



Quarterly Roundup: RERA

JULY TO SEPTEMBER 2024

Introduction

This Quarterly Roundup sets out a compilation of selected judgements, orders and circulars for the period between July 2024 to September 2024, highlighting recent legal developments influenced by the continuous changes in the real estate sector. These decisions reflect the perspective of the RERA authorities, essential for the interpretation of the Act and shaping the legal framework. This compilation of judgments and orders serves as an essential guide to understanding the implications of RERA's evolving framework.

GLOSSARY

Term	Meaning
Act/RERA	Real Estate (Regulation and Development) Act, 2016
AFS	Agreement for Sale
Supreme Court	Hon'ble Supreme Court of India
Consumer Act	Consumer Protection Act, 1986
Delhi RERA	Real Estate Regulatory Authority for the National Capital Territory of Delhi
Delhi RERA Rules	Delhi Real Estate Regulation and Development (General) Rules, 2016
Haryana RERA	Haryana Real Estate Regulatory Authority
MahaRERA	Maharashtra Real Estate Regulatory Authority
MahaREAT	Maharashtra Real Estate Appellate Tribunal
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
NCLT	National Company Law Tribunal
Authority	Real Estate Regulatory Authority
OC	Occupation Certificate

Contents

Important Judgments Passed by Real Estate Regulatory Authorities and Tribunals	1
MahaRERA/ MahaREAT	1
Delhi RERA.....	4
Haryana RERA	5
Important Circulars, Orders and Directions Issued by MahaRERA.....	6
Key Contacts.....	8

Important Judgments Passed by Real Estate Regulatory Authorities and Tribunals

MAHARERA/ MAHAREAT

Homebuyers accepting a partial refund without interest cannot subsequently request refund with interest

Sujit Tulshiram Ranmale & Ankur Dilip Patni v. Deron Properties Private Limited

In this decision, the MahaRERA held that, by opting for a refund without interest, the homebuyers forfeited their right to seek additional claims including interest under Section 18 of the Act. Section 18 of the Act provides that if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or by the date specified therein, then the promoter shall be liable on demand to refund the amount received with interest and compensation as may be prescribed under the Act to the allottee. Where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Facts

Sujit Tulshiram Ranmale and Ankur Dilip Patni booked flats in a project named 'Deron Rise and Prosper' pursuant to which allotment letters were issued on March 12, 2020. Each home buyer paid INR 3 million for purchasing the flats. However, no AFS was executed between the parties and there was no substantial progress in the project. Due to insufficient progress in the project, the complainants decided to withdraw from the project. The complainants received a total of INR 1.5 million in five installments from the developer and the developer provided a cheque for the remaining amount of INR 1.5 million which was dishonored twice. Being aggrieved by the developer's conduct,

the complainants filed complaints seeking a refund of balance amount along with interest.

Decision

The MahaRERA concluded that since the complainants accepted the partial refund before filing the complaint where they had opted for a refund of the amount without interest, they cannot subsequently claim interest on the refund amount. Accordingly, the MahaRERA rejected the complainant's claim for interest on the refund amount, however, directed the developer to refund the balance amount of INR 1.5 million without interest.

The order may be viewed [here](#).

Promoter to ensure the unhindered use of car parking space by allottee

Sanya Runwal Family Trust v. The Reserve by Runwal CHS Limited & Runwal Developers Private Limited

In this decision, the MahaRERA passed an order stating that an allottee is entitled to use the car parking space as mentioned in the AFS and it is the promoter's obligation to ensure that parking spaces are transferred to the allottee to be used free of restraint.

Facts

The allottee, Sanya Runwal Family Trust had purchased a flat alongwith use of one covered car parking space as per the AFS in the project known as 'Runwal Reserve'. The society being Runwal CHS Limited ("Runwal CHS") was formed and Runwal CHS became the owner of the common areas of the project including the covered parking. The allottee contended that Runwal CHS illegally trespassed and occupied the car parking space allotted to the allottee as per the AFS. Accordingly, the allottee filed a complaint against Runwal CHS and Runwal Developers Private Limited seeking exclusive allotment and use of car parking spaces expressly agreed in the AFS. It is to be noted that the AFS mentioned that the allottee is entitled to receive a residential flat together with a covered (i.e. stilt / basement podium/ mechanically operated) car parking space or together with the right to use the

open car parking space in common areas of the building.

