

Ref. No. MCHI/PRES/17-18/047

November 13, 2017

To,  
**The Members of CREDAI-MCHI &  
CREDAI-MCHI Units**

Dear Members,

It is indeed a pleasure to connect with all our Developer Members of CREDAI-MCHI, on the MahaRERA update, news, orders etc.

The MahaRERA Act, rules, regulations, orders are the new beginning to All and as an Association, CREDAI-MCHI would like to ensure that its Members are informed/advised on the legality of the implementation of the sections/rules framed thereunder.

In our endeavour, we have engaged M/s. Khaitan & Co., to give us an in-depth view/advise on the relevant RERA orders issued by the MahaRERA Authority, so that Members are benefited. Views expressed herein this note are only related to the facts mentioned in the orders, and it is my sincere request to all our Members, not to derive any personal or legal opinion out of this note, which otherwise is only just a gist of the MahaRERA orders.

To conclude, this shall be a monthly report for the information and update of all the Members.

Hope, this small initiative of ours may helps the Members in preparing themselves in the process of becoming RERA compliant.

Thanking you,

**Yours faithfully,**  
For CREDAI-MCHI



Mayur Shah  
President



Domnic Romell  
Hon. Secretary



S. S. Hussain, I.A.S. (Retd.)  
Chief Executive Officer

## PREFACE

In this edition, we have summarized the orders passed by MAHARera during the period September 2017 to 7 October 2017. We hope you find this Summary relevant and useful.

As this edition is being circulated, the constitutional validity of several provisions of RERA is undergoing a test in the Hon'ble Bombay High Court, the outcome of which may present a whole new dimension of reading and interpreting the provisions of RERA.

As a firm, Khaitan & Co has been actively involved in the real estate sector in India for the last several years now, providing advice and assisting various group of stakeholders on various issues.

We look forward to working together with our clients and associates in the future development of the industry in India.

Sudip Mullick

Partner, Khaitan & Co

## BRIEF SUMMARY | ORDERS PASSED BY MAHA RERA

### 1. Shrikant Merchant vs. Shreepati Castle (AOP) - [Download Link](#)

#### Complaint:

The Developer, Shreepati Castle (AOP) is an Association of Persons comprising members of the Chaturvedi Group and the Merchant Group.

Shrikant Merchant being the representative of the Members of the Merchant Group has alleged in the complaint that they have not provided any information or details for registering the project with Maha RERA and that the registration of the project 'Shreepati Castle' was undertaken by members of the Chaturvedi Group without the consent of the members of the Merchant Group.

#### Order of MAHA RERA:

Maha RERA has vide its Order dated 7 September 2017 dismissed the matter stating that the matter does not pertain to any specific violations of the Real Estate (Regulation and Development) Act, 2016 or the rules and regulations made thereunder. Maha RERA requested the parties to amicably resolve their issues to protect the interest of consumers and to not hamper project completion.

## 2. Rohan Ramnath Nawale vs. Lodha Developers - [Download Link](#)

### Complaint:

Rohan Ramnath Nawale ( "Mr Nawale" ) has sought cancellation of a flat booked by him and requested Lodha Developers ( "Lodha" ) to refund the booking amount paid by Mr Nawale.

Mr Nawale filed the complaint after he failed to receive a refund of the booking amount paid to Lodha.

### Arguments by Lodha Developers:

Lodha contended that it has refunded the booking amount to Mr Nawale.

### Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 12 September 2017 as the claim of Mr Nawale was fully satisfied.

### 3. Istekhar Yusuf Shaikh vs. Dhruva Wollen Mills Private Limited - [Download Link](#)

#### Complaint:

Istekhar Yusuf Shaikh ( "**Mr Shaikh**" ) filed a complaint on the grounds of violation of Section 4 (2)(b), 4(2)(1)(b) and (d) of the Real Estate (Regulations & Development) Act, 2016 and Rule 3 (2) (c) and (e) of Maha RERA Registration Rules, 2017 by Dhruva Wollen Mills Private Limited ( "**Dhruva**" ) while registering the project known as "Runwal Garden City-Dahila" at Thane by not disclosing the case pending against Dhruva in respect of the aforesaid project and the encumbrances thereon.

