

LANDMARK JUDGEMENTS ON RERA

BY

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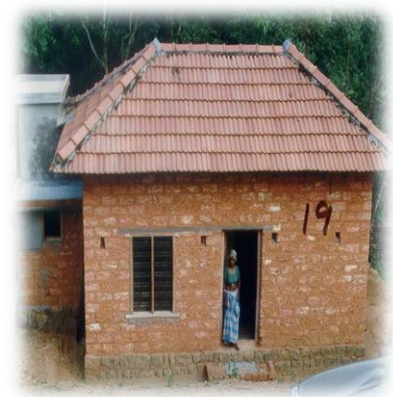


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LANDMARK JUDGEMENTS ON RERA

AGENDA

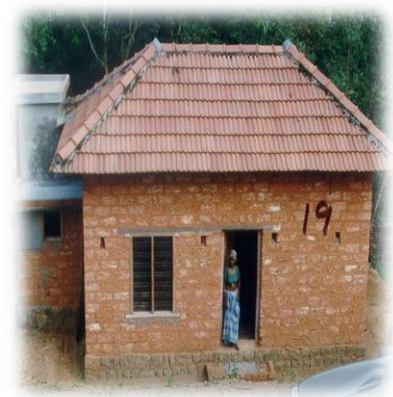
- Constitutional Validity of RERA by SC & HC
- RERA Registration & Exemption of Projects
- Applicability of RERA on lease & Industrial
- Accountability of Professionals
- Complaints of Un-regd Projects to be heard.
- Display of Plans at site By SC
- Int & Refund on Delayed Possession
- RERA to supersede of one side Agreement
- Constitution of Appellate Tribunal



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SUPREME COURT OF INDIA

on Constitutional Validity of RERA

Nearly 40 petitions in different High Courts.

**Union Govt filed a Transfer Petition (Civil)
Nos. 1448- 1456 of 2017**

Held :

- (1) The Bombay High Court to hear all the petitions**
- (2) Decide the petitions within 2 months**

BOMBAY HIGH COURT WP 2737 of 2017
on Constitutional Validity of RERA

• **Neelkamal Realtors Suburban Pvt. Ltd.**

Vs.

Union of India and ors.

• **Held on : DECEMBER 06, 2017**

Challenged :

**(1) RERA violative of the provisions of
Articles 14, 19(1)(g), 20 and 300-A of the
Constitution of India.**

(2) Most of the sections of RERA

BOMBAY HIGH COURT WP 2737 of 2017

on Constitutional Validity of RERA

- **Held :**
- **All the provisions of RERA constitutionally valid and directed to register the on going projects and comply with RERA.**
- **Section 6 regarding extension of the registration as against one year, the RERA to decide on case to case basis.**
- **Appellate Tribunal U/s 43 to have two judicial members as against earlier one.**

SUPREME COURT :WP 43 OF 2019

- **Newtech Promoters and Developers Pvt Ltd.
Vs**
- **UP State RERA & Others**
- **Order Dated: 11th November, 2021**
- **Challenged by the Promoter on various aspects of RERA working including jurisdiction, Prov to section 43(5)-pre-deposit etc.**

SUPREME COURT :WP 43 OF 2019

1. INTRODUCTION

A three-judge bench of the Hon'ble Supreme Court of India (the "**Court**") recently passed a judgment dated 11th November 2021¹ (the "**said Judgement**")

Dealing with various afflicting practices of the promoters and builders, and further clarified the existing inconsistencies within various provisions of the Real Estate (Regulation and Development) Act, 2016 ("**the Act**").

SUPREME COURT :WP 43 OF 2019

2. BACKGROUND

A complaint was instituted by the homebuyers and allottees before the Uttar Pradesh Real Estate Regulatory Authority (the "**Authority**") for refund of their investment amount along with interest under Section 31 of the Act as the promoters had failed to hand over the possession of the units to the allottees in accordance with the home buyers' agreements.

Accordingly, an order was passed to refund the principal amount along with interest (MCLR + 1%) as prescribed under the Act.

