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Definitions

2(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

2(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;

2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

2(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any

residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to thepurpose specified;

2(o) "company" means a company incorporated and registered under the Companies Act, 2013 and includes,—

(i) a corporation established by or under any Central Act or State Act;

(ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

2(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

2(v)"estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, developmentand other charges;

2(y) "garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

2(*zf*) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for

civic infrastructure such as water, sanitation and electricity;

2(zh) "planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

(*zk*) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

2(*zl*) "prospectus" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale or any real estate project or inviting any person to make advances or deposits for such purposes;

2(*zr*) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

SECTION 11:-. Functions and duties of promoter.—

(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter, at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease,

and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;
(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage

loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

Case Title: Arun Chauhan Vs. Gaursons Hi-Tech Infrastructure Pvt. Ltd.
Citation: NCR144/10/63350/2020
Date: November 02, 2021
Court: Uttar Pradesh Real Estate Appellate Tribunal (UPREAT), Lucknow
Issue: Whether the handing over possession without obtaining the OC/ CC from the competent authority.

Summary: The appellant challenged a RERA order that directed the promoter to give possession by June 2021 but only awarded delay interest up to the date the promoter claimed the unit was "ready," despite not having an OC/CC at that time. The allottee argued that possession cannot be legal or valid without these certificates.
Held: The Tribunal modified the RERA order, directing the promoter to pay delay interest from the promised date (July 1, 2019) until the actual offer of possession made after obtaining the legal certificates, excluding specific force majeure periods (COVID-19 and NGT/Supreme Court construction bans).
Takeaway: A promoter cannot compel an allottee to take possession of a unit unless a valid OC/CC has been obtained from the local authority; delay interest continues to accrue until such a legal offer is made.

Case Name: Sony Picture Networks India Pvt. Ltd. v. Ferani Developers & Ors.
Court: Bombay High Court
Citation: 2021 SCC OnLine Bom 5501
Date: February 18, 2021

Issue (Section 11(4)(d) RERA): Whether discontinuing lift services—an essential service—due to non-payment of charges by owners was justified.

Summary (Section 11(4)(d) Context):
The developer cut off lift services after unit owners defaulted on maintenance dues. Sony, the lessee, had paid all dues but suffered the discontinuation. The Court held lift services are *essential* under RERA but found "just and sufficient cause" since owners defaulted.

Held:
Lift services to be restored if Sony pays ₹2.43 crore; owners to reimburse through post-dated cheques.

Takeaway:
Essential services under RERA cannot be stopped arbitrarily—but may be withheld if justified by owner default, subject to equitable relief for occupants.

Case Name: Rishita Developers Pvt. Ltd. v. U.P. Real Estate Regulatory Authority
Court: U.P. Real Estate Appellate Tribunal
Citation: 2025 SCC OnLine UP RERA 8
Date: February 24, 2025

Issue (Section 11(2) RERA):
Whether a promoter can be penalized for a misleading advertisement published by its appointed real estate agent.

Summary (Section 11(2) Context):
Rishita Developers' agent published a misleading project advertisement that failed to mention the RERA registration number and website. U.P. RERA imposed a ₹2,00,000 penalty under Section 61 for breach of Section 11(2). The promoter argued that the agent alone was responsible.

Held:
The Tribunal held the **promoter is vicariously liable** for the acts of its agent. Section 11(2) casts the duty solely on the promoter to ensure proper disclosure in advertisements. The penalty imposed by U.P. RERA was upheld.

Takeaway:
Promoters remain legally responsible for all advertisements related to their projects — even if issued by registered agents. Violations of Section 11(2) attract penalties under Section 61 of RERA.

Case Name: M/s Fortune Infrastructure & Anr vs Trevor Dlma & Ors.
Citation: (2018) 5 SCC 442
Court: Supreme Court of India
Bench: N.V. Ramana J.
Date: March 12, 2018

Facts:
In 2011, the respondents booked a flat in a redevelopment project in Mumbai. No specific delivery date was mentioned in the agreement. The appellants subsequently transferred the project to a third party due to increased costs and failed to deliver the flat.

Issues:
(1) Whether the failure to deliver possession within a reasonable time, despite no fixed date in the agreement, constitutes a "deficiency in service".

(2) Whether a promoter can be discharged from liability toward original allottees simply by transferring the project to a third party.

(3) Whether damages should be assessed based on the property rates at the time of the breach or the date of the judgment.

Held:

The Hon'ble Supreme Court, while hearing the appeal, held that even if no delivery date is stipulated, a period of 3 years is considered reasonable for completion. Failure to deliver by 2014 was a clear deficiency of service. An

allottee cannot be made to wait indefinitely for possession and is entitled to seek a refund with compensation.

Takeaway:
A promoter cannot escape liability toward allottees by transferring the project to another entity without completing their contractual obligations. The absence of a possession date in a contract does not give a builder a blank cheque on time; a reasonable time typically 3 years is the judicial standard. If an allottee chooses a refund over possession, the compensation must reflect the current market value escalation, so the buyer can actually purchase a similar property in the same locality.

Case Name: Yes Bank Limited vs Mega Resources Ltd & Anr
Citation: (2024) ibclaw.in 279
Court: West Bengal Real Estate Appellate Tribunal, Kolkata- 700075
Bench: Justice Rabindranath Samanta (Hon'ble Chairperson), Shri Gour Sundar Banerjee (Hon'ble Judicial Member); Dr. Subrat Mukherjee (Hon'ble Administrative Member)
Date: September 20, 2024

Facts:
The Respondent purchased a flat from the Promoter. The buyer paid the full amount, took possession in July 2021, and registered the deed of conveyance in February 2022. However, in March 2024, the buyer discovered a public notice from Yes Bank seeking symbolic possession of their flat due to a loan default by the Promoter. The Bank argued that it had a registered mortgage on the unsold units (including this flat) since June 2019, long before the buyer's agreement.

Issues:
(1) Whether the WBRERA has the jurisdiction to stay recovery proceedings, like possession and auctions initiated by a bank under the SARFAESI Act when it affects a bona fide homebuyer.

(2) Whether a bank, by vide holding a mortgage over a project's units to secure a loan, becomes an "assignee" of the promoter and thus liable for the promoter's obligations under RERA.

(3) Whether a promoter's mortgage of project units to a bank requires prior written consent from two-thirds of the allottees and prior approval from the Regulatory Authority.

Held:

Hon'ble WBRERA initially passed an interim order staying the bank's auction and possession proceedings. The bank appealed to the Hon'ble Tribunal.

Hon'ble Tribunal examined whether the mortgage was valid under RERA, noting that the project was registered in 2018, and the mortgage was created in 2019 without the mandatory allottee consent required by Section 15. The Hon'ble Tribunal upheld the Regulatory Authority's jurisdiction to protect the allottee. It established that the RERA prevails over the SARFAESI Act in such conflicts. The bank, as a secured creditor acting as an assignee of the promoter's rights, is bound by RERA's protective provisions for homebuyers. The interim stay on the bank's recovery actions against the allottee's flat was maintained to prevent irreparable injury who had already paid in full and was residing in the property.

Takeaway:
RERA protects the rights of bona fide homebuyers even against the recovery powers of banks under SARFAESI if the bank is pursuing units already sold or promised to allottees. Subject to Section 15: Banks and developers must be aware that once a project is registered under RERA, any mortgage that transfers rights in project units may be viewed as a project transfer requiring allottee consent. When a bank takes over or attempts to sell project assets, it may be classified as a "Promoter" under Section 2(zk), making it liable for completing the project or honoring existing allottee rights. Also, for homebuyers, remedy will be available under RERA Act Section 11(4).

Case Name: AR Landcraft LLP vs Radhakrishnan Srinivasan
Citation: Appeal No. 196/2024
Court: Uttar Pradesh Real Estate Appellate Tribunal at Lucknow

Bench: Hon'ble Mr. Justice Suneet Kumar, Chairman; Hon'ble Mr. Rameshwar Singh, Administrative Member

Date: December 12, 2025

Issues:
(1) Whether an offer of possession or a demand for final payment made by a promoter without first obtaining an OC/CC is legally valid.

(2) Whether allottees are entitled to interest for the delay in handing over possession when the promoter fails to deliver by the date specified in the Agreement to Sub-lease (ATS).

(3) Whether administrative delays by local authorities in issuing an OC or the COVID-19 pandemic exempt the promoter from the liability of paying delay interest.

(4) Whether a promoter can demand extra fees and security for "Master Club/Golf Course" facilities that were part of the promised project amenities.

Facts:
The appellant launched the project in Greater Noida under a "Recreational Entertainment Park" (REP) Scheme. The respondent booked a villa and signed an Agreement to Sub-lease (ATS) in 2018, which promised possession by March 2021. The promoter failed to deliver on time and later issued an offer of possession despite not having an OC from the GNIDA. The promoter argued that construction was completed by July 2021 and that the subsequent delay was due to Force Majeure, (COVID-19) and administrative delays by GNIDA. The allottees contended that they were being forced into possession without a legal right to occupy the property.

Held:

The Hon'ble Tribunal held that offering possession without an OC is a violation of the U.P. Apartment Act 2010 and RERA. Legal possession is impossible until the project is certified as habitable. While a 6-month extension was allowed for COVID-19, administrative delays in obtaining government approvals are part of the promoter's business risk and do not exempt them from paying interest to buyers. The promoter was ordered to refund the fee.

Takeaway:
Under Section 11 (4) (b): A promoter cannot legally "offer possession" or demand final payment without a valid Completion/Occupancy Certificate. Any such offer is void in the eyes of the law. Delays in obtaining statutory approvals from government bodies are the promoter's responsibility. The buyer cannot be denied interest on their investment due to the promoter's failure to navigate administrative processes.

Case Name: Poonam Aggarwal vs Patel
Citation: Complaint No.: NCR144/08/98602/2022

Court: Uttar Pradesh Real Estate Regulatory Authority, Regional Office Gautam Buddha Nagar

Bench: Dr. Deepak Swaroop Saxena (Member)

Issues:
(1) Whether agreements executed before the implementation of RERA fall under its jurisdiction.

(2) Whether the promoter legally cancelled the unit for alleged non-payment while the promoter themselves were in default of delivery timelines.

(3) Whether the promoter could legally sell the unit to a third party while the complaint was pending before the Authority.

(4) Whether project delays were justified by "Force Majeure" events such as land disputes, NGT construction bans, or the COVID-19 pandemic.

(5) Whether the allottee is entitled to interest for the delayed period and the applicable rate.