#### Arguments by Dhruva:

Mr Shaikh was not an allottee of the aforesaid project.

#### Order of Maha RERA:

Maha RERA vide its order dated 14 September 2017 dismissed the complaint of Mr Shaikh on the grounds that (i) Mr Shaikh not being an allottee has no locus standi to file a complaint before Maha RERA and (ii) Maha RERA has no jurisdiction to hear a complaint filed as a public interest litigation.

Maha RERA directed Dhruva to update the status of the litigation pending before Hon' ble High Court by uploading the interim order which was not uploaded within a period of one week.

#### 4. Mr Anand Kapure vs. Jangid Constructions - [Download Link](#)

##### Complaint:

Mr Anand Kapure ( "**Mr Kapure**" ) filed a complaint before Maha RERA for claiming interest for delayed possession of the flat in a project in Thane. Mr Kapure alleged that in accordance with the terms of the agreement for sale dated 23 March 2016 the date of possession was June 2016, however, Jangid Constructions has failed to give possession.

##### Arguments by Jangid Constructions:

The possession of the flat could not be handed over because of an order dated 5 May 2017 of the Hon' ble High Court of Judicature at Bombay in PIL No 36 of 2016 restraining the planning authority from issuing the occupation certificate. Jangid Constructions further stated that the date of handing over possession of the flat was June 2017 and not June 2016. Jangid Constructions also made a statement that the building was nearing completion and possession of the flat could be given within a period of 3 months from the date of vacation of the stay order by the Hon' ble High Court of Judicature at Bombay.

##### Order of MAHA RERA:

Maha RERA vide its order dated 4 October 2017 stated that there is no dispute that the possession has been delayed in the present case and hence it directed Jangid Constructions to pay an interest equal to 2% more than MCLR as prescribed in Section 18 of the Real Estate (Regulations & Development) Act, 2016 from June 2017 till such date possession is handed over to Mr Kapure.

## 5. Abhigna Enterprise vs. Incline Realty Private Limited - [Download Link](#)

### Complaint:

Abhigna Enterprise ( "**Abhigna**" ) filed a complaint alleging that Incline Realty Private Limited ( "**Incline**" ) being the developer had made misleading and false representations at the time of registration of the real estate project under the provisions of the Real Estate (Regulation and Development) Act, 2016. Abhigna contended that Incline had allegedly showed certain plots in its layout as proposed adjoining land, which plots are allegedly owned by Abhigna. Abhigna prayed for cancellation of the Maha RERA registration of Incline and for levy of appropriate penalty on Incline.

### Arguments by Incline Realty Private Limited:

Incline denied having made any misrepresentation or uploading any misleading material on the Maha RERA website and stated that its disclosures merely provided that Incline proposes to develop the adjoining lands either as a separate layout or as an integrated layout amalgamated with the larger property. Incline also stated that the disclosures it made provide that the redevelopment of the adjoining land is proposed and has not been sanctioned till date.

### Order of MAHA RERA:

Maha RERA vide its order dated 14 September 2017, that the disclosures made by Incline are redundant and do not pertain to the project registered with Maha RERA and ordered Incline to upload amended disclosure with correct factual information pertaining to the registered project within 2 days of the date of the order.

## 6. Deepa and Avinash Mansbadar vs. Runwal Homes Private Limited - [Download Link](#)

### Complaint:

Deepa and Avinash Mansbadar ( "**Mansbadar**" ) have alleged that despite paying 87% of the total consideration towards purchase of the flat, Runwal Homes Private Limited ( "**Runwal**" ) has not executed an agreement for sale and that the draft agreement for sale sent by Runwal is not in accordance with the provisions of the Real Estate (Regulations & Development) Act, 2016. Mansbadar pointed out that there are following irregularities in the draft agreement for sale:

- (i) increase in the amount of consideration;
- (ii) carpet area of the flat has increased in the draft agreement whereas there is actually no increase;
- (iii) reduction in the society formation charges to be collected by Runwal; and
- (iv) no clarity pertaining to service tax paid by Runwal as collected from Mansbadar leading to a doubt of financial impropriety

### Arguments by Runwal:

Runwal stated that the draft sale agreement is in compliance with the provisions of the Real Estate (Regulations & Development) Act, 2016, rules and the regulations made thereunder and there is also no violation of the terms of the allotment letters executed between the parties. Runwal also clarified on each of the aforesaid points raised by Mansbadar.