Decision

The MahaRERA observed that:

- Section 11(4)(a) of the Act states that the promoter is responsible for all the obligations under the AFS which also includes handover of the parking space;
- A mere handover of parking space on paper does not absolve the promoter of its responsibility. The promoter must ensure that the physical possession of the car parking space is handed over to complete its obligations.

Accordingly, the MahaRERA concluded that the parking space as defined in the AFS is for the unhindered use of the allottee and it is the promoter who must ensure that this is made possible and that the covered car parking space would not be included in the definition of common areas under the Act. With regard to the conduct of Runwal CHS in hindering its use, the MahaRERA directed the promoter to approach the appropriate forum to take necessary action on the conduct of Runwal CHS.

The order may be viewed [here](#).

Doctrine of election applicable where homebuyer files concurrent complaint for the same remedies before the RERA and consumer forum

Ajay Jain v. Lucina Land Development Limited

In this decision, the MahaREAT held that an appellant cannot continue to pursue two sets of complaints filed under the Act and Consumer Act simultaneously, and that appellant must elect one of the two options available to continue the prosecution.

¹ Section 79 of the Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine.

Facts

The appellant had booked two flats in a project known as 'Indiabulls Green -1' and 'Indiabulls Green-3', situated at Panvel, Raigad. The appellant had filed complaints against the respondent before the MahaRERA for a refund of amounts paid along with interest on account of delay. The appellant had also filed two separate complaints before the State Consumer Redressal Forum seeking similar reliefs. Accordingly, the MahaRERA dismissed the complaint on account of appellant engaging in forum shopping. Being aggrieved by the order of the MahaRERA, the appellant filed an appeal before the MahaREAT *inter alia* seeking to quash and set aside the impugned order of the MahaRERA.

Decision

The MahaREAT, relying upon various judgments of the Supreme Court and Sections 18, 79 and 88 of the Act¹, noted that while concurrent remedies exist under the Act and the Consumer Act, the allottee's argument that he is entitled to pursue and prosecute two sets of complaints simultaneously and concurrently for similar reliefs filed under the Act and Consumer Act until their logical conclusions / outcomes of the complaints is not acceptable. The MahaREAT ruled that since the remedies sought by the appellant in both the proceedings are similar, the appellant must elect one out of the two remedies to continue the prosecution. Accordingly, the appeal was dismissed.

The order may be viewed [here](#).

Promoter liable to pre-deposit the funds received from the homebuyer and the amount contributed by the financier for an appeal

M86 Residency Private Limited v. Ketan Kataria & L&T Finance Holdings Private Limited

In this decision, the MahaREAT directed the promoter to pre-deposit the entire amount received from the allottee as well as the financier together with interest as a condition for entertaining an appeal.

Section 88 of the Act states that the provisions of the Act would be in addition to and not in derogation of the provisions of any other law.

Facts

The allottee had purchased one flat in a project known as 'Promenade -The Address'. The allottee and M86 Residency Private Limited (earlier known as Wadhwa Residency Private Limited) ("**M86 Residency**") had entered into a tripartite agreement under a subvention scheme with L&T Finance Holdings Private Limited ("**Financier**") for the purpose of financing the flat. Subsequently, the allottee filed a complaint with the MahaRERA seeking a refund of the entire amount paid to M86 Residency together with interest, due to false statement and misrepresentation by the M86 Residency and failure to handover possession of the flat. The Adjudicating Officer of the MahaRERA directed M86 Residency to refund an amount of INR 19.03 million (approx), along with interest and INR 0.2 million towards compensation. As the MahaRERA decided the original complaint in favour of the allottee, M86 Residency filed an appeal challenging the order of the MahaRERA.