Facts:
The complainant booked a unit in in June 2013. According to the Flat Buyer Agreement, possession was due by April 2017 (including a 6-month grace period). The complainant paid a total of ₹21,10,467, which the Authority noted was actually more than the total unit cost of ₹20,94,080. The promoter argued that the complaint was not maintainable because the unit had been cancelled on August 10, 2022, due to non-payment of dues. Furthermore, the promoter claimed they had already sold the unit to a third party on December 2, 2023, while the case was still pending.

Held:

The Hon'ble Authority held that since the complainant had paid more than the total cost, the promoter's claim of "default in payment" was baseless. Additionally, the promoter failed to follow the mandatory 30-day pre-cancellation notice period required by law. Under the principle of Lis Pendens, any transfer of property made during the pendency of a suit is subject to the final decision of the litigation. The promoter willfully created third-party rights to subvert the legal process. The promoter could not claim the benefit of Force Majeure because they were already in default of the original April 2017 deadline long before the pandemic or specific NGT bans occurred. The Hon'ble Authority ruled in favor of the complainant, determining that the cancellation of the unit and the subsequent sale to a third party were legally invalid. The sale deed executed in favor of the third party was declared subject to the outcome of the legal proceedings and the allottee's rights.

Takeaway:.
Under Section 11: A promoter cannot cancel an allotment if they are themselves in default of delivery. Proper notice and valid grounds (actual default by the buyer) are mandatory. RERA protects buyers from "double-selling." If a promoter sells a contested unit to a third party during litigation, that sale is legally void under the doctrine of Lis Pendens.
If an allottee has paid the substantial majority or more than the total cost of the unit, a promoter cannot use "non-payment" as a technical shield to avoid liability for delays.
Under Section 2(h) RERA applies to "on-going" projects even if the original buyer agreement was signed years before the Act came into force.

Case Title: Sharada Achar vs State of Karnataka WP-3379/2024(GM-RES)
Court: Karnataka High Court

Citation: (2025) ibclaw.in 3009 HC
Date: September 19, 2025
Issue: Whether the RERA circular dated 03.09.2020 w.r.t 'delay fee' retrospectively for delayed submission of quarterly updates and annual audit statements valid.
Summary:
A batch of petitions challenging the said circular was allowed wherein it referred Section 11 of the Act and Rule 15 of the Karnataka Real Estate (Regulation and Development) Rules. The circular also stated that the Authority has observed that promoters are not filing post registration quarterly updates and annual audits on the website within time and therefore decided to impose a delay fee. The petitioners argued that although the Act imposed obligations on promoters, it neither envisaged not empowered the authority to levy delay fees of the kind that is demanded.
Held:
The Hon'ble Court concluded that none of the provisions quoted in the circular empower RERA to impose a fee. The circular does not indicate any source of power for imposition of a fee, and does not have the method of calculation of fee as well. It was further noted that the imposition of tax, fee or any other impose upon any person, cannot be by way of circular. It is therefore stated that the Act and the Rules have not clothed the Authority with power to levy or recover fees beyond those expressly authorized.
The Hon'ble Justice stated that the reliance placed on Section 11, 34 and 37 of the Act by the Authority is misplaced. Section 11 imposes duties but confers no power of exaction. Section 37 enables directions to be issued, but the power to directions cannot, by any stretch of judicial imagination, metamorphose into the authority to impose a compulsory pecuniary burden. Section 61 and 63 also do not empower the impugned levy of delay fee, while they contemplate penalties, those are limited to what is observed in the said provisions. Hence the said circular was set aside. The Hon'ble Court clarified that while it quashed this specific circular, the State Government still has the power to introduce such a fee through proper legislative amendment or by framing new Rules, but not through an administrative shortcut.
Takeaway:
A regulatory authority is a creature of the statute and cannot exercise powers that the Act hasn't explicitly given it. If the Act mentions "penalties," the authority must follow the penalty process; it cannot create a new "fee" to bypass that process. Promoters and developers are entitled to a refund of any "delay fees" already collected under this quashed circular. Allottees and Promoters can use Section 31 to challenge orders that are based on unauthorized circulars, as the Authority must act within the "four corners of the statute."

Case Title: Papiya Rakshit vs Bengal Shrachi Housing Development Limited and anr
Court: West Bengal Real Estate Appellate Tribunal, Kolkata

Citation: W.BRERA/COM (PHYSICAL) 000027
Date: 14.07.20225
Issue: (1) Whether the promoter had the authority to change the flat number without the allottee's prior consent.
(2) Whether a previous Tribunal judgment regarding the same project acted as a binding precedent for all allottees.

(3) Whether the General Terms and Conditions signed at the time of application were legally binding in the absence of a formal registered Agreement for Sale.

Summary

The appellant booked a flat in the "Greenwood Nest" project in 2011. In 2015, the West Bengal Housing Department issued a notification authorizing a price hike for certain projects. Consequently, the promoter informed the appellant of a significant price increase and a change in the flat's floor area. The appellant contested these changes, seeking the original rate and specifications. The Regulatory Authority initially dismissed the complaint, citing a previous Tribunal order that upheld the notification for the same project. On appeal, the Tribunal clarified that the previous case was unique because that specific allottee had *voluntarily* accepted the new terms, which was not the case here. However, the Tribunal also noted that the project only officially commenced in 2017 after the notification was issued, meaning the hike did not have an illegal retrospective effect.

Held

The Tribunal dismissed the appeal but modified the original order with specific directions- in the absence of a registered Agreement for Sale, the GTC remains the governing document. Items 42.4 and 42.18 of the GTC specifically empowered the promoter to modify conditions, specifications, and prices at their "sole discretion" or as directed by Government Authorities. If an allottee does not accept such modifications, their only contractual remedy under the GTC is a refund of the deposited amount without interest. Recognizing RERA as "beneficial legislation," the Tribunal granted the appellant a one-month window to either:

1. Accept the flat at the **increased rate** and pay the balance within a further month.
2. If the option is not exercised, the promoter must **refund the advance money** after statutory deductions.

Takeaway

Allottees must carefully review "General Terms and Conditions" (GTC) in application forms, as these can grant developers broad powers to change

prices or specifications before a formal agreement is signed. A ruling in favor of a promoter in one case (e.g., regarding a project-wide notification) does not automatically apply to all allottees if the underlying facts—such as voluntary acceptance of terms—differ. If a signed GTC allows for "sole discretion" modifications, an allottee's primary protection is often limited to withdrawing from the project with a refund rather than forcing the developer to honor the original "tentative" price.

Case Title: Surbhie Sindwaani & Anr. vs. M/s. Prateek Infraprojects India Pvt. Ltd.
Forum: National Consumer Disputes Redressal Commission (NCDRC)
Case No.: CC/3266/2017
Citation: 2020 01 NCDRC CK 0072
Order Date: 22 January 2020
Presiding Member: Justice V. K. Jain
Key Extract from the NCDRC Judgment
In this case:

- The **complainants** booked a flat in **Prateek Edifice, Sector 107, Noida** in **November 2012** (after the *Gajraj* order of 21 October 2011).
- The **developer** later demanded **extra money** (~₹50,000) from the buyer towards *higher compensation to farmers*.

The Commission Held:

- Developer *cannot recover additional farmer compensation from the buyer* because the **Allahabad High Court's *Gajraj* judgment (21 October 2011)** was already in force *before* the flat price was fixed.
- As the **developer knew of the additional compensation obligation before pricing**, that risk should have been factored into the *flat price*. It *cannot be passed on later* to the home-buyer.

The Commission directed:

- **No extra compensation** to be taken from the buyer for farmer compensation, and
- **8% simple interest** on delayed possession, and
- **₹25,000 litigation costs** in favour of the buyer.

Core Legal Principle:
Since the **developer fixed the flat price *after*** the HC's farmer-compensation judgment, the developer *must assume* and bear that liability — it cannot **retroactively pass that burden onto the buyer** via demand letters later on.
Quotable Excerpt (from the judgment summary)
"…any additional compensation to the farmers cannot be construed as a Government levy or charge recoverable from the allottees… the High Court's order dated 21.10.2011 was known to the promoter before fixing the price; hence there was no clause entitling recovery of such additional compensation from the allottees."

Case Title: M. Rajashri & 124 Ors. v. M/s. Sanathnagar Enterprises Ltd.
Court: Consumer Forum Authority
Citation: 2023 Supreme (Online) (NCDRC) 2258
Date: December 29, 2023
In this case (reported judgment):

- The **developer was in possession of a significant number of unsold flats**.
- The complainants (flat owners) alleged the developer failed to pay *pro-rata common area maintenance charges* on those unsold flats, imposing the burden on other allottees.
- The complaint sought *maintenance of unsold flats* and interest, among other reliefs.
- The *consumer complaint* record shows the developer was held **liable for common area maintenance of unsold units** and was required to pay on pro-rata basis (recognizing the unfair burden on other owners).

This case is **widely cited** in practice (e.g., in consumer forum and society disputes) for the principle that developers must bear maintenance for unsold flats.

Case Title: Managing Director (Shri Grish Batra) M/s. Padmini Infrastructure Developers (I) Ltd. v. General Secretary, Royal Garden Residents Welfare Association **Case Number:** Civil Appeal Nos. 2998 & 4085 of 2010
Case Citation: [2021] 12 SCR 488 (SC)
Key Points from the Judgment

- In this case the *Royal Garden RWA* had complained against the developer for failure to provide maintenance of common areas and facilities as promised in an agreement.
- The **Supreme Court upheld that the developer must honour contractual obligations** related to maintenance and amenities as agreed.
- The Court directed the builder to **hand over possession of common facilities and to pay compensation** for failure to fulfill obligations.
- *Importantly*, while the decision did **not expressly state "builders must pay maintenance for unsold flats"**, it affirms that **builders are liable to maintain and hand over facilities to the association** as per contract/agreement, and *compensation can be awarded* for failures.

Legal Take-aways from Padmini Infra
1. Builders/developers remain liable for **maintenance obligations they contractually undertake**.
2. RWAs can enforce such obligations in consumer fora and courts.

RERA Authority — *GujRERA* Order (January 2026)

Gujarat Real Estate Regulatory Authority held that a developer must **pay maintenance charges for unsold units** from the date of Building Use (BU) permission until those units are sold.

- The Authority observed that the promoter **continues to be the owner** of unsold flats and, like other allottees, must contribute to *common maintenance expenses*.
- It directed the promoter to clear pending maintenance dues for unsold units.
- The decision relied on **Sections 11(4)(g), 17(1), and 17(2)** of the *RERA Act* and reaffirmed that promoters **cannot avoid maintenance liabilities for unsold inventory**.

