RERA Dossier 2019-20

– *insight to various judicial precedents set by the RERA of various States*

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INTRODUCTION

The real estate sector witnessed the beginning of a new era with the notification of The Real Estate (Regulation and Development) Act, 2016 (**"the Act"**), on 1st May 2017. With an object to bring about transparency and accountability in the real estate sector, the Act mandated developers to register their ongoing projects as well as new projects with the real estate regulatory authorities constituted under the Act.

Pursuant to the notification of the Act, the real estate sector eagerly awaited to see how the various provisions of the Act are interpreted by the various real estate regulatory authorities. Three years have passed since the Act was notified. Within a year of notification of the Act, the constitutional validity of various sections of the Act were challenged. However, the same was upheld by the High Court of Bombay. Over a period of time there have been some important rulings on certain aspects of the Act that have had an impact on how the stakeholders in the real estate sector have and continue to function.

This dossier intends to capture and compile the relevant judgments/orders passed during the past one year by Maharashtra Real Estate Regulatory Authority (**"MahaRERA"**), Karnataka Real Estate Regulatory Authority (**"Karnataka RERA"**), Delhi Real Estate Regulatory Authority (**"Delhi RERA"**) and Haryana Real Estate Regulatory Authority (**"Haryana RERA"**) which are pertinent from the perspective of developers, homebuyers and financial institutions on issues most relevant to each of them. The dossier also gives a flavour of divergent views taken by Authorities located in different states, making it extremely important to be mindful of the location of the Project one is involved in.

1. DEVELOPERS

1.1 Withdrawal from Project on the basis of the Allotment Letter and payment of interest in such cases

One of the primary purposes of the Act is to establish an efficient and transparent manner to protect the interests of the consumers in the real estate sector. This was at the beginning of the real estate regulatory authority regime. With the introduction of the Act, real estate regulatory authorities all over the country were faced with a vexed question – **Can an allottee withdraw from a real estate project in the absence of an agreement for sale?**

In this regard, we have experienced that the stand taken by various real estate regulatory authorities has 'evolved' over time. Essentially, real estate regulatory authorities have held that the terms of withdrawal will be governed by the terms of the allotment letter in the absence of an agreement for sale.

Below is a bird's eye view of the stand taken by the real estate regulatory authorities.

- **MahaRERA**
  - **Santanu Nandy vs. Rajesh Estates & Nirman Private Limited**

    In this case, MahaRERA held that if the allottee intends to withdraw from the project, then such withdrawal shall be guided by the terms and conditions of the allotment letter.
  - **Vijay Kumar Udasi & Ors. vs. Lohitka Properties LLP**

    MahaRERA held that in the absence of an agreement for sale, the allottee will not be entitled to any benefits under Section 18 of the Act.

    Section 18(1) of the Act inter alia provides that if the promoter is unable to give possession in terms of the agreement for sale or as the case may be, he shall be liable to return the

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amount received by him along with the interest in case the allottee wishes to withdraw from the project.

- **Mrs. Aparna Bhausaheb Lilinge vs. M/s. Maple Buildcon**

  The developer was directed to only refund the booking amount as per the terms and conditions of the booking application in the absence of any allotment letter or an agreement for sale. MahaRERA held that in the absence of an agreed date of possession, as such there was no violation of Section 18 of the Act and the allottee was not entitled to any interest.

- **Ratul Lahiri vs. Tata Housing Development Company**

  In the instant case, the date of possession was not mentioned in any written agreement. The booking form executed by the parties stated that the date of possession was to be decided at the time of execution of the agreement for sale. Upon hearing the parties and appreciating the evidence on record, the Maharashtra Real Estate Appellate Tribunal (**"MahaRERA Appellate Tribunal"**) observed that the possession was to be handed over by end of 2018. However, the developer unilaterally changed the same to December 2022. Negating the contention of the developer that the allottees cannot be granted compensation under Section 18 of the Act, it was held that where there is no agreement for sale indicating date of delivery of possession, other documents indicating agreed date can be relied upon in order to hold the developer accountable. Such documents may be a booking form, allotment letter, advertisement / pamphlet, brochures etc.

➢ **Delhi RERA**

- **Shahid Khan vs. Delhi Development Authority**

  The Delhi RERA was faced with an issue as to whether the date of issue or the date of actual dispatch of allotment letter should be considered for computation of refund to the allottee. The Delhi RERA held that the date of dispatch shall be treated as date of issuance and not the date printed on the allotment letter.