### Order of Maha RERA:

Maha RERA vide its order dated 18 September 2017 stated that Mansbadar have failed to show that the draft agreement for sale is in contravention of the model form of agreement. Maha RERA directed the parties to execute the agreement for sale before 31 October 2017, if Mansbadar intends to continue in the project.



## 7. Swatantra Anand vs. Paradigm Ambit Buildcon - [Download Link](#)

### Complaint:

Swatantra Anand ( "**Anand**" ) alleged that he is a contractor of the real estate project registered by Paradigm Ambit Buildcon ( "**Paradigm**" ) on Maha RERA website and filed the complaint on the ground of non-disclosure of the name of Anand (as a contractor) at the time of registration of the project, which amounted to a contravention of section 4 of Real Estate (Regulation and Development) Act, 2016. Anand has also alleged that Paradigm has replaced the Anand with another contractor without any notice to him and has also failed to pay the outstanding dues to Anand.

### Arguments by Paradigm Ambit Buildcon:

Paradigm claimed that it had terminated the contract of Anand, which termination had been communicated to Anand. Further no name of the contractor had been disclosed at the time of registration of the project as at the time of registration of the project, there was no contractor for the project.

### Order of MAHA RERA:

Maha RERA vide its order dated 18 September 2017, observed that since Paradigm does not admit Anand to be its contractor, in its view Anand is not an interested party in the project and has no locus standi to file the complaint. Maha RERA has further observed that the dispute between Anand and Paradigm is one of a civil nature, which MahaRERA would not like to entertain and has thus held that the information uploaded by Paradgm cannot be said to be a violation of section 4 of Real Estate (Regulation and Development) Act, 2016. The complaint was accordingly dismissed by MahaRERA.

## 8. Vijaya Powar vs. M/s Sona Enterprises - [Download Link](#)

### Complaint:

Vijaya Powar ( "**Vijaya**" ) filed the complaint seeking a direction that the development agreement between Vijaya and Sona Enterprises ( "**Sona**" ) stands terminated and allowing the Vijaya to appoint a new promoter to complete the project. Vijaya is the owner of the land in respect of which she has granted development rights to Sona under a registered development agreement. In terms of the development agreement, Vijaya was to receive a 50% share in the constructed area.

Vijaya has alleged that at the time of registration of the real estate project with MahaRERA, Sona has not mentioned the name of Vijaya as a 'co-promoter' and has thus contravened provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder.

### Arguments by Sona Enterprises:

Vijaya has contended that it has filed a civil suit on the ground that Vijaya is not co-operating in the development process and as a consequence, Sona has not been able to complete the real estate project on site.

Sona has contended that it proceeded with the registration of the real estate project with MahaRERA on the basis of whatever information was available but it could not get any help from Vijaya.

### Order of MAHA RERA:

MahaRERA, in its order dated 18 September 2017, has held that Vijaya and Sona are co-promoter and promoter respectively and both should have disclosed relevant information regarding the real estate project. In its order, MahaRERA has observed that on account of the disputes between the parties, full information regarding the project has not been disclosed and directed Vijaya and Sona to jointly upload relevant information pertaining to the project in a time bound manner and submit a compliance report before the authority. The complaint was accordingly disposed.

