



## RERA DOSSIER

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## INTRODUCTION

The Real Estate (Regulation and Development) Act, 2016 (“**the Act**”) was introduced with an aim to regulate and promote the real estate sector and to establish an adjudicating mechanism for redressal of disputes with respect to real estate projects. Considering the number of real estate regulatory authorities that are in operation today across the country, one of the biggest challenges that we see is the dissemination of information relating to latest orders, circulars/notifications passed by these authorities which impact the stakeholders, whether developers, homebuyers, investors, or financial institutions. To enable access to this information, various states have set up a web portal to provide updates on real estate projects, orders and judgements passed by various authorities and so on. While a noteworthy and significant improvement has been made towards it, the navigation process of the websites should be made more user-friendly and streamlined.

This Dossier intends to be a one stop guide to keep our readers abreast with the significant judgements, orders, circulars, and directions passed in relation to the Act and the rules thereunder which are beneficial for all the stakeholders. Volume 1 of the Dossier is a compilation of all the impactful judgment/ orders passed in the last quarter of the year 2021, i.e., October 2021 to December 2021 by the Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”), the Maharashtra Real Estate Appellate Tribunal (“**MahaREAT**”), the Real Estate Regulatory Authority for the National Capital Territory of Delhi (“**Delhi RERA**”), the Haryana Real Estate Regulatory Authority (“**HRERA**”), and the Rajasthan Real Estate Regulatory Authority (“**Rajasthan RERA**”). The Volume 1 of the Dossier also provides a compilation of all relevant regulatory circulars, orders, directions etc. issued by MahaRERA for the same aforementioned period.

Stay tuned for the next Volume!!!



## IMPORTANT JUDGMENTS PASSED BY REAL ESTATE REGULATORY AUTHORITIES AND TRIBUNALS

### Secured Creditors are amenable to RERA Jurisdiction

#### Supreme Court of India

Union Bank of India, Jaipur Vs. Rajasthan RERA & Ors. & 69 other connected Writ Petitions

The division bench of the Hon'ble Rajasthan High Court ("**Rajasthan HC**") in a recent writ petition passed a landmark judgment protecting the rights and interests of homebuyers by holding that secured creditors such as financial institutions and banks fall within the jurisdiction of the concerned RERA and the homebuyers can approach the concerned RERA against such secured creditors.

The matter in question relates to a project called 'Sunrise' which was launched in the year 2014 and subsequently registered with the Rajasthan RERA. The allottees of this project had taken a loan from ICICI Bank against the allotted flats through a tripartite agreement between the developer, the concerned allottees and the bank. Around the year 2016, according to the allottees, the concerned developer and the landowner raised finance through a project loan by mortgaging the whole project in favor of the Andhra Bank (which is now merged with the Union Bank of India) ("**Union Bank**"). The project was not completed within the stipulated timeline and the possession was not offered to the allottees. Further, the developer failed to repay the loan taken from the Union Bank. Consequently, the Union Bank took possession of the whole project and also conducted auction in respect of certain flats under the provisions of the SARFAESI Act. The concerned allottees approached the Rajasthan RERA for various remedies and certain adverse orders were passed against the Union Bank by which it was brought under RERA. Aggrieved by the same, the Union Bank approached the Rajasthan HC through a writ petition and the Rajasthan HC consolidated such 70 similar writ petitions. The Rajasthan HC held that: (i) the Act operates retrospectively only in the cases where the security interest is created because of fraud or collusion between banks/financial institutions and developers; (ii) the Act would prevail over the SARFAESI Act in case of a conflict between the two; and (iii) the RERA has jurisdiction to entertain complaints against secured creditors like banks/financial institutions once they take recourse under Section 13(4) of the SARFAESI Act to enforce their security interest.

This judgment of the Rajasthan HC was challenged by a special leave petition before the division bench of the Hon'ble Supreme Court of India ("**Supreme Court**") by the aggrieved parties. The Supreme Court affirmed the judgment of the Rajasthan HC and

further clarified that actions against secured creditors before the RERA shall be applicable in a case where proceedings are initiated by the homebuyers to protect their rights.

You can view the judgment of the Supreme Court [here](#).

