

**REAL ESTATE REGULATION & DEVELOPMENT LAW**

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## **CHAPTER 1: INTRODUCTION**

Franklin D. Roosevelt once said "*Real Estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid in full, and managed with reasonable care, it is about the safest investment in the world.*"

Though MOFA was enacted to provide for relief to flat purchasers against sundry abuses, malpractices and difficulties related to the construction, sale, management and transfer of flats, it was noticed by the Maharashtra Government that MOFA did not provide for an effective implementing arm for its various provisions and the flat purchasers were left at the mercy of redressing their grievance through the consumer forum or civil court for acts of omission or commission of the developers. The Maharashtra government thus passed the MHRDA. The main objectives of the MHRDA was to regulate and promote the construction, sale, management and transfer of flat on ownership basis, to provide relief to flat purchasers against malpractices and difficulties, to establish a Housing Regulatory

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Authority and the Housing Appellate Tribunal, to reduce multiple litigation before numerous authorities such as Consumer Forum and Civil Courts, to remove information asymmetry by ensuring full and complete disclosure and compliance on the part of the promoters, to provide relief to the buyers from the adverse and malpractices by the promoters, to make the housing sector transparent and promote planned and healthy development and to pave a way for faster construction and maintenance.

MHRDA sought to introduce the system of registration of housing projects and provided for setting up of a Regulatory Authority for monitoring and regulating the activities of promoters. However, the Act had diluted pro-purchaser provisions and certain provisions of MOFA, with regards to the responsibilities mandated on the developers are concerned. It also weakened the penalty provisions diluting it vis-à-vis developers and making it very harsh vis-à-vis home buyers. Also, government organizations such as MHADA were kept out of the scope of MHRDA. Further, draft rules were also formed, however the same were not finalized and notified. Only few sections of the Act were notified by the Government. MHRDA had a provision for repealing MOFA. However, the said section was not notified. Before the entire Act could come into force, the Union

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Government passed the Real Estate (Regulation and Development) Act, 2016 ('RERA') which repealed MHRDA.]

The Union Government being aware of the rampant abuses and malpractices enacted RERA to protect the interest of consumers in the real estate sector, to ensure sale of plot, apartment or building, or sale of real estate project in an efficient and transparent manner, to establish a regulatory authority being Real Estate Regulatory Authority and to provide for a speedy dispute redressal mechanism.

Some of the important provisions of RERA are prior registration of the real estate project with RERA authority, inclusion of any development authority or any other public body is respect of allottees in the definition of promoter, deposit of 70% of the funds collected from allottees in a designated bank account, withdrawals from the designated bank account to be certified by Engineer, Architect and CA, annual audit of project accounts, promoter to provide compensation to buyer for any false or incorrect statement along with a full refund of property cost with interest, provision of Affidavit cum declaration, consent of

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2/3rd allottees for any other addition or alteration in plans, quarterly updation on webpage, defect liability period of 5 years, increased assertion on the timely completion of projects and delivery to the consumer, prescribed timelines for formation of legal entity of allottees, conveyance of title, establishment an adjudicating mechanism for speedy dispute redressal, stronger financial penalties for MahaRERA non-compliances.

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## **CHAPTER 2: THE REAL ESTATE REGULATION AND DEVELOPMENT ACT**

*“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and 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 and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto”*

The Real Estate (Regulation and Development) Act, 2016” received the President’s assent on 25<sup>th</sup> March 2016. The Act has been partly notified on 1<sup>st</sup> May 2016, as far it concerns to the establishment of Regulatory Authority, Central Advisory Council and Appellate Tribunal and administration.

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The Act aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interest of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

MahaRERA is the state Authority of Maharashtra for administering the Real Estate (Regulation and Development) Act, chaired by Shri Gautam Chatterjee. The RERA rules of the state were notified on 20<sup>th</sup> April, 2017 with the help of MahaRERA. MahaRERA was one of the only few state authorities to come up with a website in the Act's initial phase of implementation.