The main question which arose before the MahaREAT was regarding the computation of the amount to be deposited with the MahaREAT under Section 43(5) of the Act for entertaining the appeal. The contention of M86 Residency was that it is required to deposit only the amount received directly from complainant and not from the Financier.

Decision

The MahaREAT relied on Section 43(5) of the Act, which states that *any person aggrieved by any direction, decision, or order issued by the Authority or an adjudicating officer under this Act may file an appeal before the Appellate Tribunal with jurisdiction over the matter*. The MahaREAT further observed that if a promoter files an appeal with the Appellate Tribunal, the appeal will not be entertained unless the promoter first deposits at least thirty percent of the penalty, or a higher percentage as determined by the Appellate Tribunal, or the total amount payable to the allottee, including interest and compensation, if applicable. This deposit must be made before the appeal can be heard. Additionally, the MahaREAT referred to the Supreme Court judgment *New Tech Promoters and Developers Limited vs. State of UP & Others [Civil Appeal Nos.6745-6749 of 2021]*, which established that the

requirement for a pre-deposit is mandatory for an appeal to be considered.

Accordingly, the MahaREAT held that M86 Residency is statutorily and mandatorily required to first pre-deposit entire amounts received by M86 Residency both towards the loan from Financier and from the allottee directly as a condition for entertaining the appeal.

The order may be viewed [here](#).

Allottee not entitled to interest under Section 18 of the Act after part OC and lack of proof for delayed possession

Mitali Enterprises & Himgiri Associates v. Larsen & Toubro Limited

In this decision, MahaRERA rejected the allottees' claim for interest under Section 18 of the Act, citing insufficient evidence of the Developer's commitment to deliver possession by a specific date and the fact that the complaints were filed only after the completion of the flats and after the receipt of the Part OC for the project.

Facts

Mitali Enterprises & Himgiri Associates ("**Allottees**") had booked their respective flats in the project known as 'Crescent Bay-T3' being developed by Larsen & Toubro Limited ("**Developer**") pursuant to which allotment letters were issued in July, 2015. Subsequently, Allottees filed two separate complaints with MahaRERA seeking refund of entire amounts paid by the Allottees along with the interest and compensation due to delayed possession by the Developer. These complaints were clubbed together and were heard together by the MahaRERA.

Contentions of the Allottees

- Each of them had paid 5.8 million (approx.) for purchasing the flats, however, date of handover of the possession was neither explicitly stipulated in the application forms nor in allotment letters. Further, no agreement for sale was executed between the Developer and the Allottees;

- The Allottees had booked their respective flats in July 2015 and were expecting to receive the possession of the flats within a reasonable period of three years from the date of booking i.e. by June 2018;
- They also relied on the judgment of *Fortune Infrastructure v/s. Trevor D'Lima [(2018)5 SCC 442]*, wherein the Supreme Court held that in absence of date of possession, the reasonable period of possession is three years;
- Further, due to substantial delay in handing over the possessions of the flats to the Allottees, they made an application to the Developer seeking cancellation of booking of the flats and the Developer processed the cancellation of booking by issuing cheque of 5.6 million (approx.) for both the flats as full and final settlement by deducting 0.3 million (approx.) towards service tax and MVAT which were deposited with government authorities. Since there was considerable delay in refund of amount by the Developer, the Allottees filed the present complaints.

The Developer, on the contrary claimed for dismissal of the complaints as the same were filed after the project was completed and OC of the booked flats was obtained on January 31, 2022.

Decision

The MahaRERA observed that:

- MahaRERA rejected the contention of the Allottees citing insufficient evidence to prove the Developer's commitment to hand over possession by December 31, 2019;
- While the complainants contended a three-year being reasonable period for possession based on the booking date, they filed complaints over four years later i.e. on August 5, 2022, without justifying the delay;
- The complaints were filed after the project was completed and the OC was issued, so there was no prima facie violation of Section 18 of Act;

- Though both parties attempted to settle the matter amicably, however Allottees refusal to accept the cheques prepared by the Developer led to filing of the complaint;
- Despite the application form specified a 5% (five percent) forfeiture, MahaRERA's Order No. 35/ 2022 permits the promoter to forfeit only 2% (two percent) of amount in case of any cancellation by allottee and held that forfeiture of 5% (five percent) of the amount by Developer was not in consonance with Order No.35/2022.