SUPREME COURT :WP 43 OF 2019

2. BACKGROUND

However, aggrieved by the aforesaid order, the promoters took an unconventional step and filed an appeal before the High Court of Allahabad under Articles 226 and 227 of the Constitution of India instead of filing an appeal under Section 45(5) of the Act and contended that the order of refund was passed by the single member of the Authority without jurisdiction. The promoters also questioned the pre-requisite of deposit of the amount as necessitated under Section 43(5) of the Act. However, the writ petition was dismissed by the High Court of Allahabad and therefore, the present appeal was filed by the promoters before the Court.

SUPREME COURT :WP 43 OF 2019

3. ISSUES i) Whether the Act has a retroactive application? ("**Issue 1**");
- ii) Whether the Authority has power to pass an order directing the builders to refund the amount to the allottees under Sections 12, 14, 18 and 19 of the Act? ("**Issue 2**");
- iii) Whether the Authority has the power under Section 81 to delegate its function of hearing of complaints? ("**Iss: 3**");
- iv) Whether the pre-condition of pre-deposit mentioned under Section 43(5) of the Act in relation to right of appeal is valid? ("**Issue 4**");
- v) Whether the Authority has been vested with the power to issue recovery certificate for retrieval of the principal amount? ("**Issue 5**").

SUPREME COURT :WP 43 OF 2019

4. ISSUE 1: RETROACTIVE APPLICATION OF THE ACT

4.1 Whether the Act has retroactive or retrospective effect and what will be its legal consequences if tested on the anvil of Constitution of India?

It was observed by the Court that the Act is not retrospective in nature because it affects the existing rights of the persons mentioned in the Act like promoters, allottees etc. The intent of the legislature was to bring all "ongoing projects"² which commenced prior to the Act and for which the completion certificate had not been issued, under the ambit of the Act.

SUPREME COURT :WP 43 OF 2019

5. ISSUE 2: POWERS VESTED WITH THE AUTHORITY

5.1 Whether the Authority has power to pass an order directing the builders to refund the amount to the allottees under Sections 12, 14, 18 and 19 of the Act or does such a power exclusively vest with the adjudicating officer under Section 71 of the Act?

In view of the legislative intent of the Act, the Court held that the power is vested with the Authority to deal with issues relating to refund of the investment amount or interest on such refund.

SUPREME COURT :WP 43 OF 2019

5. ISSUE 2: POWERS VESTED WITH THE AUTHORITY

However, if any complaint pertains to compensation and interest thereon, the adjudicating officer under the Act will have the power to deal with such cases. If adjudication other than compensation as envisaged under Sections 12, 14, 18 and 19 of the Act is extended to the adjudicating officer, it may expand the ambit and scope of powers and functions of the adjudicating officer under Section 71 of the Act, and that would be in contravention of the Act.

SUPREME COURT :WP 43 OF 2019

6. ISSUE 3: POWER OF AUTHORITY UNDER SECTION 81 OF THE ACT

6.1 Whether the Authority under Section 81 of the Act has the power to delegate its function of hearing of complaints under Section 31 of the Act to a single member?

If the power under Section 81 of the Act has been delegated by the Authority, then such action, if being exercised by a single member cannot be said to be outside the provisions of the Act.³ However, the same power to delegate under Section 81 shall exclude making regulations under Section 85 of the Act.

SUPREME COURT :WP 43 OF 2019

7. ISSUE 4: VALIDITY OF PRE-DEPOSIT UNDER SECTION 43(5)

7.1 Whether the pre-condition of pre-deposit mentioned under Section 43(5) of the Act for dealing with substantive right of appeal is valid in the eyes of law?

The Court held that the question of discrimination between allottees and promoters does not arise as they fall under distinct and different categories or classes. The deposit of amount equivalent to 30 percent of penalty by the promoter while preferring an appeal shall avoid uncalled litigation at the appellate stage and shall further safeguard the amount to be recovered for the allottee in case the appeal fails at a later stage. The intention of the legislation is that the promoters ought to show their bona fide intentions by depositing the amount so contemplated and avoid frivolous appeals

SUPREME COURT :WP 43 OF 2019

8. ISSUE 5: POWER OF AUTHORITY TO ISSUE RECOVERY CERTIFICATE

8.1 Whether the Authority has been conferred power under Section 40(1) of the Act to issue recovery certificate for retrieval of the principal amount?

