RERA NEWSLETTER

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Real Estate (Regulation and Development) Act, 2016

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"The RERA Newsletter"

THE RERA NEWSLETTER

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❑ Toxic Contracts and Refund Denial Continue Despite RERA

RERA came into effect four years ago with genuine hopes and reliefs to the consumers. The Act seeks to protect consumer interest and establishes an adjudicating mechanism for speedy resolution of buyer-builder disputes. At the time of coming into effect, the Act was hailed as a path-breaking legislation that would elevate the bargaining status of homebuyers to a level where they could stand their ground against rich and powerful builders.

Maharashtra was the first Indian state to set up the Maharashtra Real Estate Regulatory Authority (MAHA RERA) to implement the provisions of the Act. MAHA RERA has a dedicated website where the homebuyers can lodge online complaints; view rulings passed by MAHA RERA or by the Maharashtra Real Estate Appellate Tribunal; keep an eye on the registered projects and documents submitted by builders to MAHA RERA at the time of obtaining registration; among other things.

Two particular issues have long-troubled homebuyers and triggered the coming into being of the Act: toxic contracts and denial of refund. Needless to say, the bargaining power between a homebuyer and a large real estate corporate is disproportionate, immoral, and unconscionable. As aptly spelt out by the Bombay High Court while upholding the constitutionality of the Act in the case of ***Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India (2017)***, the idea behind the Act was to prevent builders from incorporating invariably one-sided terms and conditions in Sale Agreements and leaving individual purchasers with not much of a choice but to sign the agreement.

Pertinently, the Act and the Regulations made thereunder do provide for templates of contractual documents to be used by the builder at the time of concluding a sale transaction. The Regulations also provide (as Annexure A) for a sample template of the Agreement for Sale to be used by builders. Some minor lapses aside, the terms and conditions incorporated in the

template broadly balance the rights and obligations between the builder and the homebuyer.

But with all said and done, the implementation of the law became a problem.

Upon a quick examination of the templates uploaded by some builders in Maharashtra, it is learnt that the builders continue to subject homebuyers to unreasonable and one-sided terms and conditions. The terms and conditions specified under the Regulations are not used in the template uploaded on MAHA RERA's website, or are used only selectively. This is alarming because MAHA RERA is duty-bound to peruse the contract templates submitted by the builders at the time of seeking registration of projects and ensure that they are in line with the Regulations, before granting approval of plans. In fact, failure to comply with the Regulations is also valid ground to cancel registration or approval of projects.

MAHA RERA's failure to take prompt action against builders for non-compliance with the contract templates stipulated under the Regulations has caused much hardship to homebuyers. In practice, at the time of booking, homebuyers are asked to complete and sign a "take-it-or-leave-it" Application Form and pay the booking amount. The Application Form contains numerous terms and conditions that are completely one-sided and almost each term and condition lean in favour of the builder and at the cost of the rights of the homebuyer. The most concerning of all is the right of the builder to unilaterally cancel the transaction and forfeit the earnest money paid by the homebuyer in the event that the homebuyer fails to purchase the property. Rarely is the homebuyer provided with a sample of the Agreement for Sale at the stage of submission of Application Form or, even at the time of payment of booking amount.

Following the signing of the Application Form, a further demand for payment is raised, which, combined with the booking amount, comprises 10% of the total sale consideration of the unit. Pertinently, as per the Act, executing and registering the Agreement for Sale is a pre-condition to the builder raising demands for further sum of monies from the homebuyer in respect of the transaction. Soon thereafter, an Allotment Letter is sent to homebuyers asking them to come forward and complete the registration process within a period of 30 days from the date of such allotment.

Usually, the Allotment Letter imposes a "burden of refusal" on the homebuyer and is deemed to be accepted if the homebuyer does not respond within the stipulated timeline, which is often less than two weeks.

This is concerning because the terms and conditions of the Application Form are repeated, and the homebuyer has no option but to accept allotment. The Allotment Letter notes that homebuyers must come forward and complete the registration process within 30 days from the date of

receipt of the Allotment Letter. In some cases, builders would simply send a template of the Agreement for Sale which does not contain the relevant annexures or contains incomplete details of the homebuyer and the property. The problem becomes more significant when builders fail to send or make a delay in sending the Agreement for sale to homebuyers.

There may be circumstances due to which homebuyers do not want to proceed with the transaction (such as inability to arrange funds), or homebuyers would like to modify the terms of the Agreement for Sale. In both cases, builders threaten homebuyers to complete the registration or face forfeiture of advances paid.

Worse, homebuyers are often cajoled to pay the stamp duty before executing the Agreement for Sale so that they do not cause nuisance at the negotiating table in the future. This entire process puts the builder is an advantageous and dominating position through and through. What follows are relentless requests for payment of stamp duty and registration of the one-sided Agreement for Sale.