### Advertisement of Real Estate Projects

#### Rajasthan RERA

Suo Moto Vs. M/s Rajasthan Housing Board

A real estate project can be advertised only after registration with the concerned RERA subject to compliance of necessary directions as per the provisions of the Act. In the present case, a show cause notice was issued to the respondent, M/s. Rajasthan Housing Board ("**Rajasthan Housing Board**") for advertising e-auction of 1,681 commercial plots, and shops located in 13 cities of the state of Rajasthan without obtaining prior registration of the projects. The Rajasthan Housing Board contended that none of these projects were required to be registered under the Act as none of these projects were ongoing projects. The Rajasthan RERA accepted this contention of Rajasthan Housing Board in relation to all projects except one. It held that one project required registration as majority of the plots under the project were auctioned after the commencement of the Act making it a new project. Rajasthan Housing Board was thereby directed to apply for registration and to also pay a penalty equivalent to 4 (four) times the registration fee.

You can view the order [here](#)

#### Rajasthan RERA

Suo Moto Vs. Team RRC

Section 9 of the Act mandates that real estate agents will need to register themselves, to be able to facilitate a transaction. Further, Section 10 of the Act prohibits a real estate agent from facilitating a sale in respect of a project which is not registered. In the instant case, a show cause notice was issued to the respondent, Team RRC ("**Team RRC**"), a registered real estate agent, for issuing an advertisement of a project not registered with the RERA authority. Team RRC contended that the project was not registered because it was not required to be registered under the Act. As such, the sale of units in a project not required to be registered under the Act can be facilitated by a registered real estate agent as much as by an unregistered real estate agent. The Rajasthan RERA observed

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that neither a registered real estate agent nor an unregistered real estate agent can facilitate the sale of units in a project that is required to be registered but is not registered. The Rajasthan RERA further stated that if a registered real estate agent does so, he/it commits an offence under Section 10(a) of the Act. The Rajasthan RERA held that the project was required to be registered under the Act and imposed a penalty of INR 5000/- (Indian Rupees Five Thousand Only) on Team RRC.

You can view the order [here](#)

## **Rajasthan RERA**

### **Suo Moto Vs. Team RRC**

The guidelines prescribed for the real estate agent under the Act in relation to facilitating a sale of plot, apartment or building in a project are to be strictly complied with. In the instant case, a show cause notice was issued to the respondent, Team RRC, a registered real estate agent, for issuing an advertisement of a project without mentioning its real estate agent registration number. Team RRC contended that it was not required to mention its real estate agent registration number as issuing of an advertisement for the project by the real estate agent cannot be treated as facilitation of sale under the Act. The Rajasthan RERA held that the issue of an advertisement by the real estate agent for sale of units is facilitation of sale or at least a part of the process of facilitation of sale. Therefore, Team RRC was mandated under Section 9(5) of the Act to quote its registration number in every sale facilitated by the agent. The Rajasthan RERA held that Team RRC has violated Section 9(5) of the Act. Whilst observing that the Team RRC has subsequently started mentioning its real estate agent registration number in all its advertisements, the Rajasthan RERA decided to take a lenient view and imposed a fine of INR 2000/- (Indian Rupees Two Thousand Only) on Team RRC to meet the ends of justice.

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

## **Cancellation Charges for Cancelling Booking of a Unit**

### **Rajasthan RERA**

#### **Yashoda Parihar Vs. Ashapurna Buildcon Ltd.**

The project promoted by the respondent, Ashapurna Buildcon Ltd. ("**Ashapurna Buildcon**") displayed different dates of completion in the promotion material/ advertisement on the Rajasthan RERA website. The advertisement guaranteed that the project will be completed within 18 months from 2nd January 2020 and the Rajasthan RERA website mentioned that the project will be completed by 6th November 2023. The complainant ("**Yashoda Parihar**") thereby applied for cancellation of the unit booked by her and sought refund of the amount deposited by her along with interest. Ashapurna Buildcon contended that

the booking amount deposited by Yashoda Parihar cannot be reimbursed as the entire amount was to be forfeited in case of cancellation by the allottee. The Rajasthan RERA observed that no agreement was executed between the parties in relation to Yashoda Parihar's unit. However, the booking form provides that the cancellation of unit would attract 10% deduction towards the administrative charges of the total value. It was further observed that, as per the general norms, in absence of an agreement between the parties, an amount up to 10% of the booking amount is deducted as cancellation charges. The Rajasthan RERA directed Ashapurna Buildcon to refund the entire amount after deducting 15% of the deposited amount and taxes. No interest was awarded as agreement for sale was not executed between the parties.

