, 2019**"), MahaRERA had directed that in cases where the promoter is unable to complete a registered project in the extended time period of one year granted under Section 6 of the RERA Act, MahaRERA may grant further time extension to complete the project, provided the association of allottees resolve that the existing promoter shall be permitted to complete the project in a specific time period instead of revoking the project.

In continuation of the Order dated February 8, 2019, the following directions were issued by MahaRERA vide Order no.40 while applying for extension of validity of project registration under Section 7(3) of the RERA Act:

- i. Compliance of conditions provided under Order dated February 8, 2019;
- ii. In the event the promoters are unable to comply with the conditions as provided under Order dated February 8, 2019, the following conditions shall be complied with by the promoter:
 - a. Promoters shall submit the consent as obtained from the allottees irrespective of the number of such consents along with reasons why the required percentage of consents from allottees could not be obtained and why the application for extension should be considered without the required 51% consent.
 - b. Promoters shall submit an explanatory note setting out the grounds and reasons for delay in completion of the real estate project as well as setting out the need for grant of extension along with documents supporting such grounds and reasons. The promoter shall also state the steps that would be taken by him to complete the project within the extended period sought.
- iii. Application for extension of validity shall be made in Form 'E' as provided in Rule 7(1) of the MahaRERA Rules;
- iv. Payment of prescribed fee calculated in the manner as stated in Rule 7 (3) of the MahaRERA Rules;
- v. Consents of allottees shall be provided in Format 'B' as provided in circular dated March 8, 2021 bearing no 28 of 2021 issued by MahaRERA;
- vi. Abiding by such terms and conditions as may be imposed by MahaRERA in the interest of the allottees;
- vii. The grant of extension of the project validity shall not affect/ jeopardize the right accrued in favour of the allottees who have booked their plot, or unit or apartment or building in the said real estate project as the case may be for which extension of project validity is sought.

Order no.40 can be accessed [here](#) which came into effect from December 27, 2022.

Deregistration of Real Estate Projects.

The MahaRERA has vide its Order dated February 10, 2023 bearing no. 42 of 2023 ("**Order no. 42**") issued directions for de-registration of real estate projects or part of real estate projects. These directions have been issued in light of instances where promoters who have registered their real estate project are unable to commence and complete the construction or are not in position to complete the construction due to various reasons. In such cases MahaRERA shall allow de-registration of such real estate projects. The detailed procedure for de-registration is as follows:

- i. Only real estate projects with zero allottees, meaning no bookings, will be considered for deregistration;
- ii. If a part of a registered real estate project seeks to be deregistered, that part must also have zero allottees;
- iii. If a real estate project has bookings, the application for deregistration will be considered, but the rights of the allottees must be settled by the promoter. Also, relevant documents regarding this settlement must be submitted with the deregistration application;
- iv. If the deregistration of a part of a real estate project affects the rights of other allottees in the remaining portion of the project, consent from at least 2/3rd of those affected allottees is required along with the deregistration application;
- v. To apply for the deregistration of a real estate project, the promoter must submit an application to the secretary of MahaRERA at secv@maharera.mahaonline.gov.in. The application should follow the format specified in Annexure-A of Order no. 42. The promoter shall also annex a notarized declaration-cum-undertaking in the format prescribed in Annexure-B of the Order no. 42. Upon receiving the application for deregistration of a real estate project, the secretary of MahaRERA will take an action through the legal wing of MahaRERA. The matter will be presented before the Authority for appropriate orders, which may include scheduling a hearing, if deemed necessary;
- vi. Any aggrieved person has the right to file a complaint regarding the deregistration of a real estate project. The complaints will be heard only after providing proper notice to the promoter, and the MahaRERA will make expeditious decisions on these complaints. The terms and conditions specified by the MahaRERA authority in the order passed for the complaint will be legally binding upon the promoter.

Order no. 42 can be accessed [here](#)

Change/Transfer of designated bank account.

The MahaRERA has vide its Circular February 20, 2023 bearing no. 43 of 2023 ("**Circular no. 43**") directed that change/transfer of the separate designated account from one schedule bank/

branch to another shall be permitted only with approval of MahaRERA. MahaRERA has directed to follow the following procedure for the same:

At the time of proposed change or transfer the separate designated bank account from one scheduled bank/branch to another, promoters must submit the following documents in the correction module on their respective logins:

- i. self-declaration on the promoter's letterhead, providing an explanation for the change/transfer of the designated bank account;
- ii. duly notarized Declaration-Cum-Undertaking in the format prescribed in Annexure 'A' of the Circular no. 43;
- iii. Latest Form 3 certified by a chartered accountant;
- iv. Declaration in Format 'A' as per order dated July 27, 2022, bearing no. 34 of 2022 issued by MahaRERA;
- v. Such other additional statements or documents that may be requested by MahaRERA authority.

Promoters shall also upload on their respective webpages all compliances regarding their respective real estate project.

Circular no. 43 can be accessed [here](#) which came into effect from February 20, 2023.

Submission of half-yearly reports by MahaRERA registered real estate agents.

The MahaRERA has vide its Order dated February 13, 2023, bearing no. 43 of 2023 ("**Order no.43**") provided directions for disclosure of information by MahaRERA registered real estate agents as follows:

- i. Submission of half yearly progress report on their respective web page in the format as prescribed in Form -6 annexed as 'Annexure A of the Order no.43';
- ii. The aforementioned reports must be uploaded on the agent's web page as per half year period of financial calendar which shall be (a) April to September; and (b) October to March and the same shall be uploaded on or before October 20 or April 20, as the case may be.

In event of failure to submit the reports on time and in manner as provided in Order no.43, MahaRERA shall be entitled to initiate action against the real estate agent. The reports, except for a marked portion, must be made available for public viewing to ensure transparency.

For the first report for the period between April 2023 to September 2023, the report must be submitted by October 20, 2023.

Order no.43 can be accessed [here](#) which came into effect from April 1, 2023.

GLOSSARY

Abbreviation	Definition
BHC	Hon'ble Bombay High Court
CC	Completion Certificate
CIDCO	City and Industrial Development Corporation
Delhi RERA	Delhi Real Estate Regulatory Authority
Delhi RERA Rules	Delhi Real Estate (Regulation and Development) (General) Rules, 2016
HRERA	Haryana Real Estate Regulatory Authority
HRERA Rules	Haryana Real Estate (Regulation and Development) Rules, 2017
MahaRERA	Maharashtra Real Estate Regulatory Authority
MahaRERA Rules	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
MahaREAT	Maharashtra Real Estate Appellate Tribunal
MMRDA	Mumbai Metropolitan Region Development Authority
MOFA	Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963
OC	Occupation Certificate
Rajasthan RERA	Rajasthan Real Estate Regulatory Authority
Rajasthan REAT	Rajasthan Real Estate Appellate Tribunal
Rajasthan RERA Rules	Rajasthan Real Estate (Regulation and Development) Rules, 2017
RERA Act	Real Estate (Regulation and Development) Act, 2016
RERA	Real Estate Regulatory Authority
SC	Hon'ble Supreme Court of India

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