1.2 Payment of interest under Section 18 of the Act:

Section 18 of the Act is a fundamental element of the Act. Majority of the allottees approach the relevant real estate regulatory authorities claiming compensation in the form of interest under Section 18 of the Act. An allottee can either withdraw from the project or continue in the project in case the developer fails to give possession of the unit in accordance with the "agreement for sale". In the former case, the allottee can claim the entire amount paid by him along with interest while in the latter case the allottee can continue in the project and claim monthly interest on the amount paid by him/her. Section 18 was incorporated in the Act with a noble intent of providing a safeguard for allottees in case of delayed possession.

A lot has transpired over the past year with respect to the interpretation of Section 18 of the Act. To know more, Read on..!

➢ **MahaRERA**

- **M/s. Sineware Computer Services Private Limited vs. M/s. Ganesh Enterprises & Anr.**

  MahaRERA rejected the claim for rent of the allottee as the allottee had already taken possession of the premises. In the instant case, the allottee had demanded rent from the developer stating that due to the delay, the allottee was forced to take office premises on rental basis and had to pay huge amount towards rent.

- **Rekha Ashok Musale vs. M/s. Nirmal Lifestyle (Kalyan) Private Limited**

Following suit, MahaRERA held that there is no provision under the Act which entitles the allottee to claim the amount of rent paid by him. Thereby the allottee was not entitled to seek any amounts paid by him towards rent on account of delayed possession by the developer.

- **Devindersingh H. Anand and Ors. vs. Poona Bottling Co. Private Limited and Ors.**

  It has been held that subsequent allottees are not entitled to any interest under Section 18 of the Act. In the instant case, the complainants purchased the flat from the original allottees and were now claiming rent from the developer for the delay in possession on the basis of the date of possession mentioned in the earlier agreement between the original allottees and the developer. MahaRERA stated that the subsequent allottees were aware at the time of purchase of the flat that the date of possession had lapsed and hence they were not entitled to any relief.

- **Haladhar Mahato vs. Satish Bora and Associates**

  MahaRERA held that once the construction of the project is complete or possession is given, provisions of Section 18 of the Act cease to operate. MahaRERA observed that the said provision was to apply in the event the developer is unable to handover the possession.

- **Vanora Josephina Vaz vs. Omkar Ventures Private Limited**

  Once again, MahaRERA held that the provisions of Section 18 of the Act come into play when the developer fails to deliver the possession of the unit in accordance with the agreement for sale. An allottee had booked a flat under the subvention scheme. Certain amounts were paid by the allottee towards advance. However, the allottee did not qualify for the subvention scheme. In light of the same, the allottee desired to cancel the booking and sought for a refund of the amounts paid by her under Section 18 of the Act. Disposing of the complaint, MahaRERA directed the allottee to file a complaint before a competent court to seek refund of the amounts paid by her.

1.3 Completion of the project paramount

The Preamble of the Act, inter alia, states that one of the objectives of introducing the Act was **"to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner."** However, the provisions of the Act were being misused by some allottees to seek compensation from the developers.

MahaRERA in keeping up with the objective and spirit of the Preamble of the Act, opined in the cases of **Nandlal Pannalal Agarwal and Girish Leeladhar Meisheri vs. Empire Mall Private Limited** that MahaRERA should not be the forum and the provisions of the Act should not be used to withdraw from a project which has been completed with occupation certificate.

1.4 Force Majeure

The term 'force majeure' contemplates something happening suddenly which is not foreseen, and which is beyond the control of a person. Force majeure clause has been relied upon by the developers in multiple cases. However, the doctrine can be invoked only when the event is beyond the control of the parties and strikes at the root of the foundation of the contract. In fact, due to the CoVID-19 pandemic, the term 'force majeure' has become all the more relevant.

Real estate regulatory authorities have hitherto come across plethora of cases where developers have tried to take protection under the force majeure clause for their failure to handover the possession of the units in accordance with the agreed timelines.

A typical force majeure clause may cover within its ambit eventualities such as draughts,

earthquakes, fire and explosion, natural calamities, strikes, lockouts, floods, cyclones, epidemics, acts of government or "any other happening".

We have witnessed that real estate regulatory authorities across the country have taken conservative stand when it comes to analyzing force majeure clauses.

Some of the relevant judgments are as follows.

- **MahaRERA**
  - **Haladhar Mahato vs. Satish Bora and Associates**

    In this case, the developer cited delay on part of the local authorities in granting occupancy certificate and in view thereof, the developer was unable to handover the possession of the unit to the allottee. MahaRERA did not appreciate the contentions of the developer and ordered the developer to handover the possession of the flat within a period of 15 days.