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

### **MahaREAT**

#### **Mr. Mahendra Dnyanu Waghmare Vs. Godrej Skyline Developers Private Limited.**

The appellant ("**Mahendra Dnyanu Waghmare**") contended that he had booked a flat in respondent's i.e. Godrej Skyline Developers Private Limited ("**Godrej Skyline**") project, and paid 5% of the consideration on the assurance of a channel partner of Godrej Skyline that in case the booking is cancelled, 100% of the amount shall be refunded. Mahendra Dnyanu Waghmare cancelled the booking due to adverse health conditions; however, 100% of the amount was not refunded. The MahaREAT observed that the Act is silent on the point of permissible deductions if the allottee suo moto cancels the booking for whatever reasons. It was observed that Mahendra Dnyanu Waghmare had cancelled the booking before execution of the agreement for sale. As such, the question of deduction of amount under the head of amount of stamp duty and registration charges does not arise. The MahaREAT further observed that Godrej Skyline had utilised the amount deposited by Mahendra Dnyanu Waghmare for its commercial purposes. Therefore, the MahaREAT allowed a reasonable deduction of 10% and directed Godrej Skyline to refund the remaining amount to Mahendra Dnyanu Waghmare within a month from the date of the order.

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

### **HRERA**

#### **Sneh Lata Sachan Vs. Pyramid Infratech Private Limited.**

The complainant ("**Sneh Lata Sachan**") had booked a flat in respondent's i.e., Pyramid Infratech Private Limited ("**Pyramid Infratech**") project and subsequently entered into a buyers' agreement. Sneh Lata Sachan failed to make payment of certain amount towards the flat as per the buyers' agreement. Pyramid Infratech issued several reminders to Sneh Lata Sachan

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for the same which led to the issuance of notice of cancellation by Pyramid Infratech. Sneh Lata Sachan filed the complaint to direct Pyramid Infratech to restore the flat and set aside the cancellation of the flat.

The HRERA observed that the cancellation of flat is valid as Pyramid Infratech had followed the prescribed procedure and cancelled the flat of Sneh Lata Sachan with adequate notices. It was further observed that there is a distinction between surrendering of flat by the allottee and cancellation of flat by the promoters. In cancellation, a deduction of only INR 25,000/- (Indian Rupees Twenty Five Thousand Only) (as per the cancellation clause of affordable housing policy) should be made and the balance amount should be refunded to the allottee. Therefore, the HRERA directed Pyramid Infratech to deduct INR 25000/- (Indian Rupees Twenty-Five Thousand Only) and refund the remaining amount to Sneh Lata Sachan.

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

## Transfer of Rights and Liabilities/ Change in the Promoter of a Real Estate Project

### MahaRERA

#### Suo Moto vs. Kanakia Spaces Realty Private Limited

In the present case, the promoter/ respondent, Kanakia Spaces Realty Private Limited ("**Kanakia Spaces**") had submitted an application for transferring their rights and liabilities in their real estate project in favour of Kanakia Future Realty Pvt. Ltd. as a result of a demerger. As per Section 15 of the Act, a Promoter shall not transfer majority of his rights and liabilities in real estate project without obtaining prior written consent from 2/3<sup>rd</sup> of the allottees. The demerger order passed by the NCLT provided that there is no requirement to procure consent of 2/3<sup>rd</sup> of the allottees as there is no change in the shareholding of Kanakia Future Realty Pvt. Ltd. (being the wholly owned subsidiary of Kanakia Spaces). The MahaRERA observed that amalgamation or merger or demerger of the companies, which is not regarded as transfer under Section 47 of the Income Tax Act or where 75% of the shareholders remain same in the resultant company, in such cases the promoter shall not be required to take consent of 2/3<sup>rd</sup> allottees of the project under section 15 of the Act.

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

### MahaRERA

#### Pradip Parab & Ors. vs Siroya Yug Realtors and Ors.

In the instant case, a CHS entered into a development agreement with a developer ("**Developer 1**") for its re-development, and the builder in lieu of the redevelopment was entitled to utilize free-sale component for sale to homebuyers. The project was registered under the Act and the homebuyers

purchased the flats in pursuance of the same. Subsequently, without informing the homebuyers, the CHS terminated the development agreement with Developer 1 and entered into a new development agreement with a new developer ("**Developer 2**"). The Developer 2 also registered the project under the Act which resulted in two registration numbers for the same project. The CHS informed the MahaRERA about the termination of the development agreement with Developer 1 through a letter and not according to the procedure established by law i.e. as per Section 7 of the Act. Further, the CHS had not followed the requirement of obtaining written consent of 2/3<sup>rd</sup> of the allottees as well as approval of the MahaRERA under Section 15 of the Act in relation to the change in developer. Being aggrieved by the aforesaid, the homebuyers approached MahaRERA.