The Court observed that there exist visible inconsistencies in the powers of the Authority regarding refund of the principal amount under Section 18 of the Act and the text of the provision by which such refund can be referred under Section 40(1) of the Act. If Section 40(1) is strictly construed, it would defeat the purpose of the Act. The Court held that there exists ambiguity in Section 40(1) of the Act and the same must be harmonized with the purpose of the Act. It was further clarified that the amount which has been determined and refundable to the allottees is recoverable within the ambit of Section 40(1) of the Act.

SUPREME COURT :WP 43 OF 2019

- **Pioneer Urban Land and Infrastructure Ltd**
Vs
- **Union of India & Others**
- **Order Dated: 9th August, 2019**
- **Challenged Home Buyers as Financial Creditors under IBC, 2016 while RERA in place.**
- **Held :**
- **The Amendment to the Code include Home Buyers as financial creditor u/s 5(8)(f) does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.**

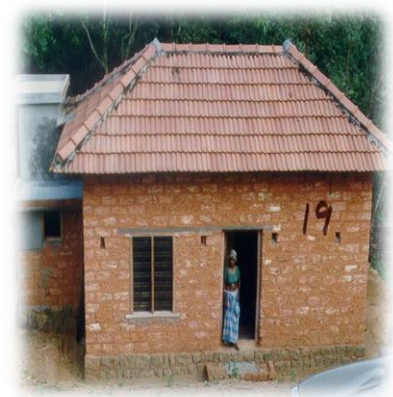
SUPREME COURT : WP 43 OF 2019

- **Held :**
- **The RERA is to be read harmoniously with the Code**
- **In the event of conflict that the Code will prevail over the RERA.**
- **Concurrent remedies to Allottees:**
 - (a) Consumer Protection Act, 1986,**
 - (b) RERA**
 - (c) Triggering of the Code.**
- **Directed the Chief Secretaries of all the states/ UT to appoint Permanent Authority/Tribunal in 3 months as per RERA.**

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MAHAREAT Appeal in Complaints

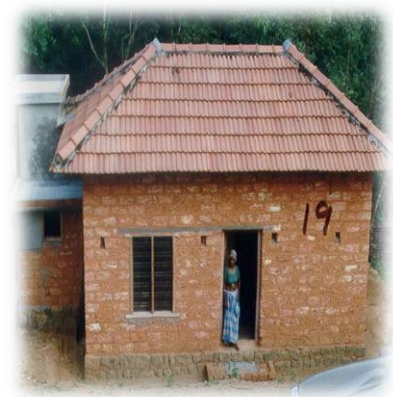
No. SC1 0000672 & SC1 0000691

- **M/s Geetanjali Aman Constructions**
- **Vs**
- **Hrishikesh Ramesh Paranjpe & others**
- **Appellants had not registered the project.**
- **The area of plot is 382 sq.mtrs. and project consists of twenty two flats and nine shops**
- **Two members held: The exemption is for projects of 500 sq.Meters or 8 units ..Need not register the project with MahaRERA.**
- **Other member held: 500 sq.Meters is for plots and units are for buildings... so liable for regn.**

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**BOMBAY HIGH COURT :
CIVIL APPLN .683 OF 2018**

- **Lavasa Corporation Limited**
- **Vs.**
- **Jitendra Jagdish Tulsiani & others**
- **Held that: Long term lease of '999 years', it would definitely amount to sale and is thus covered under RERA.**

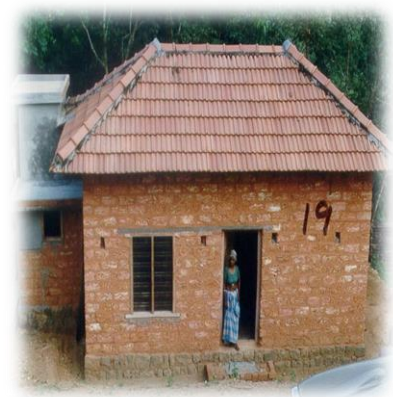
MAHARERA Complaint No: -78620

- Techno Dirive Engineer Pvt Ltd
- **Vs**
- Renaissance Indus Infra Pvt Ltd
- Coram: Hon'ble Shri. B.D.Kapdanis
- Date: 26th November, 2019
- MahaRERA regn No. p51700010971
- Held :
- **RERA is not applicable to Industrial units as the definition of apartment in RERA does not include industry as against definition flats under MOFA which includes industry.**