Case Title: Parsvnath Developers Ltd vs Mohit Khirbat
Court: Supreme Court of India
Citation: 2026 INSC 170
Date: February 20, 2026

Facts of the Case
The disputes arose from the "Parsvnath Exotica" project in Gurugram, where homebuyers (respondents) had booked flats. The developer failed to hand over possession within the stipulated time mentioned in the Flat Buyer Agreements. Homebuyers approached the NCDRC seeking possession and compensation. The developer argued that they were only liable to pay a minimal "delay compensation" as per the specific clauses in the agreement (e.g., Clause 10(c)), which were significantly lower than the interest sought by buyers. One of the matters involved a "subsequent purchaser" who had bought the flat from the original allottee. The developer argued that such buyers are not entitled to the same compensation as original allottees.

Issues
1. Whether a one-sided "Flat Buyer Agreement" override the statutory power of consumer courts to award just compensation?
2. Whether a buyer who purchases a flat in resale entitled to the same interest and compensation for delays as the original allottee?
3. Whether a developer legally offer "possession" and stop paying delay compensation if they have not yet obtained an **Occupancy Certificate (OC)**?

Conclusion
- **Statutory Supremacy:** The Supreme Court held that the NCDRC has the authority to award just and reasonable compensation regardless of restrictive clauses in the agreement. One-sided contracts cannot strip a consumer of their statutory rights.

- **Rights of Resale Buyers:** The Court ruled that the right to claim compensation for "deficiency in service" **travels with the allotment**. A subsequent purchaser steps into the shoes of the original allottee and is entitled to the same relief.
- **OC is Mandatory:** The Court strictly held that possession without an Occupancy Certificate is not "lawful delivery of possession." A developer cannot force a buyer to take possession of a flat that has no OC.
- **Final Directions:** The developer was ordered to obtain the OC and hand over possession within **six months**, continuing to pay compensation until the day the OC is provided.

SECTION 12:-

Obligations of promoter regarding veracity of the advertisement or prospectus

—

Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Case Name: Nirman Realtors & Developers Ltd. v. Shabnam Ansari & Ors.
Court: Bombay High Court
Citation: 2021 SCC OnLine Bom 13421
Date: March 5, 2021
Judge: C.V. Bhadang, J.

Issue (Section 12 RERA):
Whether false or misleading statements in a real estate prospectus amount to a violation of Section 12 of RERA, entitling allottees to refund and compensation.

Summary (Section 12 Context):
The respondents booked seven flats in the appellant's "Green Acres" project. They alleged that the developer made **false representations in the prospectus**, failed to adhere to sanctioned plans, and did not complete the project—thus violating **Sections 12, 14, and 18** of RERA. The Maharashtra RERA Authority ordered **refund of amounts with 10.05% interest**, which was later settled by consent before the Appellate Tribunal. Following non-compliance with the settlement, the allottees sought execution of the original refund order. The High Court upheld the Appellate Tribunal's direction requiring the developer to **deposit 30% of the payable amount** as a precondition for appeal under **Section 43(5) RERA**, emphasizing that **no complete waiver** of pre-deposit is permissible.

Held:

False or misleading prospectus statements constitute a **Section 12 RERA violation**, entitling allottees to refund with interest. The pre-deposit requirement under Section 43(5) is **mandatory**; only the percentage (30–100%) can vary. Appeal dismissed; refund orders enforceable upon non-compliance with consent terms.

Takeaway:
Under **Section 12 of RERA**, developers are liable for **misleading advertisements or prospectus claims**, and aggrieved homebuyers can seek refund with interest. Further, **appeals by promoters require a mandatory pre-deposit** before being entertained.

Section 13

(*1*) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(*2*) The agreement for sale referred to in sub-section (*1*) shall be in such form as may be prescribed and shall specify the particulars of development of the project

including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

Case Title: Vishnu Kumar Gupta and Pratibha Gupta vs M/s AIMS RG Angel Promoters Ltd.

Court: Uttar Pradesh Real Estate Appellate Tribunal (UP REAT)

Citation: Appeal No. 457 of 2023 (Arising out of Complaint No. NCR144/11/79848/2021)

Date: February 20, 2024

Issue: (1) Whether the demands for VAT, GST, Labour Cess, and Farmers' Compensation were legal and valid under the Builder-Buyer Agreement (BBA).

(2) Whether the promoter could demand these charges after issuing a "Final Demand Note" and handing over possession.

Summary: The respondent (promoter) developed a residential project named ‘AIMS GOLF AVENUE-I’ and 'AIMS GOLF AVENUE-II' in Sector 75, Noida. Many appellants had already paid the amounts demanded in their "Final Demand Note" and had taken physical possession of their flats. When allottees requested the execution of registered lease deeds, the promoter refused, instead demanding additional payments for VAT, GST, Labour Cess, Farmers' Compensation, and IGL/Gas connections.

The U.P. RERA Authority initially ruled in favour of the promoter, directing buyers to pay these dues before the sale deed could be executed. The allottees appealed this to the Tribunal.

Held: The Tribunal divided the 56 appeals into three categories based on when the BBA was signed relative to the issuance of the Occupancy Certificate (OC) and the implementation of GST. It held:

Finality of Demand: The issuance of a "Final Demand Note" and the subsequent delivery of possession (which required full payment under Clause 41(a) of the BBA) implied that all dues had been cleared.

VAT/GST:

- For flats purchased after the OC and after the abolition of the U.P. VAT Act, VAT could not be charged.
- GST is not applicable on "ready-to-move" properties sold after the issuance of an OC.

Labour Cess & Farmers' Compensation: The Tribunal found no proof that the statutory authorities had raised any *additional* demand for these charges after the BBA was executed. The promoter cannot shift its existing statutory liabilities to buyers unless there is a specific increase after the agreement.

IGL/Gas Connections: Buyers were held liable to pay for these charges proportionately, but only if they actually availed of the facility

Takeaway Under Section 11: A Paper Possession or Deemed Possession notice without a valid OC/CC does not stop the clock on delay interest.

Interest for delay under Section 18 is a compensatory statutory right that cannot be waived by the allottee through a forced possession letter.

Allottees are obligated to pay their share of registration charges, taxes, and other charges, but these must be based on valid, transparent demands

Case Name: Dinesh Awasthi v. Alpine Infraprojects Pvt. Ltd.
Citation: 2024 SCC OnLine UP RERA 28
Court: U.P. Real Estate Appellate Tribunal
Bench: D.K. Arora (Chairman) & Sanjai Khare (Judicial Member)
Date: May 7, 2024

Facts:
The appellant booked a flat in the respondent's "AIG Royal" project. As per a supplementary agreement, the builder was to pay pre-possession EMIs till possession. The appellant alleged non-payment of pre-EMIs, excess GST charge, and delay in possession without Occupancy Certificate. RERA directed the builder to adjust pre-EMIs in final payment.

Issues:
Whether under the RERA Act, 2016, the Authority/Appellate Tribunal can

adjudicate disputes regarding pre-EMI, assured return, or other commercial arrangements between promoter and allottee.

Held:

There is **no provision in RERA** to examine issues of pre-EMI, assured return, or committed payments, as these are **commercial arrangements** outside the scope of the Act. The appellant's complaint related only to pre-EMI payments, not possession or GST issues. The RERA Authority's order adjusting pre-EMIs was proper. Appeal dismissed; RERA's order upheld. No costs.

Takeaway:
Claims related to **pre-EMI or assured return schemes** are **not maintainable under RERA**, as they fall outside its consumer-protection framework.

SECTION 14:-

Adherence to sanctioned plans and project specifications by the promoter –

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the 16 apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after **proper declaration and intimation to the allottee**.

Explanation.—For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Haryana Rera Rules

“structural defects” means actual physical damage/ defects to the designated load-bearing elements of the building, apartment or unit like faults, breakage or cracks, appearing over time in elements such as load bearing columns, walls, slabs, beams etc. which can affect the strength and stability of the apartment or the building

and shall include any of the following, namely:-

(i) defects due to design attributes of reinforced cement concrete (RCC) or structural mild steel (MS) elements of an engineered (structurally designed) building structure;

(ii) defects due to faulty or bad workmanship of RCC or MS work;

(iii) defects due to materials used in such RCC or MS work;

(iv) major cracks in masonry work that are induced as result of failures of RCC or MS work;

(v) any defect which is established to have occurred on account of negligence, use of inferior materials or non-adherence to the regulatory codes of practice by the promoter.

Explanation:- The promoter shall not be liable for any such 2 structural/ architectural defect induced by the allottee, by means of carrying out structural or architectural changes from the original specifications/ design.

Case Title: Manju Mahajan v. Supertech Ltd.

Court: Delhi High Court

Date: 2019

Issue: Unilateral alteration of project plan – applicability of Section 14 RERA

Nature: Writ / Civil proceedings arising out of builder–buyer dispute

FACTUAL BACKGROUND

The petitioner (Manju Mahajan) booked a residential unit in a project developed by Supertech Ltd. At the time of booking:

- Specific sanctioned layout plans

- Defined amenities
- Particular density and open areas were represented to the allottee.

After execution of the Builder-Buyer Agreement and payment of substantial consideration, Supertech- Increased construction density; Altered layout plans; Modified common areas and amenities. These changes were made without obtaining consent of the allottee or 2/3rd allottees. Builder relied on clauses in the agreement permitting “changes as approved by competent authority”.

CORE LEGAL ISSUES

(1) Whether a promoter can rely on contractual clauses to unilaterally alter sanctioned plans after enactment of RERA?

(2) Whether approval of changes by local authority is sufficient compliance with Section 14(2) of RERA?

(3) Whether such alterations violate the statutory rights of allottees?

RELEVANT STATUTORY PROVISION

Section 14(2), RERA Act, 2016

The promoter shall not make any additions or alterations in sanctioned plans, layout plans and specifications of the building or common areas without prior written consent of at least two-thirds of the allottees.

ARGUMENTS OF SUPERTECH LTD.

Builder-Buyer Agreement expressly allowed modifications. Alterations were approved by the competent planning authority. Changes were necessary for better project execution. Buyer had accepted contractual terms and was estopped from objecting.

ARGUMENTS OF THE ALLOTTEE

Consent under Section 14 is statutory and mandatory. Contractual clauses inconsistent with RERA are void. Changes materially affected:

- Value of the apartment
- Open spaces and amenities

- Approval of authority does not replace allottee consent.

FINDINGS & REASONING OF THE DELHI HIGH COURT

A. RERA Overrides Private Contracts

The Court held that the

- RERA is a special social welfare legislation. Any agreement clause allowing unilateral changes is unenforceable after RERA.
- Contractual freedom cannot defeat statutory protection granted to homebuyers.

B. Meaningful Consent Under Section 14

Consent must be: Prior and Written from 2/3rd allottees (excluding promoter). Consent cannot be presumed from signing of agreement.