Maharashtra was the first state to implement RERA. It handled over 60% of all RERA applications in India. Dadra & Nagar Haveli, Daman & Diu come under MahaRera. RERA was propounded with threefold objectives: firstly, establishment of the Authorities for regulation and promotion of the

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real estate sector and for ensuring protection of consumers; secondly, establishment of an adjudicating mechanism for speedy dispute redressal; and thirdly, establishment of Appellate Tribunals to hear appeals.

The tribunal has administrative powers in addition to judicial powers conferred on them. The tribunal isn't subject to the Code of Civil Procedure or the Indian Evidence Act and is guided by the principles of natural justice. The appellate tribunal has equal powers as that of a civil court and its orders are to be treated at par with a decree by a civil court.

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### **CHAPTER 3: OBJECTIVE**

The main object of RERA is to replenish the faith of the buyers in the Real Estate sector and to bring transparency in the Real Estate transactions. The Act aims to protect the rights of the buyers by establishing the Real Estate Regulatory Authority (RERA) which will provide grievance system in Real Estate sector. It also aims to increase the credibility of the Promoters, Real Estate brokers and agents which would aid in preventing the unnecessary delay in the completion and delivery of the projects. The RERA Act provides for establishment of Appellant System for Grievance Redressal and to prescribe the penalties and charges for the defaulters.

The RERA seeks to:

- ❖ Ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, is done in an efficient and transparent manner
- ❖ Protect the interest of consumers in the real estate sector.

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- ❖ Establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority (RERA).
- ❖ Regulate transactions between buyers and promoters of residential real estate projects.
- ❖ Establish state level regulatory authorities called Real Estate Regulatory Authorities (RERA).
- ❖ Provide Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioners.
- ❖ Impose stringent penalty on promoter, real estate agent and also prescribe imprisonment.

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## Benefits of RERA to Property Buyers

- 👍 Buyers pay for what they get (carpet area)
- 👍 Transparency, Accountability & Liability
- 👍 All Legal Clearances 'a must' before project is advertised
- 👍 Consent before project modification
- 👍 Time-to-time update on the project's progress
- 👍 Time-bound Refund/Compensation in case of project delay
- 👍 No tension about project modification without consent
- 👍 Five-year warranty in case of structural fault
- 👍 Punishment to defaulters

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## **CHAPTER 4: SCOPE OF THE ACT**

The scope of RERA is very wide in respect to the Real Estate Sector. It covers all the new as well as ongoing projects, under construction projects and it also includes both residential and commercial buildings. It covers all the parties included in a Real Estate projects. Even the Real Estate brokers and agents also fall under the ambit of this Act. The main motive of RERA is to provide ease and comfort for the homebuyers, this is why every state is required to set up an Appellate Tribunal for addressing the grievances of the homebuyers.

All the builders are required to register the projects with the Tribunal before the initiation of those projects. The registration mandates them to express the details of the project and the deadline for the completion of the project and if the deadline is not met, the builders have to face the penalties and criminal charges. They also have to compensate the home buyer for the delay in the project. Before the existence of the RERA Act, the builders would

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often divert the funds of the ongoing project to a new project because of which delays occurred in the completion of individual project. Now, the builders have to deposit the 70% of the fund in a separate bank account so that the fund is not diverted and is used in the project for which it was sanctioned.



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## **CHAPTER 5: SALIENT FEATURES**

Overall objective of RERA is to create a regulatory regime and to undertake consumer protection firm regulation and speedy redressal of disputes related to the sector with the participation of states and UTs. The Act protects the interest of the home buyers by promoting accountability and transparency in real estate deals especially from the part of the developers. Besides the promoters and allottees (buyers), the Act covers the real estate brokers also.

Following are the main features of the Act.