## 9. Amol Kadam vs. Horizon Projects Private Limited - [Download Link](#)

### Complaint:

Amol Kadam ( "**Mr Kadam**" ) and Horizon Projects Private Limited ( "**Horizon**" ) had entered into a settlement wherein Horizon had agreed to refund a part of the booking amount paid by Mr Kadam to Horizon as Mr Kadam was desirous of withdrawing from the project. However, Mr Kadam filed a complaint with Maha RERA seeking full refund of the booking amount as opposed to an agreement with Horizon for refund only of a part of the booking amount.

### Argument by Horizon:

Horizon informed Maha RERA that in accordance with the provisions of the allotment letter executed between Horizon and Mr Kadam, the entire booking amount was agreed to be forfeited in case Mr Kadam intends to withdraw from the project for no default of Horizon.

Horizon further stated that considering the personal difficulty of Mr Kadam and on humanitarian grounds, Horizon has already refunded a substantial percentage of the booking amount although they could have forfeited the entire booking amount as per the allotment letter since Mr Kadam unilaterally intends to withdraw from the project for no fault of Horizon but due to his personal reasons.

### Order of Maha RERA:

Maha RERA vide its order dated 19 September 2017 observed that in light of the terms and conditions of the allotment letter signed between Mr Kadam and Horizon, it cannot direct Horizon to refund any further amounts from and out of the booking amount to Mr Kadam.

## 10. Ganesh Kalyansundaram vs. Runwal Developers Private Limited - [Download Link](#)

### Complaint:

Ganesh Kalyansundaram ( "**Mr Ganesh**" ) alleged that Runwal Developers Private Limited ( "**Runwal**" ) is not handing over possession of the office premises purchased by Mr Ganesh and having paid substantial portion of the consideration. Further, Mr Ganesh stated that Runwal is seeking interest on the balance portion of the consideration, whereas the balance portion of the consideration is not paid by Mr Ganesh to Runwal due to Runwal not executing a sale agreement.

### Arguments by Runwal:

Runwal stated that the office which is purchased is not a part of the project phase that is registered with Maha RERA as the building in which the office is situated has already received occupation certificate.

### Order of Maha RERA:

Maha RERA vide its order dated 19 September 2017 dismissed the complaint as it did not have jurisdiction in the matter as the office purchased by Mr Ganesh was not a part of the project which was registered with Maha RERA.

## 11. Sejal Gandhi vs. Jayant Narendra Mehta - [Download Link](#)

### Complaint:

Sejal Gandhi alleged that Jayant Narendra Mehta has not registered the building known as Kamala Vihar Co-operative Housing Society situated in Kandivali (West) with Maha RERA despite the building not having received an occupation certificate and that Jayant Narendra Mehta is not adding the name of Sejal Gandhi in the list of occupants displayed in the building.

### Arguments by Jayant Narendra Mehta:

It was argued that the building is already occupied and therefore not required to be registered with Maha RERA. It was further argued that Sejal Gandhi is neither an original member of Kamala Vihar Co-operative Housing Society nor a new buyer in the building. Her father had bought an apartment in the building and he has already taken possession of the flat.

### Order of Maha RERA:

Maha RERA vide its order dated 21 September 2017 stated that it does not have jurisdiction to entertain the complaint as the building is not registered with Maha RERA. Maha RERA further stated that as the building is already occupied it does not require to be registered with Maha RERA.

## 12. Sushil Agarwal vs. Yashdhan Associates through its partner Rahul Navandar - [Download Link](#)

### Complaint:

Sushil Agarwal ( "**Mr Agarwal**" ) has filed a complaint alleging (i) violation of section 4 of Real Estate (Regulation and Development) Act, 2016; (ii) that the land under the real estate project has been sold by Mr Agarwal to Yashdhan Associates ( "**Yashdhan**" ) and that Mr Agarwal has not received full consideration from such sale and (iii) at the time of registration of the real estate project with MahaRERA, Yashdhan has suppressed material facts about subsisting encumbrances. Mr Agarwal has prayed for MahaRERA to (i) direct Yashdhan to clear the dues of Mr Agarwal with interest, compensation and damages and (ii) penalise Yashdhan under section 60 and 61 of the Real Estate (Regulation and Development) Act, 2016.

