



MSME
DEVELOPMENT
FORUM
ISO 9001: 2015
WEST BENGAL
Chapter

RERA DASHBOARD RESI.COMM

KNOWLEDGE PARTNER
Mamta Binani & Associates

Volume 6

03.12.2022
Friday

Dear Members,

Greetings!!!

We are very happy to share with you this Sixth Newsletter on RERA. Timely Delivery of Flats to the homebuyers is very important under RERA Act. If there is delay in delivery of flats to the home buyers then the RERA authorities may order for paying the principal amount along with interest. In one of the case the Maharashtra RERA has ordered the promoters to refund the principal amount along with interest to the Home buyers further it has ordered the Association of allottees to take over the Project from the original developer and to complete it either on their own or by appointing a new developer.

Before RERA act was enacted most of the homebuyers used to file the complaints before Consumer Commission, Arbitration and Civil courts. Now RERA is most preferred forum for home buyers to resolve their problems. The Uttar Pradesh RERA authorities have disposed more than 1 Lakh Cases within three years.

In our country the Courts are taking more time disposing property related disputes. Due to lack of funds the Complainants are unable to proceed the matter or not coming forward to file the case against the Real estate Promoters for their default in delivering the flats. Therefore they require the funds to proceed the case and recover their claim.

The litigation funding is the emerging solution to the challenges and disagreements faced by the home buyers. Litigation funding is a method that pays for the costs of legal procedures to make it easier for people and businesses, especially those who are struggling financially to recover claims. In the case of homebuyers' litigation funding can help in a way that instead of the homebuyers bearing the expenses of the litigation, a funder does so in exchange for a portion of any recovery obtained via the proceedings.

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.

MAMTA BINANI

PRESIDENT

MSME DEVELOPMENT FORUM,
WEST BENGAL

members@wbmsme.com

G SRIRAM

SENIOR PARTNER

MAMTA BINANI & ASSOCIATES

mamtabinaniandassociates@gmail.com

Saif Ali Khan files complaint with RERA against developer for delayed possession of property

The Maharashtra Real Estate Regulatory Authority (RERA) has partly allowed a complaint filed by actor Saif Ali Khan against Orbit Enterprises for delayed possession of property in project named as Indian Newspaper Society

The Judicial Member Mahesh Pathak of RERA said that the respondent, Orbit Enterprises, has not explained the reason for delay in the project.

As per the complaint, Khan booked two units in the respondent's project for ₹14 crores and ₹11 crores respectively. The respondent also misled the actor asking him to pay ₹13 crores and ₹10 crores before execution of the agreements for sale while the considered amount is 20 percent only.



It was also alleged that the possession of the sale had to be given by July 31, 2017 but the respondents obtained an extension on the completion date by two years without keeping RERA in loop. Khan, has sought compensation for the delay along with interest. The complaint also alleged that Occupation Certificate (OC) was obtained on February 12, 2021, however possession was not offered in a proper manner and, hence, the respondents were liable to pay interest beyond the date of issuance of OC as well.

The respondents rejected the claim by the actor stating that they were not liable to pay interest beyond the date of OC, i.e., February 12, 2021. They also added that the project delay could be attributed to non-payment to Mumbai Metropolitan Region Development Authority (MMRDA) and the issue was sub-judice as a petition was filed by them against MMRDA in Bombay High Court in 2017 and is pending.

The RERA however observed that the respondent did not provide any plausible explanation to the complainant about any delay or revision in due date.

The RERA has partly allowed the complaint filed by Khan and directed the respondents to transfer possession of the units to him within a period of 15 days from the date of the order along with directing to pay interest to Khan for the delayed period from February 1, 2018 until the date of OC and also directed Khan to pay interest on delayed payment post issuance of OC with mutual discussions

UP RERA registers record 36 projects in September with estimated value of Rs 3600 crore

Leaving behind the pandemic blues, the real estate sector is rebounding and the results are visible not only from the increasing demand but also from the launch of new projects. Uttar Pradesh Real Estate Regulatory Authority (UP RERA) registered 36 new real estate projects from across the state in September alone. This is the highest number of projects being registered in a month which is a new record in itself.

The new projects include 32 residential and 4 commercial projects and the estimated value of these projects is worth Rs 3648.35 crore. The numbers of proposed units to be constructed in these projects are 8116, of which 6931 are residential and 1185 commercial. The registration trends suggest that developers are now moving towards non-NCR districts as 24 of the 36 projects have been registered in non-NCR districts. 12 new projects have been proposed in the NCR district.