C. Local Authority Approval is Not Enough

The Court clarified:

- Approval from municipal or planning authority is regulatory compliance only.
- Section 14 creates an independent obligation towards allottees.
- Both approvals are required:
    - ✓ Statutory authority
    - ✓ Allottee consent

D. Nature of Alterations

- Increase in number of floors
- Change in layout
- Reduction of common facilities are material alterations, not “minor changes”.

FINAL HOLDING

- Unilateral alteration of sanctioned plans is illegal under Section 14 RERA
- Builder-Buyer clauses permitting such changes are void
- Allottee consent is mandatory and non-derogable
- Promoter action held arbitrary and unfair

LEGAL PRINCIPLES LAID DOWN (RATIO)

- Statutory consent under RERA cannot be waived by contract
- Promoter has no unilateral right post-booking
- Sanctioned plan at the time of booking is binding
- RERA confers substantive rights on allottees
- Deviation attracts consequences under Sections 14 & 18

PRACTICAL SIGNIFICANCE

This judgment is widely relied upon to:

- Challenge increase in floors
- Object to change in layout or amenities
- Nullify one-sided builder clauses

Seek: Refund; Compensation; Restoration of original plan

Case Title: DLF Southern Homes Pvt. Ltd. v. Capital Greens Flat Buyers Association & Ors.

Citation: (2020) 16 SCC 489

Bench: Justice D.Y. Chandrachud & Justice Hemant Gupta

Date: 24 August 2020

FACTS OF THE CASE

DLF launched a residential project “Capital Greens” in Delhi. Buyers booked flats based on sanctioned layout plans, amenities, and common facilities. Subsequently, DLF:

- Increased the number of floors
- Added additional structures
- Modified the layout and density
- Builder relied upon clauses in the Builder–Buyer Agreement allowing "minor changes" and approvals from local authorities.
- Buyers challenged these alterations under Section 14 of RERA, alleging illegal unilateral changes.

LEGAL ISSUES BEFORE THE COURT

(1) Whether a promoter can alter sanctioned plans after booking without consent of allottees?

(2) Whether contractual clauses permitting unilateral changes survive after enactment of RERA?

(3) Whether approval from local authority substitutes consent of 2/3rd allottees under Section 14(2)?

(4) Whether Section 14 has overriding effect over private contracts?

STATUTORY PROVISION INVOLVED

Section 14(2), RERA Act, 2016

"The promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications of the buildings or the common areas

without the previous written consent of at least two-thirds of the allottees, other than the promoter…"

ARGUMENTS OF THE PROMOTER

- Builder–Buyer Agreement allowed modifications.
- Changes were approved by the competent planning authority.
- Alterations were claimed to be minor.
- RERA should not apply retrospectively to existing agreements.

ARGUMENTS OF THE ALLOTTEES

- Buyers purchased flats relying on original sanctioned plans.
- Changes substantially affected:
    - ✓ Open areas
    - ✓ Density
    - ✓ Amenities
- Consent of 2/3rd allottees was never taken.
- Contractual clauses cannot override a statutory mandate.

FINDINGS & REASONING OF THE SUPREME COURT

A. Overriding Effect of RERA

- RERA is a beneficial and consumer-centric legislation.
- Section 14 is enacted to prevent arbitrary conduct of promoters.
- Any contractual clause inconsistent with RERA is void.
- "Private contracts must yield to statutory obligations."

B. **Meaning of 'Minor Alteration'**

Minor alterations are:

- Necessary due to architectural or structural reasons
- Do not affect rights or interests of allottees
- Increase in floors, density, or reduction of common areas is NOT minor.

C. **Consent of 2/3rd Allottees is Mandatory:** Written consent of 2/3rd allottees is a condition precedent. Consent cannot be:

- Implied
- Presumed
- Waived through agreement clauses

D. **Local Authority Approval ≠ Allottee Consent:** Approval from planning authority does not absolve promoter. Section 14 creates a dual requirement:

- Statutory approval
- Allottee consent

FINAL HOLDING (RATIO DECIDENDI)

- Promoters cannot unilaterally alter sanctioned plans after booking.
- Builder–Buyer clauses allowing unilateral changes are void.
- Consent of 2/3rd allottees is mandatory under Section 14(2).
- RERA overrides all inconsistent contractual terms.

DIRECTIONS ISSUED

Promoter held liable for violation of Section 14. Buyers entitled to:

- Relief under RERA
- Compensation for loss of amenities
- Enforcement of original plan

LEGAL PRINCIPLES LAID DOWN

- Sanctioned plans form the basis of allotment
- Promoter has no unilateral power post-booking
- Statutory consent cannot be replaced by contract
- RERA has overriding effect (Section 89)

Deviation = breach + unfair trade practice

Case Title: Supertech Ltd. v. Emerald Court Owner Resident Welfare Association & Ors.

Court: Supreme Court of India — Judgment on Demolition of Twin Towers, Noida (Emerald Court)

Citation: (2021) 10 SC CK 0117

Date: August 31, 2021

Background / Facts of the Case

At the Emerald Court residential complex in Sector 93A, Noida (Uttar Pradesh), the developer Supertech Ltd. constructed two additional twin towers — Apex and Ceyane — within an existing housing society project.

These twin towers were not part of the original housing plan shown to homebuyers and were alleged to violate sanctioned plans, building regulations, fire safety norms, and minimum-distance requirements under applicable building regulations and codes.

The Emerald Court Owner Residents Welfare Association (RWA) challenged the construction, alleging illegality and violation of normative requirements, and sought:

Quashing of the revised plan

- Demolition of the new towers
- Refund/compensation to homebuyers.

Held:

a) Allahabad High Court

In 2014, the Allahabad High Court held that the twin towers were illegally constructed and violative of mandatory building regulations, including minimum-distance norms. It ordered that: Towers T-16 (Apex) and T-17 (Ceyane) be demolished, and Authorities and promoters be proceeded against accordingly.

b) Supreme Court Appeal

Supertech Ltd. challenged this demolition order before the Supreme Court.

Supreme Court Judgment (August 31, 2021)

The Supreme Court upheld the Allahabad High Court's demolition order and confirmed all substantive directions, holding that:

A. Illegal Construction Must Be Strictly Dealt With

The Court reiterated that unauthorised or illegal construction cannot be permitted, regardless of who constructs it, because such actions threaten:

- Public safety,
- Sound urban planning,
- Environmental norms, and
- Residents' legitimate rights.

B. Violations of Regulations

The apex court found multiple legal violations:

- Sanctioned building plans were not adhered to.
- Minimum-distance requirements under the relevant New Okhla Industrial Development Area Building Regulations and the National Building Code were breached.
- Safety norms, including fire safety norms, were violated.

C. Collusion Between Developer and Planning Authority

The Court noted that the violations were not merely administrative oversights but evidenced a "collusion between the developer and the planning authority" (here, the Noida Authority), which facilitated the illegal construction of the towers.

This conduct was held to be a serious breach of urban planning law and public trust.

D. Homebuyer Consent and Rights: The Court also observed that:

Consent of individual flat owners for the addition of the towers was not taken, contrary to statutory and regulatory expectations (such as distance and common area implications).

The addition reduced common areas, fresh air, and open space for existing residents.

This consideration resonated with principles later underscored in RERA case law (e.g., Section 14). Though the matter involved building regulations rather than RERA specifically, the fundamental rights and expectations of buyers were central.

Supreme Court's Final Orders

a) Demolition of the Twin Towers: The Supreme Court ordered demolition of the Apex and Ceyane towers within three months at the cost of Supertech Ltd. The demolition was to be carried out under supervision (e.g., Noida Authority and expert bodies like Central Building Research Institute (CBRI)).

b) Refund to Homebuyers: All existing homebuyers in the twin towers were entitled to refund of their amounts paid, with 12% annual interest from the date of deposit.

c) Compensation to RWA: Supertech was directed to pay ₹2 crore to the Emerald Court RWA to compensate for the harassment and inconvenience caused by the illegal construction.

d) Criminal & Administrative Action: The Court directed initiation of prosecution against Supertech officials and certain officers of the Noida Authority under relevant provisions of the Uttar Pradesh Urban Planning and Development Act and related laws for the violations and collusion.

Subsequent Proceedings and Enforcement

Demolition Implementation

The Apex and Ceyane towers, the tallest structures to be demolished in India at the time, were successfully razed using controlled implosion techniques in August 2022.

Ongoing Refund/Contempt Matters

Post-demolition, there have been follow-up Supreme Court orders relating to refunds and payout compliance to specific homebuyers, including through IRP deposits in connection with insolvency proceedings against Supertech.

Legal Significance

The case is a landmark judgment on illegal construction and enforcement of building regulations. Its key take-aways include:

✓ Illegal construction cannot be validated by belated approvals or developer assertions.
✓ Collusion between developers and authorities subverts legal safeguards and attracts strict consequences.
✓ Protection of residents' rights (space, light, air, safety) is fundamental.
✓ Developers must comply strictly with sanctioned plans and safety norms, failing which demolition and refunds may follow.

This decision is often cited as a precedent on enforcement of statutory planning norms, accountability of authorities, and homebuyers' statutory protections.

Case Title: Bikram Chatterji & Ors. v. Union of India (Amrapali Case)

Court: Supreme Court of India

Citation: (2019) 19 SCC 161

Relevance to Section 14:

Construction beyond sanctioned plan is illegal. Buyers cannot be compelled to accept altered structures. Authorities must ensure strict compliance with approved plans.

Held:

Deviations amount to fraud on homebuyers. Promoter is liable for consequences of illegal construction.

Section 15

(*1*) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

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

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(*2*) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (*1*), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this

section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

Case Title: Union Bank of India vs Rajasthan Real Estate Regulatory Authority and ors.
Court: High Court of Judicature for Rajasthan Bench at Jaipur
Citation: D.B. Civil Writ Petition No. 13688/2021
Date: December 14, 2021
Issue: (1) Whether the requirement for two-thirds allottee consent and Authority approval under Section 15 is an unreasonable restriction on a promoter's right to carry on business under Article 19(1)(g).
(2) Whether Section 15 can be applied to "ongoing projects" (those started before RERA but not yet completed) without being unconstitutionally retrospective.
(3) Whether a secured creditor (like a bank) taking over a project under the SARFAESI Act is bound by Section 15 when trying to transfer the project to recover dues.
Summary:
Union Bank had provided loans to real estate developers, securing these loans by mortgaging the project land and apartments. When promoters defaulted on these loans, the banks initiated recovery proceedings under the SARFAESI Act to take possession of and sell the secured assets. The homebuyers who had already paid for their units filed complaints with the Rajasthan RERA Authority, seeking to protect their interests and ensure project completion. The bank challenged the jurisdiction of RERA, arguing that as a secured creditor exercising statutory rights under the SARFAESI Act, it was not a "promoter" and should not be subject to RERA's orders.
Held:
The Hon'ble court quoted a Bombay High Court's case where it was held that Section 15 is a reasonable restriction intended to protect the interests of allottees from being "transferred" to an unknown or potentially incapable new promoter without their knowledge. The Hon'ble court ruled that the section is retroactive because it regulates the future performance of ongoing projects. It does not penalize past acts but sets conditions for any transfer occurring after the Act's commencement. In the Union Bank case, the Rajasthan High Court held that RERA is a special beneficial legislation. If a bank takes possession of a project, it "steps into the shoes" of the promoter and must comply with Section 15 before transferring the project to a third party.
Takeaway:

When a bank takes over a project due to default, they are treated as a "promoter" under RERA and cannot bypass the 2/3rds consent requirement of allottees. Section 15 ensures that the entity responsible for completing the project cannot be changed unilaterally, protecting buyers from operators or developers who might not have the capacity to finish the work.