  - **Pushpa Krishnagopal Sawhney vs. M/s. Statford Reality LLP**

    The project was delayed on account of delay in procuring the environment clearance certificate from the concerned authorities.

    MahaRERA observed that since the developer executed the agreement in March 2014, it was aware about the difficulties of getting the environment clearance for the project. MahaRERA held that as such, the developer was not entitled to any relief and ordered it to pay compensation to the allottee for the delayed possession.

  - **Ankit Chopra and Ors. vs. M/s. Vital Developers Private Limited**

    In the instant case, the developer contended that the reason for delay in handing over possession of the flat was on account of a public interest litigation pending before the Hon'ble High Court of Bombay and the injunction passed in relation to the same. MahaRERA held that an injunction granted by a Court cannot justify the delay in handing over the possession of the unit.

  - **Sandeep Vithoba Jadhav vs. M/s. Solitaire Palms and Anr.**

    Imposition of demonetisation had a huge impact on the otherwise unregulated real estate sector. In this case, the developer cited demonetisation and financial crisis in the real estate sector as the reason for delay in handing over the possession.

MahaRERA rejected the grounds cited by the developer and held that the same were not beyond the control of the developer. The developer was ordered to pay compensation to the allottees for delayed possession.

  - **Manoj Gagvani vs. M/s. Sheth Infraworld Private Limited**

    Adopting a sensitive approach towards the plight of the developers, the MahaRERA Appellate Tribunal held that the Act is a social and beneficial legislation. It observed that the Act does not re-write the contracts. The MahaRERA Appellate Tribunal further observed that when the developer has taken genuine efforts to complete the project and to hand over possession to home buyers, then MahaRERA or MahaRERA Appellate Tribunal can mold the relief accordingly.

    In the aforementioned case, there was significant delay on part of the pollution department to grant a no-objection certificate for the project and as a result there was delay in completing the construction of the project.

    While reducing the amount of interest to be granted to the allottee, the MahaRERA Appellate Tribunal observed that:

    - ✓ it is required to be seen that the

developer should not suffer hardship

- ✓ the developer should not be discouraged from launching real estate projects
- ✓ the developer should not be thrown out of such project on account of financial liability of payment of interest for delayed possession.

- **Anagha Aniket Mahajan vs. Linker Shelter Private Limited**

  In the instant case, the allottee sought possession of a flat which was a subject matter of litigation before the Supreme Court. Accordingly, until disposal of the proceedings, the developer could not handover the possession of the flat. In view of the same, MahaRERA disposed of the complaint filed by the allottee.

- **Nikhil Sardesai vs. Sanklecha Constructions Private Limited and Anr.**

  The developer cited force majeure events as a reason for delayed possession.

  MahaRERA held that the developer was well aware of the hurdles it faced and still promised to give possession to the allottee. Invoking the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**"MOFA"**), MahaRERA held that the agreement could not be re-written, and the date of possession cannot be extended. Further, MahaRERA held that the developer was only entitled to an extension of 6 months from the date of possession on account of force majeure events.

➢ **Delhi RERA**

- **Aashish Sethi vs. M/s. Umang Real Tech Private Limited**

  The developer cited reasons like lack of adequate sources of finance, shortage of labour, manpower and material cost, the provisions and procedural difficulties, shortage of water in region, recession in economy etc. for delay in completion of project. Delhi RERA, relying on **Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan**, held that the allottee cannot be compelled to wait for a longer period and hence the afore-mentioned events cannot qualify as force majeure events.

➢ **Karnataka RERA**

- **Dasika Kanthi Kiran vs. Mantri Developers Private Limited and Ors.**

  The Karnataka RERA refused to accept the reasons cited by the developer for delay in completion of the project viz. demonetisation, curb on illegal and sand mining mafia and strikes regarding the Kaveri water dispute. The developer was ordered to pay interest to the allottee in accordance with the provisions of the Act for delayed possession.

- **Sameer Agarwal vs. Mantri Technology Constellations Private Limited**

  In the instant case, reasons cited by the developer for delay in completion of the project viz. encountering hard rock during excavation, license issue for blasting the rocks, restrictions on the working hours for construction as directed by the High Court of Karnataka and the strike by sand suppliers due to curb on illegal sand mining mafia were rejected by the Karnataka RERA. It was held that the same do not qualify as force majeure events. The developer was ordered to pay interest to the allottee in accordance with the provisions of the Act for delayed possession.