The MahaRERA held that a developer or a promoter in respect of a project cannot be changed merely by informing the authorities and without following the procedure laid down under the Act. The CHS also has to provide reasons for revocation and change in the developer/promoter. Further, the MahaRERA observed that the CHS is duty bound to take such steps as may be necessary for protection of interests of the allottees who have purchased the flats in cases of transfer from one promoter to another.

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

## Jurisdiction

### MahaRERA

#### Sanjay Gaikwad & Anr. vs. Omkar Realtors and Developers Pvt Ltd.

The complainants ("**Sanjay Shankar Gaikwad and Shailaja Sanjay Gaikwad**") had booked various flats with the respondent, Omkar Realtors and Developers Pvt. Ltd. ("**Omkar Realtors**") and subsequently entered into an agreement for sale. However, Omkar Realtors failed to deliver the possession of the flats in the stipulated time. Aggrieved by the same, Sanjay Shankar Gaikwad and Shailaja Sanjay Gaikwad filed a complaint before the MahaRERA for directing Omkar Realtors to deliver the possession of flat along with interest on delayed possession, and compensation for mental agony and torture.

Omkar Realtors argued that MahaRERA had no jurisdiction to adjudicate a complaint for compensation as the powers to adjudicate complaints for compensation were vested with the adjudicating officer under Section 71 of the Act. The MahaRERA held that in cases where there are multiple prayers including the prayer for compensation, the MahaRERA has jurisdiction to entertain such complaint where the main prayer was for possession and the prayer for compensation was ancillary or consequential to the main prayer. The MahaRERA further observed that it has the authority to decide on the question

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of the main prayer in relation to possession and if the prayer is allowed, then it can transfer the complaint for the prayer of compensation to the adjudicating officer.

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

## Deposit Of Amount Required for Filing Appeal

### MahaREAT

#### Bhoomi and Arkade Associates vs. Ms. Valentine Dias

In the instant case, the appellant (“**Bhoomi and Arkade Associates**”) was seeking waiver in depositing the amount required for filing an appeal before the MahaREAT. It was contended that the order sought to be challenged in this appeal has been passed by the adjudicating officer who did not have jurisdiction under the Act to decide the complaint seeking claim of refund. The MahaREAT observed that, on perusal of Section 43(5) of the Act, it is clear that where a promoter files an appeal with the MahaREAT, it shall not be entertained without promoter first having deposited the amount. The MahaREAT further observed that the issue of jurisdiction is a matter of merit and can be dealt with and considered only after the appeal is entertained on compliance of the requirement of pre-deposit under Section 43(5) of the Act. The MahaREAT further held that it is mandatory to deposit the amount before filing an appeal and there is no discretion to waive the same. As such, the MahaREAT held that an appeal cannot be entertained to consider the grounds of appeal on merit unless the promoter complies with the requirement of pre-deposit under Section 43(5) of the Act.

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

## Ownership Status when units in a project are sold on an ‘As it is state’

### MahaREAT

#### Mr. Khaarvel S. Parakh vs. Chanchalbai Prafulchand Nahar and Ors.

Chanchalbai Prafulchand Nahar, Surendra Prafulchand Nahar, Sheetal Prafulchand Nahar, Swapanali Surendra Nahar and Nitali Sheetal Kumar Nahar, (“**Chanchalbai Prafulchand Nahar and Ors**”) borrowed money from the appellant (“**Khaarvel S. Parakh**”) for construction of their project. In 2017, Chanchalbai Prafulchand Nahar and Ors failed to register the project as ongoing project under the Act. Further, due to its inability to pay the loan, Chanchalbai Prafulchand Nahar and Ors sold majority of shops and flats of the project to Khaarvel S. Parakh and to other lenders. The appeal was filed before MahaREAT for directing Chanchalbai Prafulchand Nahar and Ors to register the project under the Act. The Chanchalbai Prafulchand Nahar and Ors contended that they had sold majority of the shops

and flats from the project on ‘as it is state’ to the Khaarvel S. Parakh under sale agreements with a mutual understanding that further construction of the incomplete units will be undertaken by Khaarvel S. Parakh and the purchasers accordingly.