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• **BOMBAY HC :2nd APPEAL 13781 OF 2018**

- **M/s Sea Princess Realty] Vs Allottees**
- **Project : Gundecha Trillium**
- **Possession Date : 31st December, 2016**
- **MahaRERA order: 16.01.2018,**
Decided : Int for 6 months
- **MahaREAT order : 4th April, 2018,**

**Decided : (1)Conducted joint inspection &
(2) allowed interest for 1 year and
(3) Action against Architect**

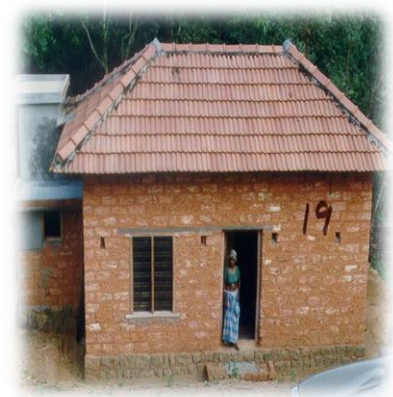
2nd Appeal order : 7th JUNE, 2018 BY HC.

- Relied on SC : Surat Singh-vs- Siri Bhagwan and ors [(2018)
- Ratio : “ As per para 20. of the considering CPC section 100 of CPC, the 2nd appeal would be only if the High Court is "satisfied" that the case involves a "substantial question of law“.
- The entire appeal is based on the facts discovered in the First appeal
- Dismissed the appeal
- **Confirmed: Interest on Delayed possession for 1 year and actions against architect.**

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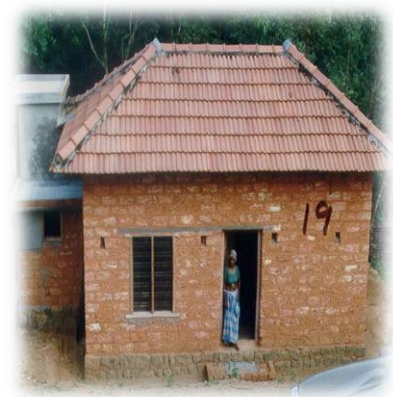
BOMBAY HC : WP(L) 908 OF 2018.

- Mohd Zain Khan Vs MahaRERA
- Order Date : 31st July, 2018.
- **MahaRERA was not entertaining complaints of unregistered projects.:**
- In HC MahaRERA gave an undertaking to modify the software and register the complaints of unregistered projects in 15 days:
- **Held :**
MahaRERA to hear complaints against unregistered projects and dispose of the complaints as per the procedure set for registered projects.

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SUPREME COURT OF INDIA :
CIVIL APPEAL NO(s) 9064 & 9065 of 2018

Ferani Hotels Pvt. Ltd. V / s SIC Mumbai & others

Order Dated : 27th September 2018

Challenge : Appeal raises the issue of disclosure under the R T I , seeking information regarding the plans submitted to public authorities by a Signature Not Verified Digitally signed by developer of a project. The SIC had allowed it.

SC Held : **No merit in the appeal and consider it a legal misadventure & imposed cost of Rs.2.5 Lakhs**

SUPREME COURT OF INDIA :
CIVIL APPEAL NO(s) 9064 & 9065 of 2018

Ferani Hotels Pvt. Ltd. V / s SICr Mumbai & others

Order Dated : 27th September 2018

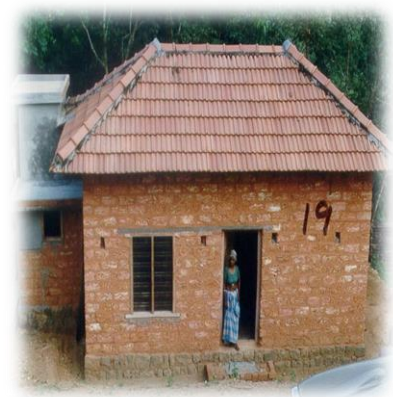
Held : **To display Sanctioned plan; Layout plan; along with the specifications approved by the Competent Authority at the site apart from any other manner provided by the regulations made by the Authority. This aspect should be given appropriate publicity as a part of enforcement of RERA**

MahaRERA Circular 20/2018 Dated 9th Aug, 2018

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SUPREME COURT OF INDIA :

CIVIL APPEAL NO(S). 3533-3534 OF 2017

**M/S. FORTUNE INFRASTRUCTURE (NOW
KNOWN AS M/S. HICON INFRASTRUCTURE)
VERSUS**

TREVOR D'LIMA & ORS.

