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**ERNAKULAM BRANCH OF SIRC OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**



invites you to  
*Virtual CPE Seminar on*

**Various judgements  
under RERA**



**VENU & VINAY**



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**ERNAKULAM BRANCH OF SIRC OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**



Speakers

**CA. Vinay Thyagaraj & Adv. Suhail Ahmed  
Bengaluru**



**VENU & VINAY**

# Topics of the session



1. Rera – Legal Remedy –
  - a. RERA Authority
  - b. RERA Adjudicating officer
  - c. RERA Tribunal
  
2. Important Rera Judgements – for today's discussion
  - a. RERA Authority
  - b. RERA Tribunal
  - c. RERA Adjudicating officer
  - d. High Courts
  - e. Supreme Court

# Objectives of RERA Includes -



1. Establishment of regulatory authority
2. Protection of consumer interest
3. Establishment of adjudicating mechanism
4. Establishment of Appellate Tribunal
5. Connected matters

# LEGAL REMEDIES UNDER RERA



## Filing of Complaints & Appeals:

### 1. Original Jurisdiction –

1. RERA Authority
2. Adjudication Officer

### 2. Appellate Jurisdiction

# LEGAL REMEDIES UNDER RERA



## *LOCUS STANDI*

“Any aggrieved person”



## JURISDICTION OF THE AUTHORITY

### When to approach –

1. Non-registration of a real estate project
2. Violation of by Real Estate Agent/s - Sale of unregistered projects - involving himself in unfair trade practice false representation - false publication
3. Consequences of non performance of duties by the Promoter
4. Deposit or advance taken by promoter without Agreement for Sale
5. Transfer of project to third-party
6. Other matter under RERA

## JURISDICTION OF ADJUDICATING OFFICER



### To adjudge compensation –

1. Veracity of advertisement
2. Adherence to Sanctioned Plans & project specification
3. Return of amount and compensation
4. Violation of allottee's rights & Consequences of non performance of duties by allottees



# Filing of Appeals



## Appellate Tribunal –

From any direction, order or decision of the

1. AO
2. Authority

## High Court

From any decision or order of the Appellate Tribunal



## Representation before AO, RERA and AT

The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Explanation.-For the purposes of this section,-

- (a) "**chartered accountant**" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "**company secretary**" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) "**cost accountant**" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "**legal practitioner**" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.





## RERA REGISTRATION OF THE PROJECT

In the landmark judgment given by the Hon'ble Maharashtra Real Estate Appellate Tribunal (MahaREAT) in case of “M/s. Geetanjali Aman Construction Vs. Hrishikesh Paranje”, the Hon'ble Maharashtra Real Estate Appellate Tribunal held that satisfaction of any of the two conditions shall suffice for project to get exempted from the registration with MahaRERA

It may be noted that this matter is sub judice now & pending with Hon'ble Bombay High Court.



## REGISTRATION OF INDUSTRIAL PROJECTS

RERA Act do not include the terms such as 'industrial or 'manufacturing unit', yet it is applicable where the land is developed into plots for the purpose of selling, irrespective of its usage. The word construction of any real estate project for use of commercial includes the industrial use.

**MahaRERA** in the case of **Techno Drive Engineer Pvt Ltd Vs Renaissance Indus Infra Pvt Ltd in complaint No CC00600000078620,**

wherein MahaRERA has expressly said that the “ Apartment” as defined under Section 2(e) of the Act doesn't include “Industrial Units.”

## REGISTRATION OF INDUSTRIAL PROJECTS



The Tamil Nadu Real Estate Appellate Tribunal has already decided that the industrial plots are covered as real estate project and requires to be compulsorily registered with RERA.

## **GMR Krishnagiri SIR vs TN RERA - Appeal No 55 of 2019**



## RERA TO LONG LEASE PROJECTS AS PER HON'BLE BOMBAY HIGH COURT



Hon'ble Bombay High Court in the Second appeal No.683 of 2018 . It was decided by Hon'ble Bombay High Court in the matter of “Lavasa Corporation Ltd. Hicon V/s. Jitendra Jagdish Tulsiani” dated 7 August, 2018, where it was held that the long lease projects fall within the ambit of the provisions of the RERA



## NEELKAMAL SUBURBAN REALTORS PVT LTD - Ongoing Project Registration



In Para No 86 of judgment, Observation about the registration of ongoing real estate projects at the time of commencement of the Act –

It was thought fit that ongoing project shall also be made to be registered under RERA. The Parliament felt the need because it was noticed that all over the country in large number of projects the allottees did not get possession for years together.





## NEELKAMAL SUBURBAN REALTORS PVT LTD -

- a. Provisions of RERA to some extent are **retroactive**;
- b. Liability under Agreement is not absolved;
- c. Interest is not penalty;
- d. S.18 is compensatory in nature;
- e. S.12 is also compensatory in nature;
- f. Consequences upon breach of S.18 by Promoter;





## Registration of Project – Either of the Conditions

In the landmark judgment given by the Hon'ble Maharashtra Real Estate Appellate Tribunal (MahaREAT) in case of “M/s. Geetanjali Aman Construction Vs. Hrishikesh Paranjpe”, the Hon'ble Maharashtra Real Estate Appellate Tribunal held that satisfaction of any of the two conditions shall suffice for project to get exempted from the registration with MahaRERA

It may be noted that this matter is sub judice now & pending with Hon'ble Bombay High Court.