As per the Act, the homebuyer gets 45 days (including a 15-day reminder) to complete the registration process and in case homebuyer does not do so, the builder is obliged to return all monies and advances to the homebuyer, including the booking amount. A quick perusal of the draft Agreement for Sale uploaded on the MAHA RERA's website reveals that some builders have skipped this clause in their Agreements, for reasons best known to them.

MAHA RERA is now seen as a toothless body that has, at times, failed to enforce its own orders. In the past, MAHA RERA has refused to admit buyer-builder disputes on the ground that the homebuyer had already sought relief under the Consumer Protection Act. MAHA RERA has also unlawfully refused to entertain refund requests from homebuyers stating that the Act provides no powers to the Authority to grant refund in certain situations. In some cases, MAHA RERA rebuked homebuyers for approaching consumer courts for reliefs instead of approaching the Authority. In some cases, complaints are not listed for hearing for months. Orders passed by MAHA RERA are not adhered to by builders and the Authority has washed its hands off stating it is incapable to order execution. The Chairman of the Authority does not have judicial experience and as a result settled legal principles are not given heed to.

As the buyers of the property are often left at the mercy of the builders, it is hoped that this practice changes.

❑ Uttar Pradesh RERA to organise National Lok Adalat on July 10

Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) under the guidance of U.P. State Legal Services Authority has decided to organise the

National Lok Adalat via online medium at Lucknow headquarters and regional office in Greater Noida on 10 July 2021 to resolve disputes of homebuyers.

The first Lok Adalat was slated to be on 10th April 2021, but was postponed keeping in mind the effects of the second wave of Covid-19.

Anand Shukla, legal advisor, UP-RERA has been appointed as the nodal officer for organising Lok Adalat.

Complaints filed before the authority under Section 31 of the RERA Act in which mutual agreement, conciliation is possible, or an application for agreement has been filed by a party will be taken up.

Prevailing and pending cases in front of the Conciliation Consultant of RERA in which settlement is possible on the basis of the reconciliation agreement or a party has filed an application for agreement will also be taken up.

Rajesh Kumar Tyagi, secretary, UP-RERA said, *"Through Lok Adalat, homebuyers will get the opportunity for transparent amicable settlement and speedy disposal of their cases. The Lok Adalat will hear the same cases where settlement is possible on the basis of reconciliation agreement and the cases which have been pending for a long time."*

❑ Seeking indiscriminate extension of project timelines from RERA is not the builders' birthright: homebuyers' body

It's been five years since the Real Estate (Regulation and Development) Act was implemented but till date less than 10% of the ongoing real estate projects that were registered under the Act have been delivered as developers have all along asked for extension in project timelines, said Abhay Upadhyay, president Forum for People's Collective Efforts.

"Getting RERA timelines extended is not the builders' birthright at homebuyers' cost. Granting indiscriminate extension in timelines without taking the opinion of homebuyers, without sufficiently compensating them is unfair," he said at a seminar titled 5 Years of RERA and the Way Forward.

FPCE, an umbrella body of homebuyers, recently won a case against the West Bengal government which had notified its real estate law, HIRA, in contravention of the Central Act. The Supreme Court had termed the West Bengal law unconstitutional.

Reflecting on the areas where RERA has been successful and where it had failed, he said that while 64,000 projects getting registered across the country in the last five years was a 'good sign', the legislation had not lived up to homebuyers' expectations when it came to execution of RERA

authority orders as many buyers were not getting back the refund due to them.

The fact that 65,000 projects have been registered under RERA means that they are now in some form of legal net which was not existent earlier. This has proved to be beneficial. Post RERA, builders cannot collect more than 10% at the time of booking. The law has linked construction with payment schedule. This is another big change brought about by the legislation.

Fund diversion too has been checked to a large extent. Also, filing a complaint has been made simple. The fact that 64,000 cases have been disposed of is also positive news.

"Earlier getting a date after more than nine months was a task in itself. Now, several buyers have received a favourable order in a matter of six months but the biggest challenge that remains is the execution of RERA orders," he adds.

Very few refund orders issued by RERA Authorities have been executed, he said.

Legal experts said that most states have a concept of legislation of public demand recovery in place. Under that once a buyer has received a recovery certificate, the designated court has the power to enforce the RERA recovery certificate and issue a notice to the builder. If that is not adhered to, the court can get his assets attached.

"It's time a separate recovery officer is appointed in the district magistrate's office who can recover the amount on behalf of the homebuyers in a time bound manner," explained Devashish Bharuka, Supreme Court advocate, who had represented homebuyers in the West Bengal's Housing Industry Regulation Act (WBHIRA) matter.