Held: Upheld the decision of NCDRC that in the absence of date of Possession in the Agreement is not mentioned, 3 years will be reasonable time from the date of booking.

MahaRERA has relied upon this and passed number of decisions.

MAHAREAT Appeal No. AT-10802

- M/s. Unique Shanti Developers

Vs

Mrs. Malaika Monis & others:

Date : 19th November, 2019

The promoter had challenged the order refund of principle amount with interest to allottees by Adjudicating officer due to delay in handing over the possession as per agreement for sale.

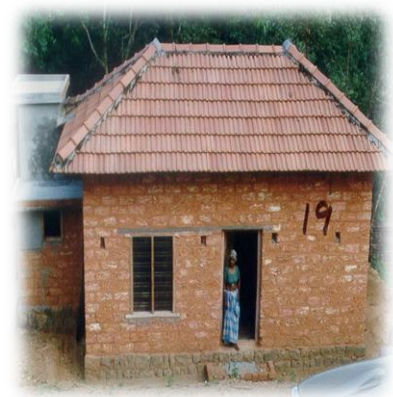
MAHAREATAppeal No. AT-10802

- WP: 2737/2016, Neel Kamal Realtor case, the Hon'ble Bombay High Court has laid down that, -
- **"Provisions of RERA Act do not rewrite the clause of completion or handing over possession in agreement for sale."**
- **S.4(2) (1)(C) enables the Promoter to give fresh timeline independent of the time period stipulated in agreement for sale so that he is not visited with penal consequences laid down under RERA.**

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MAHAREAT APPEAL NO. AT -10679

Mr. Sandeep Shivram Jadhav

Vs

Rahul Excellence,

Challenged the order of MahaRERA for allowing the deduction of 20% of the agreement value by the promoter as per the registered agreement.

Appeal Order Date: 15th March, 2019

MAHAREAT APPEAL NO. AT -10679

Held : (1) **Adjudicating officer committed error in deducting 20% as per deduction clause in an agreement while allowing exit.**

(2) Section 18(1)(a) of RERA Act 2016 will prevail over said deduction clause of agreement which took place prior to application of provisions of RERA.

(3) Any term or condition in an agreement which are against the spirit of provisions of RERA cannot be implemented as parties are governed by obligations and duties as per RERA.

**SUPREME COURT OF INDIA :
CIVIL APPEAL NO 12238 OF 2018**

**Pioneer Urban Land & Infrastructure Ltd. ...
Vs
Govindan Raghavan ...**

SC Decided on : 2nd April, 2019

Builder challenged the NCDRC order which had allowed the allottee to exit with interest as the even though OC was received before the complaint was decided as OC was delayed by two years against the agreed possession date.

SUPREME COURT OF INDIA :

CIVIL APPEAL NO 12238 OF 2018

Held : One side contract not binding on Parties.

- (1) A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.
- (2) when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.
- (3) Confirmed the order of NCDRC for exit with interest though OC was received during trial.

Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented.

--CA. Ramesh S. Prabhu



Let us be Partner in Nation Building

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Let us empower each one of us by sharing knowledge. Let us Innovate, Get involved & Solve issues collectively within four corners of Law.

Thank you for Getting involved in the discussion!

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CHAIRMAN

MAHARASHTRA SOCIETIES WELFARE ASSOCIATION, CO-OPTED MEMBER OF TASK FORCE FOR NPOS & Co-OPS OF MAHARASHTRA, CONVENER TO PREPARE GUIDANCE NOTE ON AUDIT OF DISTRICT AND STATE CO-OP BANKS –PUBLISHED BY PDC OF ICAI, CO-OPTED MEMBER OF CO-OP COMMITTEE (MAHARASHTRA) OF WIRC OF ICAI.