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# Rera Dashboard **RESI.COMM**

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Dear Members,

Greetings!!!

“According to section 15 of RERA act, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.”

Considering the above section, the Haryana RERA has passed an order staying the E-Auction of the Commercial Project by the Public Sector Bank. The Haryana RERA in its order has said that, In view of the larger interest of the allottees, we have stayed the e-auction of the bank. We are custodians of the Act and want to protect the interest of allottees. It is observed that the rights created for the allottees are absolute and cannot be fettered with by a third party by selling or creating any lieu change or encumbrance. The RERA in its order further said that the “Bank is restrained from the proceedings with the e-auction for not considering and settling the claims of individual allottees.” The order has been passed under sections 15 and 36 of RERA Act, 2016.

Recently, the Maharashtra RERA has passed an order where in it was held that, the Promoter should not accept more than 10% consideration without first registering an agreement for sale under section 13 of the RERA act. Further, the RERA has ordered the promoter to refund the Amount as the flat was not delivered as promised.

Now- a-days RERA Forum is more speed in resolving complaints. The Uttar Pradesh RERA has achieved 88 per cent success in solving the grievances of the people since its inception in 2017. From May 1, 2017 to December 2022, more than 47,000 complaints were registered and about 42,000 complaints have been disposed of. Thus, a total of 88.14 per cent grievances of consumers have been successfully redressed.

This newsletter consists of various orders passed by the Court and State RERA authorities and recent developments taking place in the realty sector.

Thank You.

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# MahaRERA to issue notices to 18,000 real estate projects for failing to upload info

The Maharashtra Real Estate Regulatory Authority will issue notices to more than over 18,000 real estate projects in Maharashtra over the developers' failure to upload details like financial disclosures, CA certificates and architect certifications on its website, MahaRERA officials have told Moneycontrol.

Notices had already been issued to 2,100 projects, officials said, adding those were issued to have all the works RERA complied.

"We see in advertisements where developers claim we are RERA registered, but it does not stop there. If you are RERA registered, you need to do RERA compliance too. This compliance entails uploading financial accounts, CA certificates, project work status, etc from time to time on the website of MahaRERA," one of the officials said on condition of anonymity.

According to MahaRERA officials, it is giving 30 days to the developers to reply to the notices and upload information in the public domain. Failing this, penal action could be taken, they said. The priority was to first issue notices to everyone.

The 18,000 projects are a mix of old and newly registered projects as well as lapsed projects. "We are issuing notices to everyone irrespectively. Initially, we started with issuing 50 notices on a daily basis that went up to 100 and on January 10, we issued 1,000 notices," the official said. They were looking to complete the exercise over in the next two weeks.



## What are the violations?

According to the RERA Act, every developer is required to keep 70 percent of the money received from customers by opening a separate account as per the RERA registration number. When the money is withdrawn, at each stage of construction, a certificate from the project engineer, architect and chartered accountant on the percentage of project completion, quality, and unrealised cost must be submitted to the bank. A quarterly inventory of flats and plots sold in the project has to be posted on the website.

It is also mandatory for every developer to have the project account audited every six months and six months after the end of each year.

MahaRERA, however, found that in more than 18,000 projects this was not done. "It is possible that they are doing the paperwork, but not uploading on the website. Our purpose is to have all the information in the public domain so homebuyers are well informed," the official quoted above said.

## What action can be taken?

According to MahaRERA officials, they have started issuing notices to developers and expect them to comply. If they don't, they will be liable to pay the fine which will be calculated based on the project cost.

## How many registrations?

Ever since MahaRERA came into existence in May 2017, more than 36,000 projects have been registered with it. Of these, more than 4,500 projects registration has lapsed and close to 10,000 projects have been completed.

## Developers urge govt to review construction ban, exempt real estate projects

Real estate developers have urged the central government to consider RERA registered projects as a public interest project and allow the work to continue even in case of pollution level going up.

A delegation of developers met Bhupender Yadav, Minister of Environment, Forest and Climate Change and said construction and demolition activities have already been banned for 29 days this winter.



“Practically construction activity once stopped, it takes more than 15 to 30 days to resume full-fledged operations hence in nutshell, it will not be wrong to mention that construction is banned for two and half months. As per estimate of experts, one week 'construction ban' impacts 'construction site' for more than a month leading huge loss to real estate companies, labourers, vendors, ancillary industries and government revenue,” said Manoj Gaur, President, CREDAI-NCR.

Developers said that the first impact of this ban is directly on the labourers working on construction sites. The workers come to Delhi NCR from different states and when they experience unemployment due to frequent ban of construction in Delhi NCR then they go back to their respective states which apart from unemployment, delays the possession of flat to faultless home-buyers.