The Supreme Court on May 4 struck down WBHIRA 2017, the law regulating West Bengal's real estate sector, saying it was 'unconstitutional' as it creates a parallel regime and is in direct conflict with the Centre's Real Estate (Regulation and Development) Act (RERA).

Upadhayay also questioned the RERA authorities about introducing new concepts that were beyond the legal framework of the law, rather than focusing on providing relief to homebuyers.

He pointed out that setting up of Conciliation Forums, self-regulatory organisations and rating of projects was uncalled for and unnecessary. *"If builders are not following orders of RERA authorities, how are they expected to follow orders of conciliation forums,"* he asked.

The Maharashtra Real Estate Regulatory Authority (MahaRERA) had issued a circular in 2019 that developers have to register with its approved Self-Regulatory Organisations (SRO) before applying for MahaRERA registration for residential projects.

"There is nothing in the Act that can be registered except for real estate projects or agents. There is no provision to register anything other than this," Upadhyay said.

Commenting on Uttar Pradesh Real Estate Regulatory Authority (UP RERA) plan to start grading projects and developers based on various parameters such as financial quality, organizational structure and certifications, track record, compliance adherence and customer feedback, he said that a regulatory body cannot be associated with rating of any project.

On the way ahead, he said that RERA Authorities would have to become proactive. They have been given sou motu powers (on their own without receiving any formal complaints) under Section 7, 35 and 38 of the Act. "That power needs to be put to use."

If RERA orders are not being obeyed, Authorities have been given powers under Sections 59, 63 and 64 to penalise builders. How many orders have been passed until now penalizing the builders where the penalty is as high as 5% to 10% of the project cost. Why has this section not being evoked until now, he asked.

"RERA Authorities have to meet the expectations of homebuyers they have to start asserting themselves. Five years is enough time for any regulatory body to prove effective," he said.

According to statistics made available by the ministry of housing and urban affairs, as many as 30 states/ UTs have set up RERA, 28 have Appellate Tribunal and 27 Regulatory Authorities have operationalized their websites. A total of 63,583 real estate projects and 50,256 real estate agents have been registered and 66,779 cases have been resolved under RERA.

❑ 32 Properties Sealed in Noida, Money Will Be Used To Refund Homebuyers

The Noida administration has sealed properties worth Rs 344 crore in 32 builder projects. These properties will now be put under the hammer and the money earned from it would be handed over to UP-RERA. The regulatory authority will, in turn, use the amount to refund buyers.

Some of the developers whose properties were sealed on Wednesday were Sikka Group, Ajnara, Supertech, Rudra Buildwell and Antriksh. UP-RERA had issued recovery notices against these properties. This money would be used to refund buyers in cases where RERA has issued refund orders but they have not been honoured by the defaulting builders.

"We will auction these properties online through a government approved platform. The collected funds will be handed over to UP RERA which can then pay off the buyers seeking refund. The total valuation of the seized property is

Rs 344.23 crore. We have sealed property at 32 builder projects," district magistrate of Gautam Budh Nagar, Suhas LY said.

"The recovery notices were sent to the district administration. If the defaulters had the funds, they would have paid them directly. But since they are cash-strapped, the builders have pledged their property as collateral. It would now be auctioned for recovery. Once we get the funds, we will facilitate the refund," said Rajesh Kumar Tyagi, the UP RERA secretary.

"Some builders handed over a number of flats, while others were given the entire towers, depending on how much they owe in terms of refund. The administration will now help liquidate these so we can execute the refunds. The entire process will take a few months," UP RERA member Balvinder Kumar said.

❒ Compliances under RERA

Quarterly compliances under the Rules

RERA aims to make promoters answerable and liable for their actions at every stage of the project.

Brief about some quarterly compliances provided for under the RERA rules of each state and union territory.

Sr. No.	State/ Union Territory	Additional Quarterly Compliances under the RERA Rules
1.	Andhra Pradesh	• The promoter must provide the status of construction of each floor, each building, the internal infrastructure and common areas, with photographs. • The promoter must provide information as regards the (i) expected date of receipt of the approvals applied for; (ii) approvals to be applied and the date planned for application; and (iii) modifications, amendments or revisions, if any, issued by the competent authority with regard to any license, permit, approval.
2.	Assam	
3.	Chhattisgarh	
4.	Gujarat	
5.	Karnataka	
6.	Mizoram	
7.	Tamil Nadu	
8.	Uttar Pradesh	
9.	Haryana	• Same as serial nos. (1) – (8). • However, the promoter is not required to provide the status of construction of each floor.