Case Title: Deepak Chowdhary Vs. PNB Housing Finance Ltd. & Ors.
Court: Haryana Real Estate Regulatory Authority (HARERA), Gurugram
Case Number: Complaint Case No. 2145 (originally 2031) of 2020
Date: September 11, 2020
Issue: (1) Whether a promoter can transfer project rights to another developer without two-thirds allottees' consent and RERA's prior approval.
(2) Whether a financial institution acting as a mortgagee in possession must fulfill the obligations of a promoter under RERA.
Summary: The project faced auction proceedings by PNB Housing Finance Limited under the SARFAESI Act due to defaults. Allottees filed a complaint seeking to protect their investment.
Held: The Authority ruled that if a financial institution intends to proceed with an auction, it must first submit all relevant documents to the Authority and undertake that allottees' interests will not be jeopardized. Any transfer of the project must follow the procedure under Section 15 of the RERA Act, i.e., in case of transfer of a real estate project to a third party.
Takeaway: Financial institutions or "charge holders" who take over a project are considered "promoters" under RERA and cannot bypass the Act's protections for allottees by simply invoking the SARFAESI Act.

Case Name: Yes Bank Limited vs Mega Resources Ltd & Anr ((2024) ibclaw.in 279
Court: West Bengal Real Estate Appellate Tribunal, Kolkata- 700075
Bench: Justice Rabindranath Samanta (Hon'ble Chairperson), Shri Gour Sundar Banerjee (Hon'ble Judicial Member); Dr. Subrat Mukherjee (Hon'ble Administrative Member)
Date: September 20, 2024

Facts:
The Respondent purchased a flat from the Promoter. The buyer paid the full amount, took possession in July 2021, and registered the deed of conveyance in February 2022. However, in March 2024, the buyer discovered a public notice from Yes Bank seeking symbolic possession of their flat due to a loan default by the Promoter. The Bank argued that it had a registered mortgage on the unsold units (including this flat) since June 2019, long before the buyer's agreement.

Issues:
(1) Whether the WBRERA has the jurisdiction to stay recovery proceedings,

like possession and auctions initiated by a bank under the SARFAESI Act when it affects a bona fide homebuyer.

(2) Whether a bank, by vide holding a mortgage over a project's units to secure a loan, becomes an "assignee" of the promoter and thus liable for the promoter's obligations under RERA.

(3) Whether a promoter's mortgage of project units to a bank requires prior written consent from two-thirds of the allottees and prior approval from the Regulatory Authority.

Held:

Hon'ble WBRERA initially passed an interim order staying the bank's auction and possession proceedings. The bank appealed to the Hon'ble Tribunal. Hon'ble Tribunal examined whether the mortgage was valid under RERA, noting that the project was registered in 2018, and the mortgage was created in 2019 without the mandatory allottee consent required by Section 15. The Hon'ble Tribunal upheld the Regulatory Authority's jurisdiction to protect the allottee. It established that the RERA prevails over the SARFAESI Act in such conflicts. The bank, as a secured creditor acting as an assignee of the promoter's rights, is bound by RERA's protective provisions for homebuyers. The interim stay on the bank’s recovery actions against the allottee's flat was maintained to prevent irreparable injury who had already paid in full and was residing in the property.

Takeaway:
RERA protects the rights of bona fide homebuyers even against the recovery powers of banks under SARFAESI if the bank is pursuing units already sold or promised to allottees. Subject to Section 15: Banks and developers must be aware that once a project is registered under RERA, any mortgage that transfers rights in project units may be viewed as a project transfer requiring allottee consent. When a bank takes over or attempts to sell project assets, it may be classified as a "Promoter" under Section 2(zk), making it liable for completing the project or honoring existing allottee rights. Also, for homebuyers, remedy will be available under RERA Act Section 11(4).

Case Name: M/s. Renaissance Infrastructure Pvt. Ltd. v. State of Gujarat & Ors.

Court: Gujarat Real Estate Appellate Tribunal

Citation: 2021 SCC OnLine GujRERA 5

Date: July 2021

Issue (Section 15 RERA): Whether a promoter can transfer project rights to another developer without obtaining the consent of two-thirds allottees and prior approval from the RERA Authority.

Summary:

The promoter transferred its ongoing real estate project to another developer without securing the mandatory consent of two-thirds of the allottees and without obtaining prior written approval from the Gujarat RERA Authority. The Tribunal ruled that such a transfer was **invalid under Section 15 of the RERA Act, 2016**, emphasizing that both allottee consent and RERA approval are **mandatory prerequisites**. It further held that the new (intending) promoter must independently comply with all pending obligations of the previous promoter **without any extension of time**, and any default will attract the same penalties applicable to the original promoter.

Takeaway:

Unauthorized transfer or assignment of a project is **void**. Section 15 safeguards homebuyers by ensuring that any change in the promoter is **transparent, approved, and compliant**, thereby maintaining the **continuity of promoter obligations** and protecting allottee interests

SECTION 16:-

Obligations of promoter regarding insurance of real estate project.—

(1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

(i) title of the land and building as a part of the real estate project; and

(ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

Case Title: Neelkamal Realtors Suburban Pvt. Ltd. & Anr. v. Union of India & Ors.
Court: Bombay High Court
Citation: *2017 SCC OnLine Bom 9302*
Date: 6 December 2017
Key Findings (relevant to Section 16):

- The constitutional validity of several provisions of RERA, including **Sections 3, 4, 6, 8, 16, 18, 19**, was challenged.
- **Section 16 (Insurance of real estate project)** was upheld as **valid and reasonable**.
- The Court held that:
  - Insurance requirement under Section 16 is **consumer-centric**.
  - It protects allottees against **defective title and construction risks**.
  - The obligation is prospective and does not violate Article 14 or 19(1)(g).

Observation:
"The requirement of insurance under Section 16 is in furtherance of the object of the Act, namely protection of the interests of consumers in the real estate sector."

Case Title: M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.
Court: Supreme Court of India
Citation: *(2021) 18 SCC 1*
Relevance to Section 16:

- Though primarily dealing with Sections **18, 31, 38, 40**, the Supreme Court recognized:
  - RERA is a **beneficial legislation**.
  - Obligations like **insurance under Section 16** are part of the statutory framework ensuring accountability of promoters.

Reinforced that promoter duties under RERA are **mandatory and non-negotiable**.

Case Title: Dhannanjaya & Anr. v. Sobha Ltd. & Anr. (K-RERA – Complaint No. 00427/2024)
Court: Karnataka Real Estate Regulatory Authority
Date: November 29, 2025
Issue: Promoter Cannot Escape Liability Without Insurance Compliance
Key Holdings:
• Held that **Section 16 insurance obligations are mandatory**, not merely procedural.
• Builder *must obtain the required insurance and transfer benefits to an owners' association* — failure to do so means the promoter remains liable for losses that should have been covered by that insurance.
• Promoter cannot avoid liability (e.g., for clubhouse fire damage) by claiming that maintenance or possession was already handed over if insurance compliance was not fulfilled.
• Directed the promoter to produce all insurance documents/accounting *as per Section 16* and warned of liability for damage costs if non-compliant.

SECTION 17:-

Transfer of title.—

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents

and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the 1 [completion] certificate.

Court Title: Bimalendu Pradhan v. State of Odisha & Others (Orissa High Court), W.P. (C) No. 18799 of 2021 (Orissa High Court)
Court: Orissa High Court, Cuttack
Order Date: 12 May 2022
Citation: 2023 Latest Caselaw 1959 Ori
Key Point: The High Court held that sale deeds conveying common areas to individual apartment owners contrary to the RERA Act should *not be registered* and must instead be transferred to the *Association of Apartment Owners (allottees)*. It directed the Registration Authority to ensure strict compliance with RERA's requirement on transfer of common areas.

Section 31:

Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation — For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law forthe time being in force.

The form, manner and fees for filing complaint under sub-section (*1*) shall be such as may be specified by regulations.

Case Name: Wg. Cdr. Arifur Rahman Khan and Aleya Sutanan and Ors. Vs DLF Southern Hpmes Pvt, Ltd..
Court: Supreme Court of India
Citation: AIRONLINE 2019 SC 2195
Date of Decision: July 23, 2019
Coram: Uday Umesh Lalit J.

Issue: (1) Whether allottees are restricted to the meager compensation mentioned in one-sided Apartment Buyer Agreements for delays spanning years.

(2) Whether the failure to provide promised facilities constitutes a "deficiency of service" under Consumer Law/RERA guidelines, even if they are located in a larger township.

(3) Whether an allottee loses the right to claim compensation for delay once they have signed the Sale/Conveyance Deed and taken possession.

(4) Whether the terms of a contract drafted by a promoter are binding on a homebuyer, with no bargaining power.

Summary:
A group of 339 flat buyers in Bengaluru approached the NCDRC seeking compensation for a delay of nearly 4 years. The NCDRC dismissed their complaint, holding that the buyers were bound by the Apartment Buyers Agreement's clause of compensation and that signing the conveyance deed meant the contract was "performed" and closed.

Held:
The Hon'ble Supreme Court reversed the NCDRC judgement and stated that the promoter promised delivery in 36 months but took significantly longer and that a promoter does not have an open-ended timeline. It was also held that agreements are standard contracts where the buyer has to "sign on the dotted line." Such one-sided terms are not binding if they are perverse or provide illusory compensation. The promoter also failed to construct the promised clubhouse and other amenities. The Hon'ble Supreme Court ruled that even if the promoter hands over the flat, the failure to provide the promised facilities is a deficiency in service. Crucially, the it was also ruled that execution of a conveyance deed does not act as a "waiver" of the buyer's right to seek compensation for the delay that occurred before the deed was signed.

Takeaway: This judgment effectively directed the promoters to pay the nominal penalties for delays done by them. It established that compensation must be "just and reasonable especially when they are at fault by providing deficiency in services.