### Arguments Sushil Agarwal and Yashdhan Associates:

During the hearing, it was brought to the notice of MahaRERA that Mr Agarwal has sold the land under the real estate project to Yashdhan and the name of Yashdhan appears on the property register card relating to the land.

### Order of MAHA RERA:

In its order dated 19 September 2017, MahaRERA observed that Mr Agarwal is neither the allottee nor the owner of the real estate project registered with MahaRERA and therefore has no locus standi. MahaRERA found no merit in the complaint and dismissed the same for want of locus standi.

13. [Rohit Kaushal vs. Marvel Realtors & Developers Limited - Download Link](#)  
[TanvirBagwan vs. Marvel Realtors & Developers Limited - Download Link](#)

Mr Rohit Kaushal ( "**Mr Kaushal**" ) and Mr TanvirBagwan ( "**Mr Bagwan**" ) had filed seperate complaints under the provisions of Section 18 of the Real Estate (Regulations & Development) Act, 2016.

However, Mr Kaushal and Marvel Realtors & Developers Limited ( "**Marvel**" ) amicably settled their dispute by filing consent terms. Marvel also amicably settled the dispute with Mr Bagwan.

In the settlement with Mr Kaushal and Mr Bagwan it was agreed that Marvel will complete the development of the building by 31 March 2018 and application for occupation certificate will be applied at that time. In the event if Marvel fails to complete the building on or before 31 March 2018 then Marvel will pay Rs 15,000 per month for 3 bhk flats.

It was also agreed that Marvel shall deposit a sum of Rs 1,00,00,000 (Rupees One Crore) in the society account at the time of conveyance of the project to the society known as Marvel Brisa.

Maha RERA vide its order dated 22 September 2017 disposed of the complaint in terms of the consent terms arrived between the parties.

#### 14. Shrikant Pradhan vs. Marvel Realtors & Developers Limited - [Download Link](#)

Mr Shrikant Pradhan ( "**Mr Pradhan**" ) filed a complaint under the provisions of Section 18 of the Real Estate (Regulations & Development) Act, 2016 in respect of a flat in a project known as Marvel Brisa in Balewadi, Pune.

However, Mr Pradhan and Marvel Realtors & Developers Limited ( "**Marvel**" ) amicably settled their dispute by filing consent terms.

In the settlement with Mr Pradhan it was agreed that Marvel will complete the development of the building by 31 April 2018 and application for occupation certificate will be applied at that time.

It was also agreed that Marvel shall deposit a sum of Rs 1,00,00,000 (Rupees One Crore) in the society account at the time of conveyance of the project to the society known as Marvel Brisa.

Maha RERA vide its order dated 22 September 2017 disposed of the complaint in terms of the consent terms arrived between the parties.



## 15. Balu Nathu Bhawar vs. Neptune Developers Limited - [Download Link](#)

### Complaint:

Mr BaluNathuBhawar ( "**Mr Bhawar**" ) had purchased a flat vide agreement for sale dated 14 December 2012 from Neptune Developers Limited in their project Neptune Swarajya. Mr Bhawar contended that possession has been delayed and now Neptune has in its registration with MAHA RERA stated that the date of possession shall be 31 December 2018, which is not acceptable to Mr Bhawar and hence he would want to withdraw from the project.

### Arguments by Neptune Developers Limited:

Neptune Developers Limited informed MAHA RERA of the reasons beyond its control due to which the project has been delayed and it mutually agreed with Mr Bhawar to handover possession of the flat on 31 March 2018.

### Order of MAHA RERA:

MAHA RERA vide its order dated 7 October 2017 directed Neptune Developers Limited to handover possession of the flat before period ending March 2018, failing which Neptune Developers Limited would be liable to pay interest at the rate of State Bank of India highest Marginal Cost of lending rate prevailing at such time plus 2% to Mr Bhawar from April 2018 till the date of handover of actual possession to Mr Bhawar of the flat, on the entire consideration paid by Mr Bhawar to Neptune Developers Limited for the flat.

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