**ROHIT CHAWLA & 11 OTHERS v/s. BOMBAY REALTY  
(ONE ICC) (before the Appellate Tribunal)**



- a. It was concluded that Promoter has committed breach of S.12 and S.18 of RERA and Allottees are entitled to withdraw from the project and get refund with interest from the Promoter and charge of the amount will be kept on the respective flats till receipt of interest;
  - b. Allotment of flats stood cancelled;
  - c. Promoter were directed to refund the Amount received from the respective Allottees;
- 
- a. Appellate Tribunal after taking consideration of **Fortune Infrastructure vs Travor Delima 2018 (5) SCC 442**, in the Judgment Apex Court has upheld that it is settled position of law that in absence of specific date of handing over the possession a reasonable 3 years should be considered in respect of transactions between promoters and the Allottees. (**para 35 and 39**)



## Development Manager under RERA

**Gauri Thatte Vs. Nirmal Developer and Shapoorji Pallonji -** Lucrative Properties Private Limited which is subsidiary of M/s. Shapoorji Pallonji Private Limited acted as a Development Manager and had the Authority to supervise and control all the activities of planning, selling, funding and constructing of the project. In case of a shortfall of the funds, the Development Manager is empowered to sell the apartments at discounted price'.

Furthermore Lucrative Properties Private Limited is using brand name and goodwill of M/s. Shapoorji Pallonji Private Limited' collecting money from buyers, issuing the receipts bearing their logo and name and selling the units of the projects. Not only that it is sharing almost 10% of the revenue on priority basis. Therefore, held that Lucrative Properties Private Limited is the Development Manager and hence it needs to be added as a Promoter and held jointly liable along with Nirmal Developer to refund the monies taken from Allottee.



# Single Bench of Authority



**Judgment dated 12.01.2021 by the Hon'ble Allahabad High Court**

**single Member of Authority has jurisdiction to adjudicate complaints filed under Section 31 of RERA**

**Sriram Krishnan Vs. CCI Projects Pvt. Ltd (MahaRERA Appellate Tribunal)**

**Held:** Relying on Judgment passed by Allahabad High Court it has concluded that single Member of Authority has jurisdiction to adjudicate complaints filed under Section 31 of RERA

# Investors



In **Mahesh Pariani Vs Monarch Solitaire LLP** it was held that Complainant was an investor in the project having MOU with the respondent and hence, is a Promoter (Investor) as per MahaRERA circular.

An Investor cannot be an allottee and hence, the dispute was civil and not violative of RERA provisions.





# Lender Bank

In **Kotak Mahindra Bank Ltd Vs. East & West Builders**, the Appellate Tribunal has upheld the view taken by MahaRERA that Appellant is neither a Promoter nor Allottee or real estate agent and therefore cannot be treated as an aggrieved party as per provisions of Section 31 of RERA' He therefore declined to grant reliefs prayed for and clarified that mere grievance of any nature against a Promoter, Allottee or real estate agent would not entitle any person to file a complaint under Section 31(1) of RERA if the same does not arise on account of violation of any provisions of RERA.



# CMP 2/2019



Based on the above findings the Authority passes the following Order.

1. The respondents shall register the project referred in the complaint as per provision of Section 3 of the Act within March 31<sup>st</sup> of 2020.
2. The respondent shall complete the project and take occupancy certificate within 30.06.2020 without fail and hand over possession of the apartment to the complainant after receiving the balance amount of Rs.2,24,300/- (Two Lakhs Twenty-Four Thousand Three Hundred Only) and any other amount due to the respondent as per their agreement dated 23<sup>rd</sup> July 2014.
3. The respondent shall pay interest at the rate of 15.2% (SBI bench mark prime lending rate + 2%) for the amount of Rs. Rs.49,50,000/-(Rupees Forty Nine Lakhs Fifty Thousand only) from 01.03.2017 ie, after 90 days from 31/12/2016, till the actual date of handing over the possession of the apartment as provided under Section. 18 of the Act read with Rule 18 of the Kerala Real Estate (Regulation & Development) Rules, 2018.
4. The complainant is also at liberty to approach the Adjudicating Officer for compensation if any, related to his grievance as per section 71 of the Act.

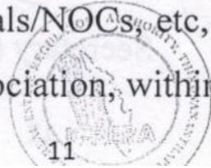




## 327/21 and others

2) The Association of allottees, formed and registered as directed by us, shall monitor the progress of works and make sure that it is being carried out as per the Work Schedule given in the affidavit. In case of any default on the part of the Respondent, the Association can approach this Authority seeking further intervention.

4) The Respondents shall handover all the documents pertaining to the project such as a) title deeds of land, b) permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association, within the above said period.



7) In the event of failure on the part of the Respondent / Promoter to complete the entire works of the project and hand over the apartment as stated above, the Respondent/ Promoter shall be liable to pay Rs. **25,000/- per day** from **01/09/2022** to the date of actual compliance with said direction, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.





## Directions to Landowner 273/2021



2. The 3<sup>rd</sup> Respondent land owner shall execute sale deed of the Apartments in favour of the Complainants on receipt of instruction from the promoters subject to the payment of balance amount due from the Complainants.



## More Judgements

1. **Janta Land Promoters Pvt. Ltd. v/s. Union of India & Ors.**
  1. PH HC – dismissed considering Single Bench
  
1. **M/s. Eminent Infra Developers Pvt. Ltd. v/s. Ms. Neeru Chander Kiran Nanda and Anr.**
  
1. **Ms. Simmi Sikka v/s. M/s. Emaar MGF Land Limited**



# Newtech Promoters and Developers V/s. State of UP

1. Powers of the Authority and AO
2. Act is retrospective or prospective
3. Description powers of Authority U/s. 81 – Delegation of powers
4. Appeal before AT – 100 % money shall be deposited as per sec 43(5) of the Act



# Thank you

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