Case Name: M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Others

Court: Supreme Court if India
Citation: (2021) 14 SCC 278
Date: November 11, 2021
Issue: Whether the promoter's liability is discretionary or mandatory, and whether this statutory right can be limited or waived by clauses in the Agreement for Sale.

Summary:
The Hon'ble Supreme Court held that the provisions of RERA, specifically the right of an allottee to seek refund and interest under Section 18, are mandatory statutory rights. The Hon'ble Court ruled that this statutory right overrides any contrary clauses present in the builder-buyer agreement or Agreement for Sale, which often tend to be one-sided in favor of the promoter. The promoter's failure to hand over possession by the promised date triggers an unconditional liability under RERA.

Takeaway:

Affirmed that the allottee's right to seek refund and compensation under Section 18/19 is a statutory right arising from the non-compliance of the promoter's obligations, and cannot be curtailed by the terms of the builder-buyer agreement. The liability of the promoter for refund with interest (at the prescribed rate) is absolute once the promised date of possession is missed.

Case Title: M/s T.G.B Realty Pvt. Ltd. vs. State of U.P and 7 Others

Court: High Court of Judicature at Allahabad

Citation: 2019:AHC:170334-DB

Date: October 17, 2019

Issue: Whether the RERA has the power to entertain an application for the recall of an order passed without notice to a party.

Summary:

The petitioner, a builder with a registered project called "Neel Gagan," filed a writ petition in the Allahabad High Court. They challenged orders dated April 10, 2018, and April 27, 2019, passed by RERA in a complaint case, as well as a recovery certificate and citation issued in 2019. The petitioner argued that

the complainant had manipulated the process by providing a wrong address, resulting in the orders being passed without the petitioner's knowledge. While the petitioner sought to have these orders quashed by the High Court, the court noted that the proper remedy for a lack of hearing is an application for recall before the original authority (RERA).

Held:

The Hon'ble High Court held that while substantive review must be expressly conferred by statute, every court or tribunal possesses an inherent power of procedural review. The court clarified that seeking a recall because a notice was never served falls under "procedural review" rather than "substantive review". Consequently, RERA cannot refuse to entertain a recall application simply because the RERA Act lacks a specific provision for it. The Court disposed of the writ petition, granting the petitioner liberty to file recall applications and directing RERA to entertain and dispose of them according to law, ideally within one month of filing.

Takeaway

RERA Takeaway is the distinction between substantive and procedural review, i.e., a tribunal like RERA always maintains the inherent authority to recall an order if it was obtained through a procedural lapse, such as a failure of service of notice, regardless of whether the governing Act specifically mentions "recall" or "review" powers.

Case Title: Jitendra Kumar Shukla Vs. U.P. Awas Evam Vikas Parishad
Court: Uttar Pradesh Real Estate Appellate Tribunal (UPREAT), Lucknow
Citation: Appeal No. D 220/2024
Issue: (1) Whether Limitation Act, would be applicable to provisions of Act 2016 for instituting complaint under Section 31 of Act 2016;
(2) Whether in the absence of limitation, what would be the reasonable time, for instituting the complaint by the allottee under Section 31 for relief under proviso to Section 18(1) of Act 2016;
(3) Whether the promoter can claim waiver of its obligation for paying delayed interest on execution of the conveyance deed.
Summary: Allottees were denied with delay interest by the Regulatory Authority even when possession was 15 months delayed and the registry was due and the case was filed after 03 years from the date of execution.

Held: The Hon'ble Tribunal held that the Authority must exercise its powers under RERA to compel promoters to compute and pay delay interest, as it is a statutory obligation that cannot be waived through one-sided agreements. The U.P. Real Estate Appellate Tribunal has concluded that the Limitation Act, 1963, is not applicable to proceedings under the RERA Act, as the Regulatory Authority is a quasi-judicial body rather than a "court". Since the Real Estate (Regulation and Development) Act, 2016, does not prescribe a specific limitation period for filing a complaint, such actions are governed by the principle of **"**reasonable time**"** determined on a case-by-case basis. Consequently, a complaint cannot be dismissed solely on the ground of delay unless the promoter demonstrates actual prejudice, and the promoter's mandatory statutory obligation to pay interest for delayed possession cannot be waived or barred by a plea of limitation or the mere execution of a conveyance deed
Takeaway: Payment of interest for delay under Section 18 is a mandatory statutory obligation. Promoters cannot use agreements or sale deeds to circumvent this duty, and RERA Authorities have the explicit power and responsibility to enforce this payment.

Case Title: Mohammed Zain Khan vs Emnoy Properties India and Ors.

Court: High Court of Judicature at Bombay

Citation: (2024) ibclaw.in 426 HC

Date: April 25, 2024

Issue: Whether the Real Estate Authority and RERA Appellate Tribunal were justified in refusing to entertain the complaint of the Appellant lodged against the Respondent-Promoter for contravention of the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 for punishment under Section 59 of that Act, on the ground that the project was not registered as a Real Estate project under Section 3 of that Act, particularly having regard to Section 31 of that Act?

Summary:

The dispute arose from a real estate project involving the sale of bungalow plots developed by the respondent-promoter. The Appellant and his mother purchased a plot in the project and paid part consideration, pursuant to which an allotment letter was issued in their joint names. As per the understanding between the parties, the promoter was required to obtain Non-Agricultural (NA) permission and hand over possession upon receipt of the balance consideration

within a stipulated completion period of two years. However, the promoter failed to obtain NA permission and did not complete the project within the agreed timeline. Subsequently, the Appellant was informed that the project had been taken over by another promoter, who proposed to convey four smaller plots in a different project in lieu of the original plot. Despite such assurances, no conveyance was executed, compelling the Appellant to approach the consumer forum. The Appellant further contended that the promoter had failed to register the project under the Real Estate (Regulation and Development) Act, 2016, despite marketing and selling plots. A complaint was therefore filed under Section 31 of RERA seeking action against the promoter for violation of Section 3 and imposition of penalty under Section 59. Both MahaRERA and the RERA Appellate Tribunal declined to entertain the complaint on the ground that the project was not registered, leading to the present appeal before the High Court.

Held:

The High Court examined the definitions of “promoter” and “real estate project” under Sections 2(zk) and 2(zn) of the RERA Act and observed that development of land by subdivision into plots is, in principle, covered within the scope of a real estate project. It was clarified that Section 2(zn) does not require that development must necessarily be pursuant to permissions granted by the planning authority in order to fall within the definition of a real estate project. However, on the facts of the case, the Court held that the Valvan Valley project was incapable of being registered and was not liable to be registered under RERA. Consequently, the Appellant’s complaint under Section 31 seeking punishment under Section 59 for contravention of Section 3 was not maintainable in respect of that project. The Authority and the Appellate Tribunal were therefore justified in refusing to entertain the complaint. With respect to the Lion’s Valley project, the Court noted that the Appellant’s grievance was based on an alleged oral agreement for conveyance of alternate plots and that development permissions had reportedly been granted for that project. In such circumstances, the Appellant was held to be at liberty to agitate grievances relating to non-registration of the Lion’s Valley project, as already permitted by the Appellate Tribunal. The Court further clarified that the Appellant was free to pursue all other available remedies before appropriate forums for allotment, refund, interest, or compensation, and that the present judgment would not prejudice such proceedings.

Takeaway:

This judgment draws an important distinction between projects that are required to be registered under RERA and those that are incapable of registration. While

land development and plot subdivision ordinarily fall within the definition of a “real estate project,” a complaint under Section 31 for penalty under Section 59 cannot be maintained solely on the ground.

Case Title: Godrej Projects Development Ltd. vs Anil Karlekar

Court: Supreme Court of India (CIVIL APPEAL Diary No(s). 1650/2023)

Citation: 2025 INSC 143

Date: April 24, 2023

Issue: (1) Whether the forfeiture of 20% of BSP as earnest money was enforceable under contract law?

(2) Whether such a forfeiture clause was unconscionable and unfair under consumer protection laws?

(3) Whether the NCDRC was justified in reducing the forfeiture to 10% of BSP?

(4) Whether the homebuyers were entitled to interest on the refund amount?

Summary:

The complainants booked an apartment in the "Godrej Summit" project in Gurgaon, Haryana, on 10th January 2014. An allotment letter was issued, and an Apartment Buyer Agreement was executed. The builder obtained an Occupation Certificate thereafter, the complainants were offered possession of the apartment. Instead of taking possession, the complainants sought cancellation of the allotment, citing a fall in market prices. The complainants issued a legal notice demanding a refund of Rs. 51,12,310. they filed Consumer Complaint before the NCDRC seeking a full refund with 18% interest. The builder, relying on the agreement, forfeited 20% of the Basic Sale Price (BSP) as earnest money and refused to refund the entire amount. On 25th October 2022, the NCDRC ruled that only 10% of the BSP should be forfeited, and the balance should be refunded with 6% interest per annum.

Held:

The Court upheld the NCDRC's ruling, holding that 20% forfeiture was excessive and unfair. Supreme Court referred to various precedents and considered 10% to be fair and reasonable forfeiture. The Court overturned the NCDRC's award of 6% interest, on the grounds that buyers withdrew due to

market conditions and hence invested in some other apartment. No interest, if the withdrawal by homebuyers and no event of default by builder. The Court reinforced consumer fairness principles, ensuring developers

cannot impose unreasonable penalties on homebuyers. The clauses of the agreement can be held to be unenforceable on the grounds of fairness.

Takeaway:

This judgment establishes that a 10% forfeiture of the Basic Sale Price (BSP) is generally considered "fair and reasonable". Any clause mandating a higher forfeiture (e.g., 20%) can be challenged before RERA as being unconscionable and unenforceable. Under Section 18 of the RERA Act, an allottee is entitled to interest if the promoter defaults (e.g., delay in possession). However, this judgment clarifies that if there is no default by the promoter (i.e., possession was offered on time) and the allottee withdraws purely due to market conditions, the allottee is not entitled to interest on the refunded amount. The ruling empowers RERA under Section 31 to set aside or ignore specific clauses in an "Apartment Buyer Agreement" if they are found to be one-sided or unfair. This mirrors the RERA mandate to ensure that the terms of the agreement for sale follow the Model Agreement prescribed by State Rules.

Case Name: Pioneer Urban Land & Infrastructure Limited vs Govindan Raghavan
Court: Supreme Court of India
Citation: AIR 2019 SC 1779
Date of Decision: July 23, 2019
Coram: Uday Umesh Lalit J.; Indu Malhotra J.
Issue: Whether a buyer can be compelled to take possession of a flat after a significant delay of 3 years because the promoter eventually obtained an Occupancy Certificate (OC) during the litigation proceedings.