9.	Kerala	● Same as serial nos. (1) – (8). ● The promoter must also provide details of the application for occupancy certificate or completion certificate submitted to the competent authority including the date of submission and expected date of clearance.
10.	Maharashtra	● The rules merely state that the authority shall ensure that the information provided by the promoters under the provisions of RERA shall be updated at the interval of every quarter. ● The rules do not specifically require a promoter to provide quarterly updates, in addition to those stipulated under RERA, in respect of the status of the project, construction and approvals.

▫ ***Disclaimer:***

The content of this article is intended to provide a general guide to the subject matter. Every effort has been made to keep the information cited in this article error-free. Suggestions and feedback to improve the task are welcome. The article and opinions therein are based on my understanding of the law and provisions prevailing as on date.

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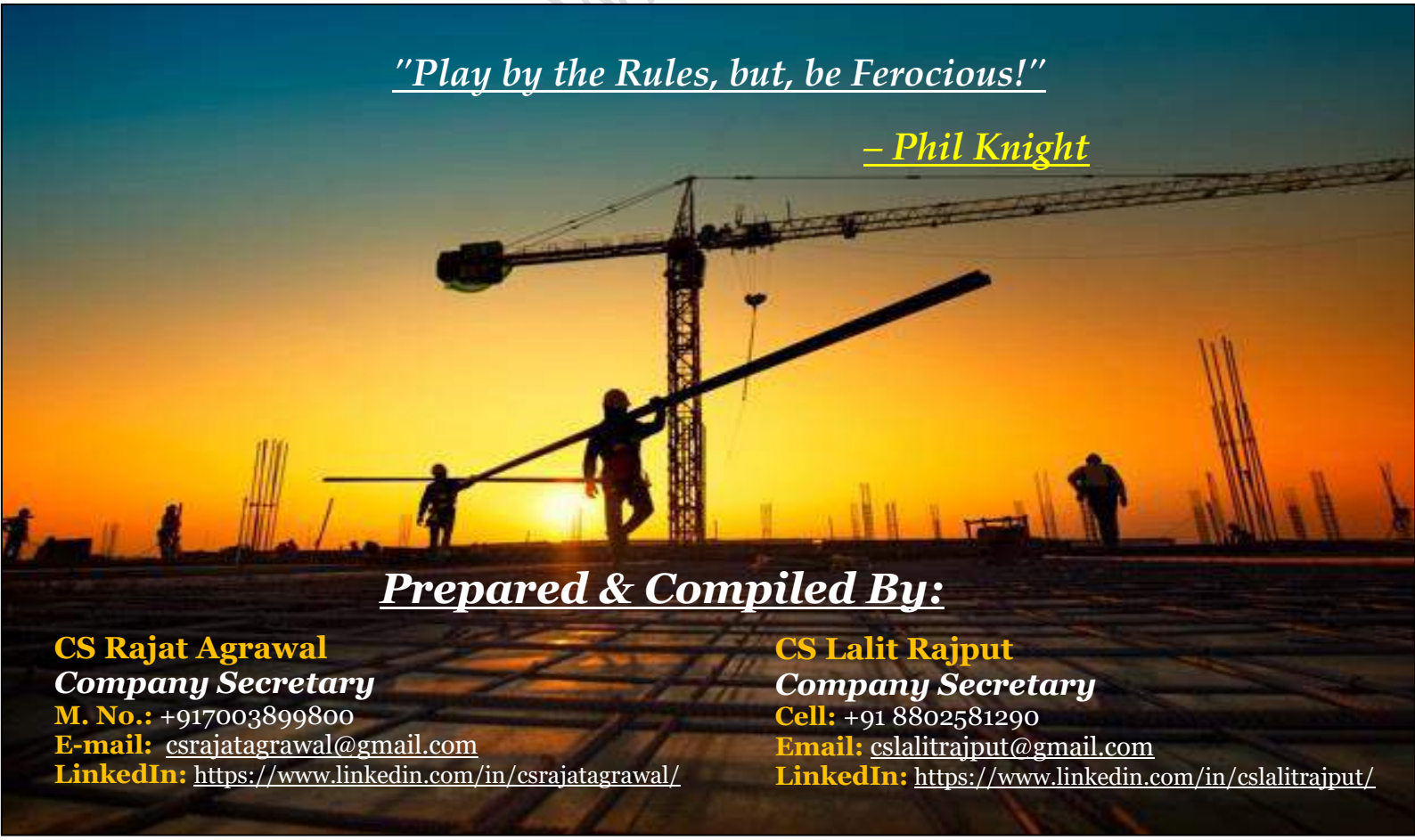

"Play by the Rules, but, be Ferocious!"

– Phil Knight

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