Accordingly, MahaRERA rejected the claim of interest of Allottees and directed the Developer to refund the money paid towards consideration of flats without interest after deducting 2% (two percent) of total consideration of flats within 45 (forty-five) days from the date of the order.

The order may be viewed [here](#).

DELHI RERA

Misleading Advertisements and Procedural Violations

Suo Moto case

The case emerged from a notice by the Delhi RERA on account of an advertisement published on May 24, 2022, by India Sotheby's International Realty ("**Noticee-1**"). The advertisement included a RERA registration number that belonged to Realpro Realty Solutions Private Limited who is registered as real estate agent with the Authority ("**Noticee-2**").

Facts

In suo moto proceedings, the Delhi RERA has addressed issues of misleading advertisements and procedural violations involving both Noticee-1 and Noticee-2 relating to an advertisement for property in 'Mayfair Gardens', New Delhi, which displayed an incorrect RERA registration number. As the advertisement did not clarify the relationship between the two entities, the Delhi RERA held that Noticee-2 being the holder of the registration number, violated Section 10(c) of the Act by allowing Noticee-1 to use its registration number without appropriate disclosure. Additionally, Noticee-2 failed

to update its business address with the Delhi RERA, thereby violating Rule 8(1)(e) of the Delhi RERA Rules. Both Noticee-1 and Noticee-2 claimed they were the same entity, arguing that no separate disclosures were needed for using the RERA registration obtained in Noticee-2's name. Noticee-2 further contended that as a real estate agent, it was authorized to use India Sotheby's International Realty (Noticee-1) as trade name and since the application form for registration of real estate agents did include a field for 'trade name' they could not inform the Authority about their understanding to use trade name of India Sotheby's International Realty (Noticee-1).

Decision

The Delhi RERA concluded that:

- The display of an incorrect registration number in the advertisement misled prospective buyers and constituted unfair trade practices under Section 10 of the Act.
- Noticee-2 violated procedural requirements as stipulated under Rule 8(1)(e) of Delhi RERA Rules by not updating its business address with Delhi RERA.
- Noticee-1 advertised real estate projects without being registered as a real estate agent with Delhi RERA.

Accordingly, the Delhi RERA imposed a penalty of INR 1 million on Noticee-2 for misleading practices and an additional amount INR 0.5 million for failing to notify the Delhi RERA of change in its business address. Further, Noticee-1 was restrained from using Noticee-2's registration number without obtaining its own registration.

The order may be viewed [here](#).

HARYANA RERA

RERA complaint filed 3 years after the cause of action is barred by limitation

Neeru Bhatia v. Emaar MGF Land Limited

In this decision, the Haryana RERA dismissed a complaint filed after a delay of five years and five

months after the possession of the flat was offered to the complainant on April 28, 2017, ruling it to be beyond the limitation period.

Facts

The complainant had booked a flat in a project known as 'Emerald Hills Floors' in Gurugram for consideration of INR 6.7 million. The AFS was executed with the complainant in 2009, and possession was agreed to be handed over within 27 (twenty-seven) months. However, the possession of the flat was ultimately handed over to the complainant on July 4, 2017. Being aggrieved by the delay in receiving the possession of the flat, the complainant filed a complaint with the Haryana RERA, five years and five months after the cause of action arose *inter alia* seeking interest for delayed possession. In the said complaint, the respondent argued that the complaint is barred by limitation as the possession of the flat was offered to the complainant on April 28, 2017, and the physical possession of the flat was formally handed over on July 4, 2017, and the complaint was filed on October 18, 2022.

Decision

Upon hearing the contentions of both parties, the Haryana RERA concluded that though the law of limitation does not strictly apply to the Act, it is still guided by principles of natural justice as per Section 38 of the Act. The Haryana RERA further observed that law favors those who are vigilant about their rights and not those who delay. Further, even after taking into consideration the moratorium period from March 15, 2020, to February 28, 2024 for the purpose of computation of limitation, the Haryana RERA held that the complaint is not filed within a reasonable time period and is therefore barred by limitation.