In NCR, 7, projects were registered in Ghaziabad followed by Gautambuddha Nagar and Meerut where 3 projects each have been registered. In the non-NCR districts, 4 projects each were registered in Lucknow and Agra while 3 projects each in Kanpur, Vrindavan and Moradabad, and 2 projects in Gorakhpur. One project each was proposed in Jhansi, Varanasi and Gorakhpur.

In the past few years, the UP RERA has taken tough decisions against promoters and developers to secure home buyers' interests. Recently, it levied a penalty of over Rs 1 crore 39 lakh on 13 builders for non-compliance with its orders related to homebuyers' welfare. The real estate regulator also imposed a fine of Rs 1.5 crore on nine developers a few days ago after they failed to comply with the authority's order and did not return the money that buyers invested in those projects.



UP-RERA said that it has intensified action against all such promoters who have not complied with the orders. The authority has urged the developer community to follow the model agreement and has directed them to utilise the funds of the escrow account in the construction of the project and not divert.

It may be recalled that UP-RERA began investigating the projects of numerous builders about two years ago and even subjected some builders to forensic audits. During its investigations, UP-RERA also found that builders diverted around 70-80% of the fund from one project to another. Approximately 1.25 lakh buyers are still looking for their homes in the state today due to the negligence and default of the developers.

As per UP-RERA rules, builders cannot invest money from one project into other projects. Of the total amount deposited by the buyers, 70% will have to be spent on the construction of the same project and the remaining 30% can be spent on other expenses.

UP RERA came into existence on 27 October 2016 and aims to protect the interest of homebuyers and promote investment in real estate in the state of Uttar Pradesh.

Maharashtra RERA Asks Buyers of Delayed Mumbai Project to Not Withdraw Till Completion

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has asked home buyers of a delayed project in Mumbai to exit only after the completion. The regulatory body's decision comes after close to three dozen homebuyers raised a complaint against the developer- Vijay Group- who began this project in 2015.

According to a Moneycontrol report, the saga began in May 2015, when two homebuyers bought a flat for Rs 1.75 crores under Vijay Group's Victory Platinum project in Kandivali, Mumbai. They were promised possession by December of that year. However, the deadline was later pushed to March 2016 and then to March 2020. The delay was not agreeable to the buyers, who sought a refund. In 2019, the two entered a memorandum of understanding (MoU) with the developer, who agreed to buy back the flat at Rs 3.15 crores, including interest.



The four cheques that Vijay Group issued to that end bounced, resulting in the owners approaching MahaRERA to claim the amount due.

Other buyers in the project have also approached the regulator with similar complaints. The developer told the real estate authority the delay was caused by reasons beyond its control. It added that it did not have the resources to complete the project.

Vijay Group also filed an affidavit stating that it had made efforts to support the buyers.

RERA, however, found the developer guilty of violating provisions of the Real Estate Regulation and Development Act. In an order dated September 28, it said that the two homebuyers were entitled to seek a refund, interest included.



Owing to dozens of complaints, the body also took over the project from the original developer, giving the association of allottees— an association of homeowners or buyers— the first chance to complete it either on their own or by appointing a new developer.

Noting that the project's feasibility could be impacted if the association or the incoming developer is pressed with the liability to compensate for the previous promoter's delays, MahaRERA said that homebuyers will not be allowed to withdraw from the project before completion. This is to allow the association of allottees to sell the finished houses to refund those who want to exit the project.

Haryana RERA issues notice to Ansal Highland Park's promoter

SYNOPSIS

Granting a month's time, the authority has asked the promoter to remain present in person in the court with reply of the show-cause notice during the next date of hearing scheduled on November 22.



GURUGRAM: The Gurugram bench of the Haryana real estate regulatory authority (HRERA) has issued a show-cause notice to promoter of Ansal Highland Park after the developer failed to submit adequate documents related to the housing project. Ansal Highland Park is a residential group housing colony being developed at Sector 103, Gurugram

"The promoter may be issued a show-cause notice for the imposition of a penalty amounting to Rs 10,000 per day for the duration of default under Section 63 of the Real Estate and Development) Act, 2016 and why the HRERA registration may not be revoked under Section 7 of the Act, 2016," the authority noted in its proceedings.



The promoter was asked to submit the project's service plans and estimates

"It is observed that the registration certificate (RC) for the project was issued on April 1, 2019. As per the condition No VIII of the registration certificate, the promoter was required to submit the revised building plans and service plan estimates within a period of three months from the date of the issue of certificate.