“We have urged the minister to allow activities which doesn't cause pollution. Also, frequent ban negatively impacts the sectors and government should declare in advance that during this part of the year, no construction will be allowed in NCR,” said Harsh V Bansal, Convenor, CII Delhi Sub-committee on Real Estate, Urban Development and Infrastructure.

The industry body said that the vendors and ancillary industries which are selling construction materials such as steel, paint, plywood, cement cannot sell during ban and this leads to loss of GST for the government.

Ban on construction activities due to pollution is not recognized by RERA, development authorities, town planning department as a result developers don't even get 'time extension' benefit against 'time-loss', delay in construction, delayed possession to home-buyers which even attracts 'delay penalty' at the time of possession.

“Ad hoc blanket ban on all the construction activities has its own problem and impact. Not only does it delay the project, it also adds to the cost of construction,” said Mr. Lalit Aggarwal, co-founder and vice-chairman, Signature Global.

“Given that, most projects have a completion deadline as per RERA compliance, even more for projects in affordable housing segment, where there is statutory timeline of four years to complete the project, such bans every year cumulatively delay the project significantly,” Aggarwal said.,

CREDAI has said that since RERA registered projects involve interest of general public and strictly follow government guidelines to minimise pollution, RERA registered projects shall be considered as a public interest project.

# RERA starts unravelling as key fixes in law are neglected

The Odisha Real Estate Regulation and Development Authority (RERA) has expressed its inability to adjudicate on consumer issues as it has no financial power or structure to execute the orders that it passes against the industry. It has now sent consumers to civil courts to seek justice. The case will come up for hearing on February 7, 2023, when the two-judge bench of Chief Justice S Muralidhar and Justice M S Raman will hear from the Odisha RERA and the state government.

This has brought the issue of lack of powers of execution out into the open and the Centre and states need to amend the RERA Act to fit in these crucial clauses. The issue was flagged at the Urban Development Conclave by the Indian Institute of Human Settlements in November 2022, when the issue was debated and the conclusion was that without the necessary powers to execute orders, RERA may well fade away into an insignificant law that does not have the necessary structure to enforce the solutions. The root issue is that while RERA was a consumer protection act exclusively for the real estate sector, the Act did not give it exclusive jurisdiction over the sector.

## Hurdles to Execution

While there are detailed clauses on how the RERA can adjudicate and issue orders, it did not even provide the necessary tools to get the orders executed. As a result, once a consumer gets a favourable order from RERA, he has to go to the district magistrate or collector to get them executed. Once the orders go into the common civil pool, the speed of execution is severely impacted. This is why the Odisha RERA has laid down the gauntlet and said since its adjudication is restricted to issuing orders and not to taking it through to its logical conclusion, the case may as well go directly to the civil court. This was what experts at the IHS conclave had flagged, that in the absence of executing orders, RERAs are soon going to throw up their hands and not take decisions at all.

This issue has been flagged by consumers and RERA regulators alike and has even been taken up with the Centre several times. The amendment to the Act needs to grant powers of execution of its orders to the state RERA authorities. It also needs to give RERA primary jurisdiction in the sector for it to become effective.

## Parallel Proceedings

While the Act does allow RERA to rule on disputes, it did not preclude other forums from passing laws on real estate matters. As a result, the national and state consumer redressal forums and the National Company Law Tribunals too can adjudicate on these issues. While RERA's primary mandate is to get the projects completed and handed over to the consumer who has paid for a unit, consumer forums give maximum penalties for non-delivery to the petitioners who filed the case. It does not ensure a class action and therefore does not give uniform relief to all buyers in the project. Also, with the limited resources available for incomplete and delayed projects, once individual buyers get compensated for delay, there is no way the project will be completed, in the larger good. Similarly, the NCLT is a recovery body and hardly any real estate projects have gone through to completion in the NCLT process.



In the Pioneer Urban case, giving his interpretation of the law, Justice Rohinton Nariman had said: "The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies." Herein lies the problem. A case that is being handled by RERA, if challenged in the NCLT, will have to yield place to that court. As a result, RERA authorities have been struggling to establish themselves as the absolute arbitrator of the real estate industry. Justice Rohinton Nariman called this out: "That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88."

## UP RERA addresses 88 pc complaints

### Synopsis

From May 1, 2017 to December 2022, more than 47,000 complaints were registered and about 42,000 complaints have been disposed of by RERA.

Uttar Pradesh RERA has achieved 88 per cent success in solving the grievances of the people since its inception in 2017. From May 1, 2017 to December 2022, more than 47,000 complaints were registered and about 42,000 complaints have been disposed of. Thus, a total of 88.14 per cent grievances of consumers have been successfully redressed.

Besides, about 12,800 requests of order execution have been received in which compliance of final order was successfully executed 9,900 requests, which is about 77 per cent. This was disclosed in a press statement issued by the RERA here on Friday.