### **1. Real Estate Regulatory Authority and Appellate Tribunal**

Under this Act, the appropriate government shall establish a Real Estate Regulatory Authority for regulation and promotion of the real estate sector in the State / UTs. The Authority shall strive to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector while protecting the interest of allottees, promoters and real estate agents. The authority shall also establish an adjudicating mechanism for speedy dispute

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redressal regarding registered real estate projects. The key responsibilities of the Authority shall be as follows:

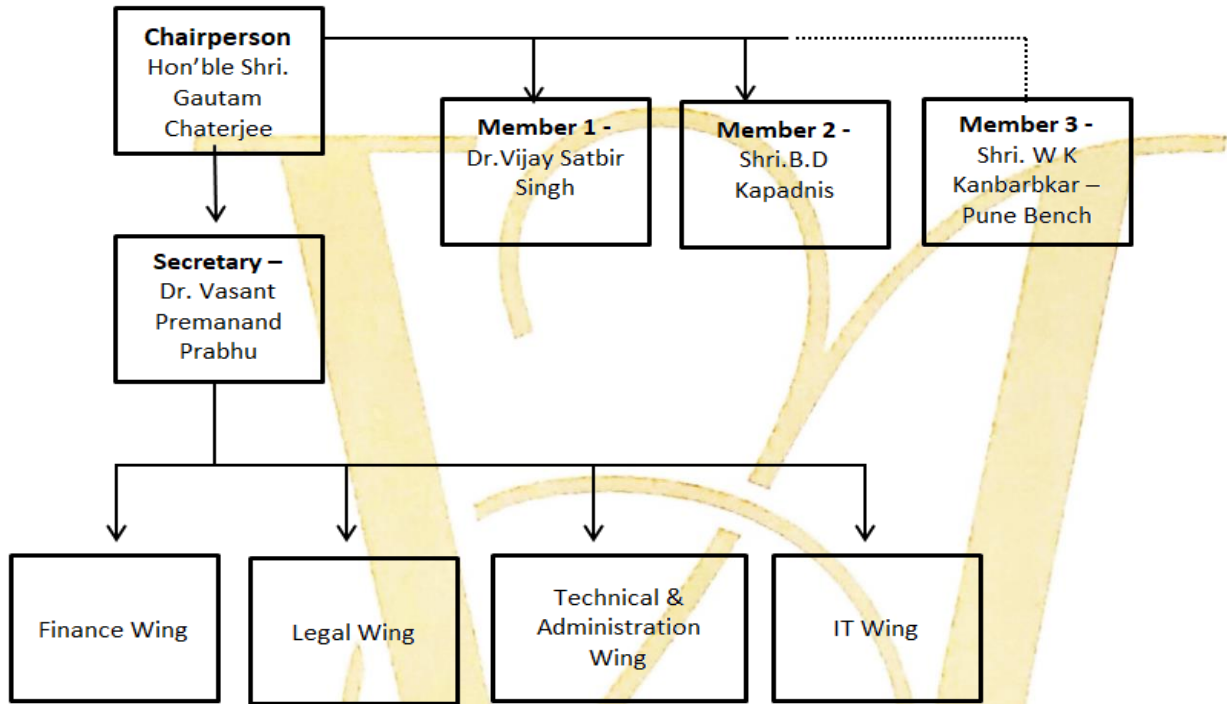
- Ensuring Disclosures of Real Estate Projects by Promoters
- Real Estate Projects Registration
- Real Estate Agents Registration
- Complaints Redressal
- Provide recommendations to appropriate Government on in matters relating to the development & promotion of real estate sector;

The appropriate Government shall also establish an Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority. Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer may file an appeal before the Appellate Tribunal and the appeal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days.