"However, the service plan and estimates have not been submitted till date, which is a violation of the original certificate of HRERA registration. Further, the revalidated building plans have also not been submitted with the application," the authority said.

The licence to the project was granted in April 2012, and seven years later in April 2019 it obtained the RERA registration that expired on May 30, 2022. This includes six months grace period granted due to Covid pandemic

The promoter applied for continuation of the RC on May 11, 2022 under Section 7(3) of the Act 2016.

"Any real estate project has to be completed as per the terms and conditions mandated under the Act 2016. The authority issues RC to a project only after it is satisfied with the documents are complete," said K K Khandelwal RERA chairman

RERA project & agent registrations up by 109% in last 3 years, shows data

As per Ministry of Housing and Urban Affairs (MoUHA) data, projects and agent registrations have shown a 109 per cent growth in the last three years, approx. 94,513 projects have so far been registered under RERA. In the same corresponding period in 2019, 45,307 cases were registered.

The states with maximum project registrations are Maharashtra, Gujarat, Karnataka, Madhya Pradesh, Uttar Pradesh, Telangana and Tamil Nadu. Together, these states account for a significant 83 per cent share with approx. 78,258 registered projects. Maharashtra still tops the list with approx. 38,229 project registrations.

As per data compiled by Anarock, Tamil Nadu recorded a 828 per cent jump in the period - in October 2019, the state had 1,154 projects registered under RERA and this has increased to 10,711 projects as of October. Whereas Uttar Pradesh saw an increase of just 22 per cent.

As per MoHUA, 1,00,949 cases filed under the various State iterations of RERA have been disposed of by these authorities as of 8 October 2022. Of these, approximately 72 per cent cases (72,979 complaints) were resolved in the last three years.

NUMBER OF PROJECTS AND AGENTS REGISTERED (AS OF OCTOBER)

States	Projects	Agents
Maharashtra	38,229	38,969
Tamil Nadu	10,771	2,596
Gujarat	10,030	1,953
Karnataka	6,313	3,590
Telangana	5,148	2,448
Madhya Pradesh	4,523	1,287
Uttar Pradesh	3,304	5,583

Taking the lead over previous torchbearer MahaRERA, Uttar Pradesh's UP RERA saw as many as 40,559 cases disposed of so far - against a mere 11,596 cases in October 2019.

As per Anarock compilations, Haryana comes a distant second with approx. 20,539 cases disposed of, against just 2,480 cases in the corresponding period of 2019 and MahaRERA has so far disposed of approx. 12,507 cases.

"Still nowhere close to saturation effect but showing 'real' progress, the Real Estate (Regulation and Development) Act has been visibly fulfilling one of its key functions - resolving homebuyer grievances," said Anuj Puri, Chairman - ANAROCK Group.

Expressing his concerns about 100 per cent resolution, Puri said that RERA still lacks sufficient execution powers - a fact which the Supreme Court has also expressed apprehensions over. Meanwhile, the pandemic did not break the pace of project and real estate agent registrations over the last three years.

While it leads in terms of disposal of cases, UP has seen the lowest growth of 22 per cent in project registrations in the past three years. In October 2019, the state had approx. 2,710 registered projects while the current number stands at approx. 3304 projects, indicating that the primary focus in UP has been on project completions rather than new launches.

Meanwhile, registration of real estate agents under RERA has risen by 95 per cent in the last three years - from 35,699 on 8 October 2019 to approx. 69,766 on 8 October 2022. Maharashtra retains its lead with the maximum number of projects and agent registrations:

More than 1 lakh cases disposed of by RERA authorities

Over 1 lakh cases filed under the various state iterations of RERA have been disposed of by RERA authorities, with Uttar Pradesh's RERA disposing of the maximum number of cases as of the first week of October. Of these, approximately 72 percent of cases were resolved in the last three years, which include the COVID-19 pandemic, data available with the Ministry of Housing and Urban Affairs has indicated.

As many as 1,00,949 cases and 72,979 complaints have been disposed of until October 8, 2022.

Taking the lead over previous torchbearer MahaRERA, Uttar Pradesh's UP RERA saw as many as 40,559 cases disposed of so far - against a mere 11,596 cases in October 2019. Haryana comes a distant second with approximately 20,539 cases disposed of, against just 2,480 cases in the corresponding period of 2019. Still going strong but no longer in the pole position, MahaRERA has so far disposed of approximately 12,507 cases, an analysis by Anarock showed.