The MahaREAT observed that since majority of the units have already been sold on ‘as it is state’ to the Khaarvel S. Parakh, the Chanchalbai Prafulchand Nahar and Ors are no longer the owner of the entire units of the incomplete project and certain underlying completed assets and hence free from all encumbrances. It was observed that because encumbrance free title is an essential condition to apply for registration, the Chanchalbai Prafulchand Nahar and Ors are not qualified to apply for registration with the MahaRERA. The MahaREAT held that execution of sale agreements in favour of the Khaarvel S. Parakh has effectively changed the status of the Khaarvel S. Parakh from lender of the project to investor/ owner of respective units of the project and thereby have stepped into the shoes of the promoter to the extent of units owned by respective parties.

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

## Validity Of Clauses In The Buyer’s Agreement

### HRERA

#### Pioneer Urban Land and Infrastructure vs. Sh. Soneel Raj

The respondent (“**Sh. Soneel Raj**”) had booked a flat with the complainant, Pioneer Urban Land and Infrastructure Limited (“**Pioneer**”) and the parties subsequently entered into a flat buyer agreement. Further, Sh. Soneel Raj failed to make timely payments of the due instalments because of which the builder had to borrow money at higher rates which delayed the completion of the project. Even after receiving the occupation certificate, Sh. Soneel Raj failed to make the payment of balance instalments. Pioneer contended that there was a delay in completion of the project due to non-payment by different allottees including Sh. Soneel Raj, dispute with the contractor, etc. Therefore, the present complaint was filed to direct Sh. Soneel Raj to make payment of the balance instalments and take possession of the flat. Sh. Soneel Raj contended that there was a delay of 3 years in delivering the possession of the flat. So, Pioneer should be directed to give possession of the flat after paying delayed possession charges.

The HRERA observed that the buyer’s agreement which says ‘time is of essence’ in relation to the payment is vague, uncertain and favours Pioneer. It was observed that few of the clauses were incorporated just to evade the liability of timely delivery and to deprive the Sh. Soneel Raj of his right accruing after delay in possession. The HRERA highlighted that the concept of grace period for extension of time in the agreement is neither a statutory right nor has been provided in the rules and thus such grace period was disallowed. The HRERA held that Sh. Soneel Raj was entitled for delayed possession charges from the due

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date of possession i.e., 4th September 2015 till the expiry of 2 months from the date on which possession was offered.

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

## Maintenance charges when the unit is incomplete

### HRERA

#### Kunal Minda vs. M/s Tata Housing Development Company Limited

The complainant ("**Kunal Minda**") booked a unit in the respondent, Tata Housing Development Company Limited's ("**Tata Housing**") project but no agreement was executed between the parties. There was a delay in offering timely possession of the unit despite several emails sent by Kunal Minda. When Tata Housing did offer possession, it was for a unit whose condition was not habitable. Further, Tata Housing also raised holding and maintenance charges which Kunal Minda refused to pay. Kunal Minda therefore, filed the present complaint to direct Tata Housing to handover the possession of the unit in habitable condition along with delayed possession charges and not to charge arbitrary holding and maintenance charges.

The HRERA held that the provisions of the Act and agreement are to be read simultaneously and where the Act lays down certain specific provisions, the same will have to be dealt as per the Act. The charges shall be payable as per the agreed terms and the agreement to the extent that the same are in accordance with the provisions of the Act. It was further held that where the unit of the project is incomplete, the question of maintenance charges does not arise. The HRERA directed Tata Housing to pay the delay possession charges from the due date of possession i.e. 30th September 2017 till the expiry of 2 months from the date the possession of the unit was offered.

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

## Overriding effect of the act over other laws and buyer's agreement

### HRERA

#### Sandip Basu vs. Ireo Grace Realtech Pvt. Ltd.

The complainant ("**Sandip Basu**") had booked a flat in respondent, Ireo Grace Realtech Pvt. Ltd.'s ("**Ireo Grace**") project and subsequently entered into a buyers' agreement. Ireo Grace had delayed in delivering the possession of the flat and therefore, the complainant filed the complaint before the HRERA for seeking refund of the entire amount paid by him, interest for mental agony and cost of litigation. Ireo Grace contended that at the time when the buyers' agreement

was executed, the Act was not enacted. Further, the buyers' agreement provides for an arbitration clause in case of any dispute, therefore, the complaint is not maintainable. It was further contended by Ireo Grace that due to demonetisation and lack of valid currency notes, the work at the project site was halted for 7-8 months. Also, due to orders passed by the National Green Tribunal ("**NGT**") to protect the environment of NCR, all construction activities were badly affected.