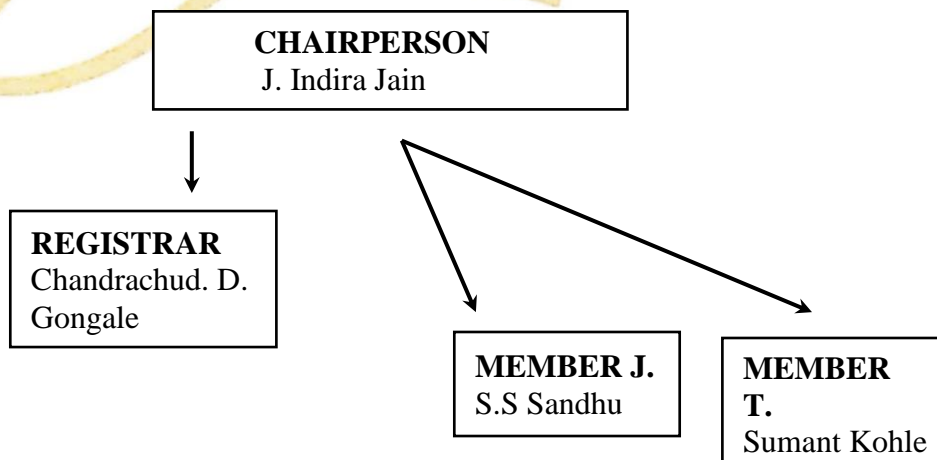
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**Organogram for Maharashtra Real Estate Regulatory Authority**  
**(MahaRERA)**



**Organogram for Appellate Tribunal (MahaRERA)**



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## **2. Real Estate Projects Registration**

Section 3 of the Act provides for the registration of all commercial and residential real estate projects and provides that *“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area within Maharashtra, without registering the real estate project with the Maharashtra Real Estate Regulatory Authority (MahaRERA)”*

However, the following projects do not fall under the ambit of Section 3:

- (a) where the area of land proposed to be developed is less than 500 square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases or
- (b) the Promoter has received completion certificate for a real estate project prior to commencement of this Act.
- (c) For the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any

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apartment, plot or building, as the case may be, under the real estate project.

If any promoter fails to register as per Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both.

Apart from Registration, the promoters are also required to provide quarterly updates on the status of the project to the authority.

### **3. Real Estate Agents Registration**

All Real Estate Agents are required to register under this Act. No real estate agent can facilitate the sale or purchase or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case

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may be, in a real estate project or part of it, without obtaining registration under this section. (Section 9)

If any real estate agent fails to register, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.

#### **4. Filing of complaints**

Any aggrieved person may file a complaint with MahaRERA or the adjudicating officer, as the case may be, with respect to any registered real estate project, for any violation or contravention of the provisions of the Act or the rules and regulations made there under. The Authority shall then establish an adjudicating mechanism for speedy redressal of such complaints.

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Any person aggrieved by any direction or decision or order made by MahaRERA or by an adjudicating officer may file an appeal before the Appellate Tribunal within 60 days from the date of Order.

Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court.

### **5. Financial Discipline**

The Act strives to ensure greater financial discipline in the real estate sector.

Some of its provisions are as follows:

- A promoter shall not accept more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale.
- Seventy per cent of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account

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to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

- Withdrawal from such accounts shall be in proportion to the percentage of completion of the project, which shall be certified by an engineer, an architect and a chartered accountant in practice.
- Promoter to compensate buyer for any false or incorrect statement with full refund of property cost with interest.
- Project Accounts to be Audited / FY. Copy to be submitted to MahaRERA.
- Provision for MahaRERA to freeze project bank account upon non-compliance.
- Provision for stronger financial penalties for MahaRERA non-compliances.

## **6. Transparency**

The Act seeks to derive great transparency in the real estate sector as follows:

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- Details of all the Registered Projects shall be available online for citizens including: sanctioned plans, layout plans, along with specifications, approved by the competent authority.
- Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter.
- Proposed Number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s).
- The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.
- Quarterly update of the list of number and types of apartments or plots, as the case may be, booked.
- Quarterly update of the list of number of covered parking, garages booked;
- Quarterly update of the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- Quarterly update of the status of the project; and

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- Such other information and documents as may be specified by the regulations made by MahaRERA.

The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of MahaRERA, wherein all details of the registered project have been entered and include the registration number obtained from the Authority

#### **7. Citizen Centricity**

Citizens can view on the MahaRERA website all disclosures pertaining to registered projects. This is done to ensure data driven and informed decision making.

The promoter cannot make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities etc. without the previous consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

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If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale, he shall be liable to pay interest for every month of delay. In case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him with interest

The Act also casts an obligation on the promoter to enable the formation of Legal Entity like Cooperative Society, Company, Association, Federation etc. within three months from the date on which 51 per cent of the total number of Purchasers in such a building or a wing, have booked their apartment.