In 2021, about 8,600 complaints were registered and about 8,400 were disposed of. In 2020, about 8890 complaints were registered and about 8670 complaints were disposed of. In 2019, about 12600 complaints were registered and about 12800 were disposed of.

Similarly, in the year 2018, about 8,300 complaints were registered and disposal was done in about 2,500 cases. However, only about 110 complaints were disposed of against 1,650 registered in 2017.

The highest numbers of complaints have been registered against 46,400 promoters, while about 500 complaints have been registered against allottees and about 200 complaints against agents.

As many as 35,900 complaints have been registered in eight districts of NCR, almost 76 per cent of total complaints, and 31,800 have been successfully disposed of.

Gautam Buddha Nagar in NCR and Lucknow district in non-NCR are at the first and second positions respectively with 28,450 and 8,600 complaints, followed by Ghaziabad (6,470), Varanasi (850) and Meerut (800).



## H-Rera restrains bank from e-auctioning of commercial project

Gurugram: The Haryana Real Estate Regulatory Authority (H-Rera), Gurugram, on Monday restrained a public sector bank from proceeding with the e-auction of a commercial real estate project that was scheduled on January 24.

The authority said that the bank was auctioning CHD E-Way Tower in Sector 109, while the dues of the property owners are still pending.

The order said, "Bank of Baroda is restrained from the proceedings with the e-auction dated 24/01/2023 for not considering and settling the claims of individual allottees." The order has been passed under section 36 of RERA Act, 2016, it said.

"An audit of the accounts of CHD Developers Limited needs to be done to bring out a clear picture of the utilisation or diversion of funds with respect to the project, if any," said the order.

H-Rera, Gurugram took the decision following a complaint by a property owner, who had invested in the CHD E-way Tower, a commercial real estate project.

The bench has also directed the H-Rera planning branch to initiate proceedings against the developer for non-registration of the project under section 3 and 4 of the Rera Act.

A complaint in this regard was filed on January 20, 2023, the authority said.

Dr KK Khandelwal, H-Rera, Gurugram chairman said, "In view of the larger interest of the allottees, we have stayed the e-auction of the bank. We are custodians of the Act and want to protect the interest of allottees".

As per the authority, the complainant had booked a unit in the commercial project at Sector 109 for a total sale consideration of ₹35 lakh, executing a builder-buyer agreement (BBA).

The order said, "In the meantime, the allottees were apprised by promoters as well as through newspaper advertisement that the land on which the project is situated (measuring 2.025 acres) in Sector 109 is being sold by Bank of Baroda by way of e-auction on 24/01/2023 wherein all the allottees share their reserved rights by virtue of the BBA. It is submitted that the rights created for the allottees are absolute and cannot be fettered with by a third party by selling or creating any lieu change or encumbrance."

Seeking a stay on the e-auction, the complainant during the hearing argued that the bank has not only violated section 15 of the Rera Act, but was trying to harass them and jeopardise the rights of the allottees.

"The third-party rights which have already been created in the project in question have not been taken into account by the Bank of Baroda and it will seriously jeopardise their interest and it must be stayed," pleaded the complainant.

A spokesman for CHD Developers said that they are trying to resolve the matter. "We need some flexibility from the bank and from the authorities to bring this project back on track by transferring the licence to a new developer," he said.



## KMC exploring bringing small promoters under RERA

### synopsis

The announcement comes after complaints from flat owners. "It has been observed that without obtaining the completion certificate, possession is being given.



The Kolkata Municipal Corporation is exploring options to bring small promoters under the Real Estate Regulatory Authority (RERA) Regulation and Development Act. The civic body is also planning to stop the registration of flats without completion certificates. The decision was announced by KMC mayor Firhad Hakim after the 'Talk to Mayor' programme today. The announcement comes after complaints from flat owners. "It has been observed that without obtaining the completion certificate, possession is being given. I have asked the IGR to write a letter as to how registration is being done without a CC. The reason is that without a CC, it could be possible that the fire clearance has not been obtained.

If someone starts living there without a fire clearance and there is a blaze, who would be responsible?" asked Mr Hakim. The civic body is also considering options if small promoters could be brought under the RERA Act. In case of big promoters, they have to pay an amount with interest as per the RERA Act, in situations of irregularities. The civic body is exploring options if small promoters could be brought under the act while sanctioning of plans.

Apart from this, the KMC is also to set up a dedicated cell for handling 'thika' cases. "Thika is being handled directly by the KMC now. Those requiring a lease under it would apply directly to the cell and we would process it and get the further procedures done from the state government. For this, a dedicated cell has to be set up so that the 'thika' related works could be expedited," added the mayor.