Whether one-sided clauses in an Agreement executed by the Promoter could legally bind a purchaser to accept such delayed possession.

Summary:
The respondent-buyer entered into an agreement in 2012 for a flat. The agreement stipulated that the builder would apply for an OC within 39 months (plus a 6-month grace period), making the deadline March 2016. The builder

failed to meet this deadline, leading the buyer to file a complaint in 2017. During the case, the builder finally obtained the OC in 2018 and argued that the buyer must now accept possession instead of a refund. The builder relied on restrictive, pre-drafted clauses in the agreement that heavily favored the promoter.

Held:
The Hon'ble Supreme Court ruled that a buyer cannot be forced to wait indefinitely and then compelled to take possession years later, especially when they have already made alternate living arrangements. The Hon'ble Court also stated that the Agreements executed by the Promoter are often not negotiated and represent a gross disparity in bargaining power. It ruled that such one-sided clauses constitute an "unfair trade practice" and are not binding on the flat purchaser.

Takeaway: Any allottee can file a complaint under Section 31 regardless of what "one-sided" agreements state**.** Provisions under Sections 31 of RERA Act override restrictive contractual terms. A developer cannot use unfair trade practices in an agreement executed by the Promoter to escape their primary obligation of timely delivery or the liability to refund for delays. It is noted that more than 02 years, the project was delayed and this does not make the Allottee liable for possession especially if the agreement is one-sided, their clauses would be non-applicable.

M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Others

Court: Supreme Court of India
Citation: (2021) 14 SCC 278
Date: November 11, 2021
Issue: 1. Whether the RERA Act, being retroactive, applies to ongoing projects where agreements were signed pre-RERA. 2. Whether the RERA Authority, through a complaint filed under **Section 31**, has the power to direct **refund with interest** under Section 18.

Summary:
The Supreme Court decisively upheld the retroactive applicability of RERA to ongoing projects. Critically, it affirmed that a complaint filed under **Section 31** empowers the RERA Authority to order the promoter to **refund the amount**

along with interest to the allottee for delayed possession, as prescribed under Section 18. The Court emphasized that RERA offers a concurrent remedy to the allottee. This judgment established the Authority's power to grant the primary relief of refund/interest following a Section 31 complaint

Takeaway:

A complaint filed under Section 31 is the legally sound mechanism to obtain an order for refund and interest from the RERA Authority for any violation, particularly delayed possession (Section 18). This Supreme Court ruling reinforced the Authority's role as a primary adjudicatory body for protecting allottee rights

Case Title: Aftab Singh v. Emaar MGF Land Ltd. & Anr.

Citation: Consumer Case No. 701 of 2015, National Consumer Disputes Redressal Commission (NCDRC), affirmed by Supreme Court

Facts: Builder sought arbitration despite consumer complaints; issue of overlap with RERA powers.

Holding: Consumer forums retain jurisdiction even after RERA, but RERA's supervisory powers under Section 37 remain intact.

Principle: Section 37 directions are binding, but do not oust remedies available under other statutes like Consumer Protection Act.

Section 43

Establishment of Real Estate Appellate Tribunal-

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the-- (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal: Provided that, until the

establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.--For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

Case Title: M/s International Land Developers Private Limited vs Aditi Chauhan and others
Court: Punjab and Haryana High Court
Citation: 2022:PHHC:100273-DB
Date: August 17, 2022
Facts:
The petitioner (a real estate company) was developing a residential housing project named "Project ARETE" in Sector-33, Sohna, Gurugram. Respondent No. 1 (Aditi Chauhan) was allotted a flat in 2015, with possession promised by December 20, 2019.

When the petitioner failed to deliver the unit on time, the respondent filed a complaint seeking a refund of the amount paid (approx. Rs. 48.19 lakhs) plus interest and compensation.

Initial Order: An Adjudicating Officer (AO) of the Haryana Real Estate Regulatory Authority (HARERA) directed the petitioner to refund the amounts with interest and litigation expenses.

Writ Petition Grounds: The petitioner filed this writ petition challenging the AO's order, claiming it was "without jurisdiction" because only the "Authority" (not an AO) has the power to grant refunds. They also sought a waiver of the **"pre-deposit"** requirement mandated for filing an appeal, citing financial inability.

Conclusion

The High Court **dismissed the writ petition**, holding that:

1. **Alternate Remedy:** RERA provides an inbuilt appellate mechanism; therefore, a writ petition under Article 226 cannot be entertained to bypass the statutory appeal process.
2. **No Pre-deposit Waiver:** The financial inability of a promoter does not constitute "genuine hardship" to justify waiving the mandatory pre-deposit under Section 43(5). The court emphasized that the Act's primary scheme is to safeguard home buyers.
3. **Validity of Delegation:** The court upheld the Authority's power to delegate functions to the Adjudicating Officer under Section 81, finding the delegation of execution powers to be within legal bounds.
4. **Final Result:** The petitioner was directed to approach the Appellate Tribunal after complying with the mandatory pre-deposit requirements.
5. If the developer promised a "Luxury Clubhouse" in their brochure (Section 16) but fails to build it, the buyer doesn't just get an apology; they get a statutory right to compensation.

Case Title: M/S G.S. Enterprises Vs. Yogesh Agrawal.

Court: High Court of Madhya Pradesh, Indore Bench.

Citation: Second Appeal 1053 OF 2021

Date: August 29, 2023

Issue: Whether a single member of the Real Estate Appellate Tribunal can pass a final order or if a "Full Coram" is mandatory.

Summary:

An appeal was filed against an order passed by the RERA Appellate Tribunal where the final judgment was delivered by a bench that did not consist of both a Judicial Member and an Administrative/Technical Member. The appellant argued that the Bench was not properly constituted as per the mandatory requirements of the Act.

Held:

The High Court held that Section 43(3) of the Act is mandatory and stipulates that every Bench of the Appellate Tribunal must consist of at least one Judicial

Member and one Administrative or Technical Member. Any final order passed by a single member or an improperly constituted bench is void and lacks legal validity.

Takeaway:

For an order of the RERA Appellate Tribunal to be legally binding, it must be heard and signed by a composite bench of at least two members (one Judicial and one Technical/Administrative).

Case Title: Pacifia Developers Pvt. Limitted & Ors. Vs Adjudicating Officer & Ors.
Court: In the High Court of puc at Ahmedabad-
Citation: C/LPA/1056/2025
Date: September 09, 2025
Issue: (1) Whether the petitioners were entitled to continue enjoying interim protection after withdrawing their writ petition based on the claim that a statutory appeal was pending.
(2) Whether the petitioners intentionally misled the court by stating that a valid statutory appeal had been filed when the mandatory pre-deposit required under Section 43(5) of the RERA Act had not been made.
(3) Whether the petitioners could simultaneously seek to withdraw the Rs. 24 Lakhs deposited to while continuing to enjoy the interim stay upon that very deposit.
Summary
The petitioners challenged a RERA Adjudicating Officer's order through a writ petition, claiming the RERA Appellate Tribunal was not then functional. The Hon'ble High Court granted an interim stay conditioned on the petitioners depositing Rs. 24 Lakhs. The petitioners then sought to withdraw the writ petition, stating they had availed the remedy of a statutory appeal before the now-constituted Tribunal. Based on this representation, the Hon'ble Court extended the interim stay until the Tribunal could hear the appeal. However, it was later revealed that no valid appeal was actually "instituted" or pending because the petitioners had not fulfilled the mandatory pre-deposit condition under Section 43(5) of the RERA Act. Instead, the petitioners filed a new application to withdraw the Rs. 24 Lakhs they had deposited in the High Court, claiming they needed it to make the pre-deposit for the Tribunal.
Held
It was held that without the pre-requisite deposit under Section 43(5), there was no valid appeal in the eyes of the law. It was found the petitioners were guilty of perjury and misrepresentation for misleading their own counsel and the Court to obtain an undue advantage (continuing the interim stay in perpetuity). The Hon'ble Court ruled that the petitioners cannot continue to enjoy the conditional interim order and seek withdrawal of the deposits, simultaneously.

Takeaway
Filing an appeal under Section 43(5) is not complete until the mandatory pre-deposit is made. A mere "inward entry" of an appeal memo does not constitute a valid legal proceeding. Petitioners who misrepresent the status of statutory filings to secure or extend interim stays from High Courts risk being found guilty of perjury. If a stay is granted subject to a financial deposit, that deposit must remain secured as long as the stay is in effect. An allottee/petitioner cannot treat the court registry as a temporary holding account to be withdrawn at will while still demanding protection from the original order.

Case Name: M/s Samiah International Builders Ltd. vs Melrose Avenue Apartment Allottees Association and Anr. (Appeal (D) 21 of 2021)
Court: The U.P Real Estate Appellate Tribunal at Lucknow
Date: 04.10.2021
Issue: (1) Whether the requirement under the proviso to Section 43(5) of the RERA Act is a mandatory prerequisite for the Appellate Tribunal to "entertain" or hear an appeal filed by a promoter.
(2) Whether the Appellate Tribunal possesses the jurisdiction or discretion to waive or reduce the amount of pre-deposit based on the promoter's financial hardship or merits of the case.
(3) Whether the specific clause regarding "30% of the penalty" applies in cases where the Regulatory Authority has only awarded interest/compensation without a formal penalty.
Summary:
The promoter filed an appeal under Section 44 challenging two orders (dated 11.06.2019 and 05.10.2020) passed by UP RERA. The Authority had directed the promoter to complete construction within 60 days, obtain CC/OC, execute conveyance deeds, and pay delay interest. The promoter failed to comply with the pre-deposit requirements of Section 43(5), arguing that the calculation of the award was impossible to determine and seeking an exemption due to potential heavy financial losses. The Tribunal noted that the promoter had not even filed the necessary C.A. Certificate to rectify defects pointed out by the Registry.
Conclusion:
The Appellate Tribunal dismissed the appeal for non-compliance with Section 43(5). The Tribunal held that: the right to appeal is not absolute; it is a statutory right restricted by the conditions laid down in the Act. The pre-deposit is a "condition precedent" that must be fulfilled before an appeal is even physically "presented" or heard. The Tribunal has no discretion to reduce or waive the pre-deposit. The wording "shall not be entertained" creates a mandatory bar against examining even the "merits" of a defective appeal until the deposit is made. Since no "penalty" was imposed, the promoter was required to deposit the total amount (100%) to be paid to the allottee, including interest and compensation. Financial hardship or the "merit" of the original order cannot be considered as grounds for waiver.
Takeaway:

The phrase "shall not be entertained" in Section 43(5) prevents the Tribunal from even processing the appeal. A promoter must "first deposit" the amount to unlock the jurisdiction of the Tribunal. The Hon'ble Tribunal views the pre-deposit as a reasonable restriction intended to protect the consumer's interest and prevent frivolous appeals from delaying justice. Failure to deposit the determined amount, or even failure to provide the C.A. Certificate to help determine that amount, leads to an automatic dismissal of the appeal as "non-maintainable."