- **Capt. Dev Krishnan vs. Townsville Neo Town**

While placing reliance on the judgment of **Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan**, Karnataka RERA refused to consider heavy rain, sand strike, disruption of supply of cement, strike by transporters and bundh as force majeure events and ordered the developer to refund the amount paid by the allottee along with interest for delay in handing over the possession of the unit.

- **Oswal Sunil Mendonca vs. Mantri Developers Private Limited**

  In yet another case, Karnataka RERA held that demonetisation was not an event beyond the control of the developer and directed the developer to pay compensation to the allottee for the delay in handing over the possession.

- **Ananda Subhaiah vs. Shubham Agarwal**

  Karnataka RERA, relying on the stand taken by the Maharashtra RERA, dismissed the plea taken by the developer that delay in handing over the possession of the unit was on account of Lok Sabha elections. In the instant case, the developer had also paid pre-EMI interest to the allottee for the delay. However, Karnataka RERA refused to grant any relief to the developer.

While talking about the event of force majeure, it becomes essential to discuss the Report of the Standing Committee on Urban Development dated 12th February 2014, which sets out comments and observations on various clauses of the Real Estate (Regulation and Development) Bill, 2013. The said Report acknowledged that significant delay is caused on part of the governmental authorities to grant approvals for construction of real estate projects. The Standing Committee inter alia observed as follows:

"The Committee is given to understand that the real estate developers need to run after various departments of the appropriate government for getting clearances for their projects. Moreover, the Bill does not prescribe any timeline for the appropriate Government for giving clearances to the projects of the promoters / builders. These factors are also responsible for making delays in the completion of the projects."

The Standing Committee also had the following noteworthy suggestion:

"The Committee desires that the Ministry should insert a new sub-clause under Clause 29 so that the Real

Estate Regulatory Authority will give necessary directions to the appropriate Government to put in place a single window system for getting all necessary clearances of the projects by the builders / promoters. The Committee further desires that the Ministry should specify the timelines in the Bill itself for giving various types of clearances of the real estate projects. The Committee is of the strong view that in this way the projects will be cleared in a hassle-free manner. This will curtail delays in completion of the projects and also bring down the cost of real estate projects significantly."

However, the afore-mentioned suggestions were not incorporated in the Act.

1.5 Jurisdiction

The Act is a special enactment providing for a mechanism to resolve disputes between allottees and developers. Inspite of there being a special mechanism in place, allottees often approach the consumer forums.

With the inclusion of allottees in the definition of 'financial creditor' under the Insolvency and Bankruptcy Code, 2016 (**"IBC"**), the National Company Law Tribunal was one such other forum where the allottees queued up to seek refunds of the amounts paid by them to the developer.

In terms of Section 71 of the Act, any complaint with respect to matters covered under Section 12, 14, 18 and 19, pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commissions or the National Consumer Redressal Commission, maybe withdrawn with the permission of such forum or commission as the case may be, and

the allottee may file an application before the adjudicating officer under the Act to resolve the same.

Some of the relevant judgements have been captured as follows.

- **MahaRERA**
  - **Ramnik Hardhor Karia vs. M/s. Oswal Developers**

    In the instant case, the allottee had filed a complaint before MahaRERA seeking directions to the developer to handover the possession of the flat and pay interest for delayed possession. The developer contended that it had already obtained the occupation certificate and hence the project was not registered with MahaRERA. Accordingly, the developer further contended that the complaint is not maintainable. MahaRERA held that the complaint was not maintainable since the project was not registered with MahaRERA.

  - **Zarine Watson vs. Marvel Dwellings Private Limited**

    The agreement between the allottee and the developer stated that only a civil court can entertain the disputes between the parties. In this case, the developer failed to handover the possession of the flat and the allottee intended to withdraw from the project, thereby filling a complaint before MahaRERA. The developer contended that MahaRERA did not have jurisdiction since the agreement for sale stated that the disputes were to be settled by the civil courts. MahaRERA held that since the project was registered with MahaRERA, it had jurisdiction over the project and Section 79 of the Act bars jurisdiction of a Civil Court and jurisdiction of MahaRERA cannot be ousted by an agreement between the parties.

  - **Manjusha Dyaneshwar Bhusari vs. M/s. Yemul and Sancheti Associates**

    The complainants had executed a development agreement. The property was mutated in the name of the respondent, but power of attorney (**"POA"**) was still with the complainants. The complainants had prayed for cancellation of the POA. However, the respondent stated that the complaint is not maintainable since the same is pending before the City Civil Court in Pune. In view of the same, MahaRERA ordered in favour of the developer and held that the complaint was not maintainable.