The HRERA observed that as Ireo Grace had not received the completion certificate for its project, it was obliged to register its project within 3 months from the date when the Act came into effect. As such, the complaint is maintainable. The HRERA further observed that none of the parties were serious about the arbitration clause, even Ireo Grace did not invoke any arbitration proceedings. Moreover, the Act has overriding effect over other laws in existence, even over agreement between the parties. So far as the demonetisation is concerned, the HRERA observed that the same is not connected with the completion of the project and there were no restrictions on payment through e-banking transactions. Further, no evidence was adduced by Ireo Grace to show that the construction activities were halted due to the orders passed by the NGT. Therefore, the HRERA directed Ireo Grace to refund the amount paid by Sandip Basu along with 9.30% interest per annum and cost of litigation.

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

### Delhi RERA

#### Tripty Kesarwani vs. M/s Revanta Multistate CGHS Ltd.

The complainant ("**Tripty Kesarwani**") had alleged that a false promise was made by the respondent, Revanta Multistate CGHS Ltd. ("**Revanta Multistate**") that the project is approved by the RERA and the Delhi Development Authority. Revanta Multistate contended that they are a multi-state co-operative society registered under the Multi State Co-operative Societies Act, 2002 and as such, the agreement between the parties will be governed by the Multi State Co-operative Societies Act, 2002 and not the Act. Therefore, the complaint is not maintainable.

The Delhi RERA rejected the arguments of Revanta Multistate and held that Revanta Multistate had placed a condition upon its members in their declaration cum expression of interest that the project is subject to the provisions of the Act. The Delhi RERA further held that Revanta Multistate is covered in the definition of promoter under the Act and Section 89 of the Act gives overriding effect to anything inconsistent with the provisions of the Act. The Delhi RERA directed Revanta Multistate to refund the entire amount along with an interest of 9% per annum to Tripty Kesarwani.

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



## IMPORTANT CIRCULARS, ORDERS AND DIRECTIONS ISSUED BY MAHARERA

### Extension of timelines for filing of annual report of statement of accounts

The MahaRERA vide its Order No. 25/2021 dated 18th October 2021 extended the deadline for submission of Form 5 (the annual report for statement of accounts) for the financial year 2020-21 for all MahaRERA registered projects. The timeline for submission of Form 5 was extended from 30th September 2021 to 31st December 2021.

The order can be accessed [here](#).

### Report from CERSAI to be uploaded on MahaRERA website

As per the Order No. 26/2021 dated 29th October 2021, the MahaRERA has directed that the promoters shall undertake the following:

- The promoter shall submit report from the CERSAI on security interests created in the real estate project along with the encumbrance certificate at the time of project registration. In the event no security interest has been created, then the promoter shall provide an undertaking confirming the same.
- As and when there are any changes, the promoter shall submit the updated CERSAI reports on security interests created on the real estate project by the promoter.
- The CERSAI reports submitted should be generated within 10 days before the date of submission.

The directions have been issued so as to keep awareness amongst the homebuyers/ allottees of security interests created on real estate projects/ flats which the homebuyer is interested in purchasing.

A copy of the order can be accessed [here](#).

### Functioning of the MahaRERA conciliation & dispute resolution forum

The MahaRERA has vide its circular No. 38/2021 dated 8th November 2021 sought to streamline the process of hearing and disposal of the complaints referred to the MahaRERA Conciliation and Disputes Resolution Forum. In this behalf, the MahaRERA has prescribed the following procedure for conducting a hearing in conciliation matters (online complaints):

- The hearing in the complaint must be completed within a

period of 60 days from the date of first hearing.

- In case the matter is not progressing towards settlement, then such complaint must be closed and referred back to the MahaRERA within a period of 60 days from the date of first hearing.
- If the conciliation bench feels that the settlement terms cannot be finalised within 60 days period then in such cases, hearing could be taken up even after the expiry of 60 days in the interest of the parties. Intimation in regard to the same must be submitted to the secretary, MahaRERA.
- Complaints in any event must be heard and finalized within the extended period which should not be more than 30 days from the expiry of the 60 days' period.
- Complaints that have been concluded either as settled or failed must be referred to the MahaRERA within a period of one week for taking appropriate decision on merits.