## 'Repay buyer as flat was not delivered as promised'

Mumbai: A Maharashtra Real Estate Regulatory Tribunal (MREAT) bench recently set aside a ruling of MahaRERA and has directed a realtor to refund with interest to an NRI woman homebuyer. In November 2019, MahaRERA ruled that in the absence of a registered agreement for sale, the provisions of section 18 of RERA are not applicable.

According to section 18 (1), the buyer is entitled to get a refund of the whole of the amount invested by him in the promoter's project along with the interest and including compensation if the promoter fails to deliver possession in accordance with terms and conditions laid down in the Agreement to Sale, is unable to complete the project in due time specified in the agreement and fails to deliver possession on account of discontinuance his business due to revocation of his project under this act or for any other reasons.

US-based home buyer Bijoya Laxmi Gantayat had filed an appeal against an order by then MahaRERA chairperson Gautam Chatterjee denying relief under section 18 of Real Estate (Regulation and Development) Act (RERA) stating that since no agreement for sale had been executed and registered between the two parties, the provisions of section 18 do not apply to the case.

She had booked flat B-2406 in Tower B of the Alta Monte project on April 29, 2015, through Era Realtors for ₹1.97 crore and cumulatively paid 43 per cent of the total amount on the assurance of possession delivery by March 2017. The complaint relied upon an email sent by the promoters on March 30, 2015, assuring possession by March 2017.

Advocate Sunil Chavan, appearing for the home buyer, contended that his client came to know from the MahaRERA portal that without her consent and knowledge, the promoter changed the completion date of Tower B to December 31, 2020, completion date with amenities to December 2021 and completion date with other facilities to December 31, 2023.

He submitted that the promoters did not update and respond to the complainant about the progress of the construction work till July 2017. After November-December of 2017, his client and her daughter Atasi Gantayat tried to repeatedly follow up on the status of construction work and execution of an agreement for sale. When there was no response, she desisted from making further payment until the agreement for sale was duly registered. He claimed that the promoters on June 7, 2018, sent a notice terminating her booking and deducted ₹23.65 lakh from her paid amount and never registered the agreement for sale.

Advocate Mohanish Chaudhari, appearing for the developer, denied the claims made by the home buyer and said his client has never committed any date of delivery. He contended that the Alta Monte project has an SRA project component and is beyond the promoter's control to complete any SRA project in such a short duration of two years. He claimed that on the MahaRERA portal, the date of completion for the project was December 31, 2021, with 12 months grace period hence the complaint was premature in November 2019, and MahaRERA was right in denying any reliefs to the complainant. He argued that the complainant is not financially capable to make payment of the outstanding amount and now wants a refund on the alleged ground of delaying delivery of possession.

After considering submissions from both sides, MREAT chairperson Justice (ret'd) SS Shinde and member K Shivaji held that Era Realtors had violated Section 11 (3), and 19 (2) which define the rights of home buyers, and the obligations of the promoters in providing updates on construction completion. The bench said the developer had also violated Section 13 of RERA which mandates that the promoter should not accept more than 10% consideration without first registering an agreement for sale.

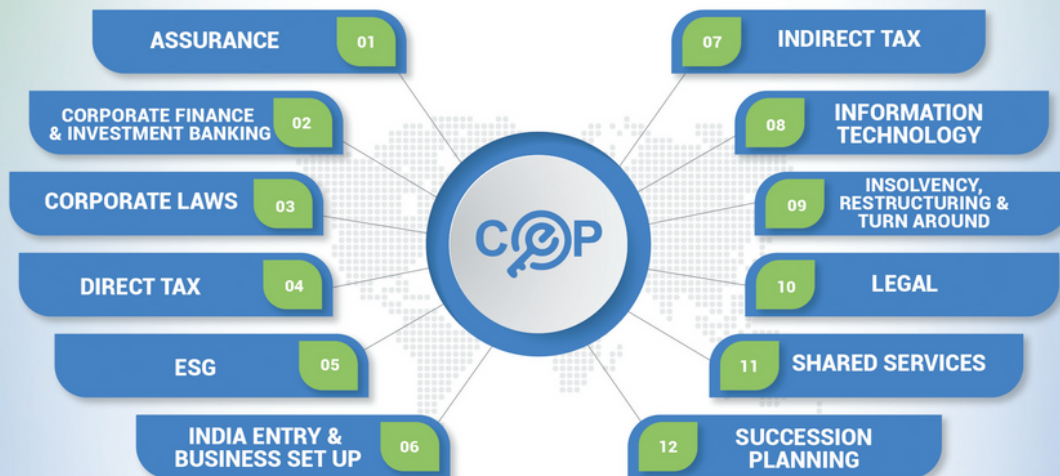
The order dated January 24 also pointed out that the March 2015 email from the developer "unequivocally" conveyed that Tower B will be completed by March 2017, and the second email in September 2015 also forecasted mid-2017 as the delivery date. It held that the developer had failed to deliver possession by the promised date.



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