  - **Sarita Bhairu Chandekar and Anr. vs. Prashant Bhandari and Anr.**

    The allottees had filed a complaint for delayed possession. The developer contended that the said complaint was not maintainable since the agreement between the parties stated that the disputes were to be referred to arbitration. MahaRERA held that:

    - ✓ it had special powers under the Act to adjudicate the present dispute.
    - ✓ it is a special forum and its jurisdiction cannot be delegated to an arbitrator despite the provisions of the Arbitration and Conciliation Act, 1996 and the arbitration clause in the agreement for sale.

    Accordingly, MahaRERA ordered the developer to pay compensation to the allottees on account of delayed possession.

  - **Complainants vs. D.S. Kulkarni Developers Limited**

    The allottees had filed a complaint before MahaRERA claiming compensation on account of delayed possession. MahaRERA held that on account of pending proceedings in the Court constituted under the Maharashtra Protection of Interest of Depositors Act, 1999, it was untenable for MahaRERA to issue any directions

under the Act. Accordingly, the complaints were dismissed.

- **Karnataka RERA**

  - **Manjunath Naik vs. Karnataka State Government Employees House Building Co-operative Society**

    The Karnataka RERA held that:

    - ✓ the complainant cannot pursue his claim before Karnataka RERA when he has sought the same remedy before a parallel forum.
    - ✓ if the plea before the consumer forum is withdrawn before filing a complaint under the Act, then there would be no embargo.

    In this case, the complainant filed complaints before Karnataka RERA and the Bangalore District II, Additional Consumer Disputes Redressal Forum.

    It is worth noting that the subjects of complaint before the consumer forum and RERA were the same. Karnataka RERA relied on the judgment of **M/s. Emaar MGF Land Limited vs. Aftab Singh** and observed that the complainant had to make a choice between the authorities that he can approach for seeking relief.

  - **Vansant Kumar Kalarickal Paniker vs. Fortuna Buildcon India Private Limited**

    In the instant case, the allottee had sought for refund of the amount paid to the developer towards the equated monthly instalments. An Interim Resolution Professional had been appointed for the developer under the IBC. Accordingly, the developer was not held answerable.

    Karnataka RERA held that Section 89 of the Act had an overriding effect and admitted the complaint and directed the developer to pay compensation to the allottee. However, Karnataka RERA directed the allottee to realise the amounts by approaching the National Company Law Tribunal since the developer was not in a position to realise the award.

1.6 Other relevant orders!

MahaRERA has been one of the most active real estate regulatory authorities in the country. Often, MahaRERA has been faced with unique scenarios which may not have been otherwise dealt with. We have handpicked some of them.

- **MahaRERA**

  - **Anupam Kumar Gupta vs. Sanyam Realtors Private Limited**

    In this case, MahaRERA dealt with the reasonability of sale consideration. In the instant case, the erstwhile developer had transferred the project to a new developer. The new developer agreed to execute an agreement for sale with an old allottee subject to the sale consideration being revised. MahaRERA held that the parties must be reasonable while deciding on the revised sale consideration and ordered the parties to execute an agreement for sale.

  - **Saurav Purkayastha vs. M/s. Ruparel Realty Private Limited**

    MahaRERA held that the developer was not entitled to deduct amounts from the sale consideration paid by the allottee on the ground that the allottee had failed to make payments in accordance with the payment schedule. In the present scenario, the developer rescinded the agreement for sale on the ground that the allottee failed to tender the sale consideration in accordance with the payment schedule. The developer conceded that it was willing to refund 80% of the amount paid by the allottee and intended to deduct 20% of the sale consideration on account of the default of the allottee.

  - **Sajid Ismail vs. Nadeem Essak Parihar**

In the instant case, MahaRERA dealt with a dispute between the parties pertaining to an access road granted by the relevant authorities. The complainant challenged the validity of such permission alleging that the respondent had encroached upon their land for access road. MahaRERA dismissed the complaint stating that the said matter falls outside the purview of MahaRERA.

- **Nahari Bhau Chilwante and Anr. vs. M/s. Drushti Developers and Ors.**

  The allottees had executed an agreement for sale with one of the partners of the developer. The allottees sought for registration of the agreement for sale and also demanded handover of the possession of the unit. The developer, a partnership firm, resisted the demands of the allottees on the ground that the agreement for sale was executed by a partner who had defrauded the other partners of the partnership firm and thus the other partners relinquish any responsibility or liability in relation to the same. MahaRERA held that the firm is bound by the actions of each and every partner and accordingly ruled in favour of the allottees.