The circular can be viewed [here](#).

### Process of hearing complaints before the MahaRERA

Vide its order no. 23/2021 dated 8th September 2021, the MahaRERA had *inter alia* directed that the complainant/respondent in addition to their complaints/reply/written statement shall file a set of 'convenience document'. This set of 'convenience document' comprises of relevant pages of the documents required for deciding the issues raised in the complaint. The MahaRERA has now vide its order dated 7th December 2021 directed that:

- Adjournment of more than 30 days will be granted where convenience document is not submitted by complainant.
- Presumption will be made that respondents do not have any additional documents to rely upon in case a convenience document set is not submitted. Also, the complaint shall be taken up for final hearing.

This order which can be accessed [here](#) has come into force from 1st January 2022.

### Registration of sale component of redevelopment projects

The MahaRERA vide its order no. 28/2021 dated 7th December 2021 has directed that following documents are to be attached at the time of registration of sale component of redevelopment projects:

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- Resolution/ no objection certificate (“**NoC**”) from society/ association of residents of the rehabilitation component confirming the promoter’s rights to undertake the redevelopment project;
  - Letter of intent (“**LoI**”) / NoC / equivalent document from the planning authority confirming promoter’s rights to undertake the redevelopment project;
  - Valid commencement certificate of sale component from concerned planning authority; and
  - All the above-mentioned documents to be submitted in name of the promoter entity. In cases where the commencement certificate is not in the name of promoter entity, a copy of the collaboration agreement, development agreement or joint development agreement (as applicable) confirming the rights of the promoter entity to be submitted at the time of registration.

The order which can be accessed [here](#) has been passed as there is a need to clarify the details of the documents to be submitted by the promoter for these projects so as to ensure completeness of the registration application and removal of any ambiguity.

### **Maharashtra Real Estate Regulatory Authority (general) (amendment) regulations, 2021**

On 22nd December 2021, the Maharashtra Real Estate Regulatory Authority (General) (Amendment) Regulations, 2021 (“**Amendment Regulations**”) were notified. The Amendment Regulations notified new forms for the certificates issued by the project architect, project engineer and chartered accountants. Also, the requirement of submitting the aforesaid certificates to the bank which was deleted vide the Maharashtra Real Estate Regulatory Authority (General) (Amendment) Regulations, 2019

has now been retained. Further, a new form for certificate issued by the project architect on completion of registered real estate project was also notified.

Moreover, as per the Amendment Regulations, Form 2A (Quality Assurance Certificate to be submitted by engineer) shall have to be submitted at the end of every financial year instead of on a quarterly basis.

The Amendment Regulations can be accessed [here](#).

### **Submission of certificates to the schedule bank operating the separate account and copies thereof to MahaRERA**

The MahaRERA has vide circular no. 39/2021 dated 28th December 2021 made it mandatory for promoters of a real estate project to provide certificates from architect, engineer and chartered accountant at the time of every withdrawal from the bank (in line with the Amendment Regulations).

Additionally, these certificates have to be uploaded on the website of the MahaRERA which will allow the homebuyer/ allottee of a real estate project to be updated on the exact amount of work completed and the amount withdrawn by the promoter.

This current circular supersedes the earlier circular no. 3/2017 dated 7<sup>th</sup> June 2017 which had exempted the promoters of a real estate project from depositing the certificates from architect, engineer and chartered accountant to the bank and were instead asked to submit a self-declaration to the bank every quarter for the withdrawals made.

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



## GLOSSARY

Abbreviation	Definition
The Act	Real Estate (Regulation and Development) Act, 2016
MahaRERA	Maharashtra Real Estate Regulatory Authority
MahaREAT	Maharashtra Real Estate Appellate Tribunal
Delhi RERA	Delhi Real Estate Regulatory Authority
HRERA	Haryana Real Estate Regulatory Authority
Rajasthan RERA	Rajasthan Real Estate Regulatory Authority
CHS	Co-operative Housing Society
NGT	National Green Tribunal
CERSAI	Central Registry of Securitisation Asset Reconstruction and Security Interest of India
Amendment Regulations	Maharashtra Real Estate Regulatory Authority (General) (Amendment) Regulations, 2021
RERA	Real Estate Regulatory Authority
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
NCLT	National Company Law Tribunal

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