While it leads in terms of disposal of cases, UP has seen the lowest growth of 22 percent in project registrations in the past three years. In October 2019, the state had approximately 2,710 registered projects while the current number stands at approximately 3,304 projects, indicating that the primary focus in UP has been on project completions rather than new launches.

Among the top seven states, Jharkhand has seen the highest three-year growth of 855 percent in project registrations - from 103 in October 2019 to approximately 984 projects today. Tamil Nadu recorded an 828 percent jump in the period - in October 2019, the state had 1,154 projects registered under RERA; this has increased to 10,711 projects today.



“Still nowhere close to saturation effect but showing ‘real’ progress, the Real Estate (Regulation and Development) Act has been visibly fulfilling one of its key functions – resolving homebuyer grievances. As per official data from MoHUA, the respective RERA authorities of various states and UTs have addressed more than a lakh consumer complaints,” said Anuj Puri, Chairman – ANAROCK Group.

PROJECT AND AGENT REGISTRATIONS

Amounting to a 109 percent growth in the last three years, approximately 94,513 projects have so far been registered under RERA to date, from approximately 45,307 on October 8, 2019.

The states with the maximum project registrations are Maharashtra, Gujarat, Karnataka, Madhya Pradesh, Uttar Pradesh, Telangana and Tamil Nadu. Together, these states account for a significant 83 percent share with approximately 78,258 registered projects. Maharashtra still tops the list with approximately 38,229 project registrations.

As of October 8, 2022, Maharashtra saw 38,229 projects and 38,969 agents registered under MahaRERA. In Tamil Nadu, 10,771 projects and 2,596 agents have been registered as of October 2022. Gujarat has seen 10,030 projects and 1,953 agents registered to date; In Karnataka, 6,313 projects and 3,590 agents are currently registered under RERA; Telangana currently has 5,148 projects and 2,448 agents registered; Madhya Pradesh has seen 4,523 projects and 1,287 agents registered.

Litigation funding: An emerging solution to the challenges and disagreements faced by homebuyers

The majority of individuals in the world's population have made their greatest single investment in a home. The real estate industry in India is vast, varied, and ambiguous. Where the relationship between the consumers and seller has always been a matter of concern and the redressal of the dispute has always been a time-consuming process. Homebuyers had to go to consumer court in the past if they wanted to file a complaint against unreliable builders.

Purchasing a house in India comes with several risks and challenges. Here are some of the problems faced by homebuyers:

1. There is a risk of disputes that might occur between the homebuyer and the builders.
2. To determine title, ownership and, possession of the property.
3. To determine if the property is free of charges, lawsuits, or obstruction. Failure to do so could get homebuyers in trouble shortly.
4. To determine the legal status of the property.
5. Check the documents to see if the registration and transfer are complete.

Above mentioned are some of the most common problems homebuyers face and resolving these issues has a lot of technicalities in it and is long delayed. Everything has changed in the recent past after the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, and the Real Estate Regulation and Development Act (RERA), 2016. The Insolvency and Bankruptcy Board of India (IBBI) by the way of an amendment in the code has given the status of "financial creditors" to the homebuyers, by this the homebuyers can now initiate the CIRP and can approach the NCLT to resolve disputes of default and delayed possession.

LITIGATION FUNDING TO THE RESCUE

In a country like India whose judicial system is rarely known for its speed and where a large number of property-related disputes are not heard promptly due to a lack of adequate funding, litigation funding emerges as an excellent alternative. Litigation funding is a method that pays for the costs of legal procedures to make it easier for people and businesses, especially those who are struggling financially to recover claims. In the case of homebuyers' litigation funding can help in a way that instead of the homebuyers bearing the expenses of the litigation, a funder does so in exchange for a portion of any recovery obtained via the proceedings.

THE ENACTMENT OF RERA AND IBC

It is very commonly witnessed in India where homebuyers are frequently deterred from starting legal actions to collect claims that could have the potential to be successful however, the passage of the RERA and subsequent IBC strengthened the legal rights of aggrieved home buyers in India and gave them various options to exercise their legal rights. According to several reports, commercial contracts in India are settled in around 1445 days, while it takes about 589.6 days in Organization for Economic Co-operation and Development (OECD) nations, according to the World Bank's Ease of Doing Business Report, 2020 the litigation expenses in India are about 31 per cent of the claim value, which is about 10 per cent more expensive than in OECD nations because of the high expenses involved in pursuing the claim.