- **Priyesh Ashok Vijaywargi vs. Vikram Prakashrao Takale and Anr.**

  MahaRERA imposed a penalty of INR 1,50,000/- on a developer for his failure to execute an agreement for sale despite receiving the entire sale consideration.

- **Sandip Vinayak Nikam vs. Sardar Promoter and Builders**

  MahaRERA held that consent given by the allottees to the developer for extension of the registration of the project under the Act did not amount to extension of the agreed date of possession as set out in the agreement for sale. Since the developer had failed to handover the possession of the flat as per the agreement for sale, the allottees claimed compensation under the Act. The developer contended that they had applied for the extension of the registration of the project by taking consent of the allottees. Further, the developer contended that they had paid an amount of INR 40,000/- to the allottee in lieu of the delayed possession. MahaRERA observed that there was nothing on record to indicate that the allottee had accepted the amount of INR 40,000/- towards satisfaction of his claim of interest.

  It was held that Section 18 confers a legal right and MahaRERA ordered:

  - ✓ the developer to restore the allottee in the position that he was before booking the flat; and
  - ✓ the developer to refund the amounts.

- **Samyak Lalwani and Ors. vs. M/s. Yashodhan Associates**

  The developer had handed over the possession of the flat without obtaining the occupancy certificate. The registration of the project had expired, and the developer had not applied for an extension. MahaRERA directed the developer to apply for extension of registration of the project since the project qualified as an "ongoing project" due to lack of occupancy certificate. The developer was directed to fulfil its obligations and compensate the allottees.

  Further, MahaRERA observed that there was a violation of the Act, MOFA and the Maharashtra Municipal Corporation Act, 1949.

- **Techno Dirive Engineer Private Limited vs. Renaissance Indus Infra Private Limited**

  In the instant case, the allottee had filed a complaint against the developer on the ground that the

developer failed to handover an industrial unit booked by the allottee in accordance with the agreed date of possession. The allottee had booked the unit for setting up its industrial manufacturing unit. MahaRERA dismissed the complaint stating that industrial units do not come under the definition of "real estate project" and the provisions of the Act are not applicable to industrial units.

- **Haryana RERA**
  - **Greenopolis Welfare Association vs. Orris Infrastructure Private Limited and Anr.**

    In the instant case, the developer had failed to complete the project in accordance with the timelines. Coming down heavily on a developer, Haryana RERA stated that in the event the developer failed to commence the construction of the project within the timelines provided by Haryana RERA, the developer shall be liable to pay a fine of INR 1 Crore for each day of delay.

2. ALLOTTEES

2.1 Refund of amount with interest for delayed possession

Initially, the real estate regulatory authorities across the country had taken a rigid stand about the requirement of a registered agreement for sale to claim interest and/or refund under Section 18 of the Act. With time, the real estate regulatory authorities have adopted a lenient approach considering multiple scenarios wherein the developers failed to execute and register the agreement for sale and the uninformed allottees had to bear the brunt.

In this section, we will deal with certain relevant judgments vis-à-vis refund of amount along with interest to the allottees on account of delayed possession.

- **MahaRERA**
  - **Seema Sureschandra Mehata and Ors. vs. Marvel Realtors and Developers Limited**

    MahaRERA held that the provisions of Section 18 of the Act dealing with return of amount along with interest to the allottee are applicable to agreements which have been executed prior to the Act coming into force.

  - **Mr. Jagdish Patel vs. Skystar Buildcon Private Limited**

    In the instant case, the allottees wished to withdraw from the project on account of some personal reasons. The allottees requested the developer to refund the amounts paid by them. However, the developer deducted certain amount and refunded the balance amount to the allottees. When the matter was heard by MahaRERA, it was held that there was no contravention by the developer and the forfeiture was in accordance with the terms and conditions of the booking letter. However, MahaRERA Appellate Tribunal set aside

    the order of MahaRERA. MahaRERA Appellate Tribunal held that the allottees were entitled to refund of all amounts paid by them since they had paid a considerable amount without execution of any document and such refund was justifiable. However, MahaRERA Appellate Tribunal observed that there cannot be a straight jacket formula that the developer is not entitled to forfeit the amount paid by the allottee on cancellation of the transaction and the same depends on the facts and circumstances of each case.

To be continued in next issue....