The order may be viewed [here](#).

Important Circulars, Orders and Directions Issued by MahaRERA

Submission of proforma of the allotment letter along with AFS at the time of registration of a real estate project

The MahaRERA, by its Order bearing No. 60/2024 dated September 3, 2024, issued directions regarding submission of the proforma of the allotment letter and AFS at the time of registration of project in compliance with Section 4(2)(g) of the Act. These directions are summarized below:

- Promoters are required to upload the proforma of the allotment letter at the time of application for registration of a real estate project, which proforma must conform to the model allotment letter, attached thereof in Annexure 1.
- Promoters are required to upload the proforma of the AFS proposed to be signed with the homebuyers, which proforma shall conform to the model form of agreement at Annexure A of Rule 10 of the MahaRERA Rules along with the details as prescribed in the order.
- No deviation/modification shall be permitted in clauses regarding parking in the proforma of the allotment letter and the AFS. Other deviations/modifications in the proforma allotment letter and AFS shall be highlighted in a different color and uploaded along with a deviation sheet.
- Non-compliance of the aforesaid or any deviation/ modification proposed by promoters in the proforma allotment letter and AFS as uploaded being contrary to the provisions of the Act, the rules and regulations made thereunder, would render the application of the promoter for registration of real estate project being rejected.

Order no. 60/2024 can be accessed [here](#).

Clarification for promoters in relation to the opening of bank accounts as prescribed under Order dated June 27, 2024 bearing no. 56/2024

The MahaRERA by its Order bearing no. 61/2024 dated September 4, 2024 issued a clarification with respect to Order bearing no. 56/2024 dated June 27, 2024 which relates to a mechanism for the operation and maintenance of a separate bank account for registered projects to ensure compliance of provision of Section 4(2)(l)(D) the Act. Section 4(2)(l)(D) the Act outlines the manner for utilizing the amounts realized for the real estate project from the allottees.

This Order clarifies that only promoters as defined under Section 2(zk) of the Act as well as the landowner who makes a declaration that such landowner is a promoter would be required to open three bank accounts. Where the landowner has not declared himself as promoter, then such landowner is not required to open three bank accounts as mentioned in Order dated June 27, 2024.

Order no. 61/2024 can be accessed [here](#).

Details of facilities/amenities to be provided by promoters for real estate projects under proforma of AFS and as well as in the AFS

The MahaRERA by its Order dated July 30, 2024 bearing no. 57/2024, issued directives on the details of facilities and amenities that must be included in proforma AFS and actual agreements. The details that are required to be included are as follows:

- Facilities/amenities to be provided in the building/common areas/in the layout such as theatres, swimming pools, tennis courts etc.
- The size and location of facilities/amenities in the form of open spaces and the proposed date on which such spaces shall be handed over to the common organization.
- Details regarding lifts as to the type of lift, capacity and speed of the lift.

Any major revision in facilities/amenities would require a correction application under Section 14(2) of the Act.

The facilities/amenities are required to be specifically listed in the second schedule in the model form of agreement as provided at Annexure A under Rule 10 of the MahaRERA Rules, in the manner provided in Annexure 1 of the Order dated July 30, 2024. This clause shall be considered as non-negotiable.

Order no. 57/2024 can be accessed [here](#).

Key Contacts



Avikshit Moral
Partner
avikshit@snrlaw.in



Khushbu Goyal
Associate
kgoyal@snrlaw.in



Komal Pandey
Associate
kpandey@snrlaw.in



Shaunak Deshpande
Associate
sdeshpande@snrlaw.in

S&R
ASSOCIATES

ADVOCATES

NEW DELHI

Max House
Tower C, 4th Floor
Okhla Industrial Estate Phase III
New Delhi 110 020
India

T: +91 11 4069 8000
F: +91 11 4069 8001

MUMBAI

One World Center
1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
India

T: +91 22 4302 8000
F: +91 22 4302 8001

www.snrlaw.in

This document is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.

© 2024 S&R Associates