Pawan Kumar Aggarwal v. State of Haryana (2020 SCC OnLine P&H 878)

Facts

Petitioner Pawan Kumar Aggarwal challenged the constitution and functioning of the Haryana Real Estate Appellate Tribunal ("REAT") under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"). In particular, he contended that the Tribunal had been improperly constituted – effectively as a single-member tribunal – contrary to the multi-member structure mandated by law. He sought to invalidate decisions of the REAT on the ground that its Chairperson and Members were not appointed in accordance with the statutory scheme (especially Section 21 of the RERA Act). (The petition was heard by a Division Bench of the Punjab & Haryana High Court.)

Legal questions

The key questions were: (i) whether Section 21 of the RERA Act – which provides for a multi-member **Regulatory Authority** – had any bearing on the constitution of the **Appellate Tribunal**, and (ii) whether the Chairperson and Members of the REAT had been appointed in compliance with the RERA Act (in consultation with the Chief Justice of the High Court and by a proper selection committee) so as to ensure the Tribunal's independence. In essence, the petitioner argued that the REAT was not properly constituted and thus lacked jurisdiction, and that the appointment process violated constitutional principles of tribunal independence.

Case Title: M/s Paratus Real Estate Private Limited vs Amit Kumar Garg and Others
Court: High Court of Uttarakhand at Nainital
Citation: 2025:UHK:8408
Date: September 19, 2025
Matter:

The case originated from an order passed by the Real Estate Regulatory Authority (RERA), Dehradun, on March 28, 2025.

The promoter (Ms Paratus Real Estate) was directed to refund a total of Rs. 22,69,159 (comprising two amounts of Rs. 17,40,000 and Rs. 5,29,159) to the

allottee, Amit Kumar Garg. The refund was to be paid with **11.10% interest** from the dates the payments were originally made.

The promoter attempted to appeal this, arguing that the allottee had failed to pay EMIs and therefore they should only be required to deposit the minimum **30%** to have their appeal heard.

The Uttarakhand Real Estate Appellate Tribunal had ordered the promoter to deposit **50% of the amount** as a condition precedent for hearing the appeal.

The High Court upheld this 50% requirement based on the following:

- **Discretionary Power:** Under **Section 43(5)** of the RERA Act, the Tribunal has the power to demand at least 30% of a penalty or "such higher percentage as may be determined".
- **Strict Interpretation:** The Court held that RERA must be **construed very strictly** because it was enacted specifically to safeguard the interests of consumers and ensure "speedy dispute redressal".
- **Legality:** The Court found "no illegality" in the Tribunal's decision to set the deposit at 50% rather than the 30% requested by the promoter, dismissing the promoter's petition entirely.

Conclusion: the Tribunal's right to demand at least 50% and refused to lower it to 30%, reinforcing that the developer cannot seek the "minimum" as a matter of right when consumer interests are at stake

Case Title: M/s Newtech Promoters and Developers Pvt. Ltd.
Court: Supreme Court of India
Citation: (2022) 2 SCC 655
Date: November 11, 2021
Matter:

A plot was allotted however promoter failed to handover the possession. Hence, complaints were instituted by the homebuyers for refund of investment made along with interest.

Initial Order: Promoters directed to refund the principal amount along with interest.

The said order was appellable under Section 43 (5) of the Act and provided pre-deposit before Appellate Tribunal, however the promoter approached High Court instead and filed a writ petition questioning the order's authority being without jurisdiction, especially the said order was passed by single member.

Relevant Paragraph

"122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted."

"127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him."

"128. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregulatity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for re-appraisal pf the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage."

"136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question."

"137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of predeposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

Key takeaway: The courts have shifted the burden of financial risk onto the promoter. By requiring a **100% pre-deposit**, the law ensures that promoters cannot use the appellate process as a stalling tactic, and that the "decree" are secured for the homebuyer while the legal battle continues.

Case Title: R.R Enterprises and Anr. vs Karnataka Real Estate Regulatory Authority and Ors.
Court: Karnataka Real Estate Appellate Tribunal
Citation: (2025) ibclaw.in 549 REAT
Date: November 04, 2025

Issue: Whether the appellant assigned just and proper reasons to waive the pre-deposit, as contemplated under Section 43(5) of the Act.

Matter:
A real estate project "Roshan Platinum Apartment" is developed and allotted an apartment, wherein a complaint was filed for the relief of interest on delay period, registration of flat, possession with completion and other interior works along with OC.

Initial Order: Complaint was allowed.

Appeal:
The Developer challenged the said order and preferred an appeal without depositing full amount as per Section 43(5) of the Act.

The Developer argued that the 1st Appellant had acquired development rights over land at Arekere Village through a Joint Development Agreement, under which the developer was entitled to 62% and the landowners 38% of the developed area. The Allottee claiming rights over an apartment falling in the landowners' share, filed a complaint before the Authority. The Appellants contended that no contract existed between them and Allottee, and therefore no liability arose. They further contended there is no laches on their part. Since the proposed flat was allotted to the share of the Land Owner, she too required

to deposit rest of the amount and thereby sought permission of the Tribunal to prosecute the matter."

Conclusion:

Case Title: Mrs. Sangeeta Kumar And Another vs Laureate Buildwell Pvt. Ltd. Thru its Director And Another
Court: Allahabad High Court (Lucknow Bench)
Citation: 2025:AHC-LKO:64542
Date: October 15, 2025
Issue: Whether the order passed by a Bench comprising of Chairman and a Judicial Member would be a proper "Tribunal" in terms of the prescription contained in Section 43 (3) of the Real Estate (Regulation and Development) Act, 2016.
Matter:

- The appellants, **Mrs. Sangeeta Kumar and another**, had booked a unit with **Laureate Buildwell Pvt. Ltd.**
- A dispute arose regarding possession, delay, and obligations under the builder-buyer agreement.
- The matter was first decided by the **U.P. Real Estate Regulatory Authority (RERA)**, and later appealed before the **U.P. Real Estate Appellate Tribunal**.
- The Tribunal passed an order on **07 May 2024** in *Appeal No. 142/2020*, which the appellants challenged before the Allahabad High Court (Lucknow Bench).

Conclusion

- The High Court upheld the Tribunal's order.
- It held that **RERA is a special legislation** enacted to protect homebuyers, and its statutory remedies **prevail over contractual terms**.
- The Court rejected the challenge to the Tribunal's constitution, affirming that its proceedings were valid and binding.
- The appeal was dismissed, reinforcing that **buyers cannot be deprived of RERA protections by contractual clauses drafted by builders**.

Section 44:

Application for settlement of disputes and appeals to Appellate Tribunal:

(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

Case Title: Rise Projects Pvt. Ltd. vs Anupama Chaturvedi
Court: The U.P Real Estate Appellate Tribunal
Citation: Appeal- 546/2023
Date: May 07, 2025
Issue: (1) Whether the Adjudicating Officer had the legal authority (jurisdiction) to grant interest for a delayed project, or if such relief should have been sought before the Regulatory Authority instead.

Matter:

1. A scheme was launched namely “Organic Homes” at Plot No.- GH-1, H-Block, Jaipuria Sunrise Greens, Opposite Columbia Asia Hospital, NH-24, Ghaziabad (UP) wherein a unit was allotted and sale consideration was paid and promised possession date was 18.01.2020, however the said promise along with valid OC/ CC is not fulfilled.

2. The allottee has not withdrawn from the project and promoter is liable to pay interest as per section 18(1) of the Act.

3. The Adjudicating Officer (AO) had initially passed an order on 06.10.2022, granting delay interest to the allottee

Conclusion:

It was determined (and conceded by both parties) that the Adjudicating Officer lacked jurisdiction to grant delay interest; this power lies with the Regulatory Authority. Consequently, the AO's original order was set aside and quashed.

Despite the jurisdictional error by the AO, the Tribunal decided to settle the dispute directly rather than remanding it, as the fact of the delay was undisputed.

Final Directions:

The respondent is entitled to delay interest starting from January 18, 2020, until the date a valid offer of possession (with OC/CC) is made excluding 06 months force majeure period due to COVID-19 Pandemic within 45 days.

Section 58

(*1*) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—The expression "High Court" means the High Court of a State or Union Territory where the real estate project is situated.

(*2*) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

100. Second appeal— (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]

4(2)(l)(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and achartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schduled to the Reserve Bank of India Act, 1934;

Case Title: Gujarat Real Estate Regulatory Authority (RERA) vs. Satyam Infracon
Court: High Court of Gujarat — *R/RERA Appeal No. 1 of 2020*
Judgment Date: *9 March 2021* (Gujarat High Court
Issue: Whether the Gujarat Real Estate Regulatory Authority (RERA) — a statutory public authority — is a "person aggrieved" under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and therefore entitled to file an appeal before the High Court against an order of the Appellate Tribunal.
RERA Authority passed an order that was challenged by **Satyam Infracon** before the Appellate Tribunal under Section 44 of the RERA Act.
The Appellate Tribunal allowed Satyam Infracon's appeal and granted relief.
RERA Authority then filed an appeal before the **Gujarat High Court** under Section 58 of the RERA Act read with Section 100 of the Civil Procedure Code.
Satyam Infracon contested the maintainability of RERA Authority's appeal, arguing that RERA is *not* a "person" under Section 58 and therefore has no right to appeal.
Definition of "Person" Includes RERA Authority

- Section 2(zg) of the RERA Act defines "Person" to include a *company*.

- Section 2(o) defines “company” to include “a public authority established by the Government in this behalf under any law for the time being in force.”
- RERA Authority is a statutory public authority, set up by the Government under the RERA Act.
- Therefore, the term “person aggrieved” in Section 58 **includes RERA Authority**.

2. RERA Authority Can Appeal

- Since RERA Authority qualifies as a “person aggrieved,” it can appeal against an Appellate Tribunal order under Section 58 before the High Court.
- RERA’s functions under the Act include safeguarding interests of homebuyers and regulating real estate projects. Denying it the right to appeal would undermine this role and lead to inconsistent outcomes — e.g., RERA can be heard in appeals to the Appellate Tribunal but not challenge adverse decisions.

Court’s Reasoning

The judgment emphasized:

- The purpose of the RERA Act (protection of homebuyers and regulation of the real-estate sector).
- RERA’s statutory role and powers (Sections 20, 32, 34, 38, etc.).
- Legislative intent showing that the Authority should be able to enforce compliance and uphold decisions that align with the Act’s objectives.