The Promoter ought to execute a registered conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate or 51 per cent of the total number of Purchasers in such a building or a wing, have paid the full consideration to the promoter, whichever is earlier.

Real Estate (Regulation and Development) Act 2016 is a step towards reforming the real estate sector in India, encouraging greater transparency, citizen centricity, accountability and financial discipline.

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## **CHAPTER 6: IMPORTANT PROVISIONS**

### **(Section 2 (za)(i)).**

Both promoter and buyer are liable to pay equal rate of interest in case of any default from either side.

### **(Section 3)**

Registration of all real estate projects is made mandatory with RERA having territorial jurisdiction over such projects. No sale in a real estate project can be made without registration of the project with RERA. RERA can also refuse to register a project, if the same is not compliant with provisions of the Act. Registration of a project can even be cancelled, in case, RERA receives any complaint and the same is found to be correct after inquiry.

### **[Section 4(2)(1)(D)].**

It has been made obligatory for the promoters to deposit 70% of the money collected from buyers for a particular project in a separate account that will

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cover the cost of land and construction and the same can be withdrawn only after certification from an engineer, an architect and a chartered accountant.

**(Section 5).**

RERA shall approve or reject the application for registration within 30 days, failing which it shall be deemed to have accepted the application for registration

**(Section 11).**

It is mandatory for a promoter to upload details of proposed project on the website of RERA, including details of registration, types of apartments or plots booked, list of approvals taken and the approvals which are pending subsequent to commencement certificate, status of the project, sanction plan, layout plan etc.

**(Section 13)**

Any promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an

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application fee, from a buyer without first entering into a written agreement for sale with such person and register the same.

**[Section 15(1)].**

The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from at least 2/3rd no. of Allottees, except the promoter, and without the prior written approval of RERA.

**(Section 16).**

It is now obligatory for all the promoters to obtain insurance in respect of title of the land and buildings and construction of every project.

**(Section 18)**

The promoter shall compensate the buyer in case any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for

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compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

**(Section 31)**

An aggrieved person may file a complaint with RERA, as the case may be, for any violation or contravention of provisions of this Act or rules and regulations made thereunder against any promoter, buyer or real estate agent.

**(Section 36)**

During the pendency of enquiry, RERA can restrain any promoter, buyer or agent from continuing with the act complained of.

**(Section 43)**

A person aggrieved by any direction or decision or order made by RERA or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

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**[Section 59(2)].**

If a promoter continues to violate the provisions of Section 3, he shall be punished with imprisonment for a term which may extend to three years or fine which may extend to ten percent of the estimated cost of the project or both.

**(Section 63).**

If a promoter fails to comply with orders or directions of RERA, he shall be liable to a penalty, which may extend up to five percent, of the estimated cost of the project as determined by the Authority.

**(Section 64).**

If a promoter fails to comply with the orders or directions of the Appellate Tribunal, he shall be punished with imprisonment for a term which may extend to three years or fine, which may extend up to ten percent of the estimated cost of the project, or with both.

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**(Section 69)**

Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

**(Section 79)**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which RERA or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

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## **CHAPTER 7: PENALTIES AND PUNISHMENTS**

### **1. Offence wise- penalties**

<b>Section</b>	<b>Offence</b>	<b>Penalties / Punishment</b>
9 (7)	Registration secured through misrepresentation or fraud. Breach of terms for which registration obtained.	Revocation of Agent. Registration Number.
59(1)	If any promoter does advertising, marketing, booking, selling etc. of a real estate project without first registering the project with RERA u/s 3	Penalty up to 10% of estimated project cost as determined by the authority.
59(2)	If any promoter does not comply with the orders, decisions or direction in relation to above penalty or continues to violate section 3	I. Imprisonment up to 3 years; or II. Fine up to up to 10% of estimated project cost as determined by the authority, or III. With both However, this offence is compoundable.
60	If any promoter provides false information or fails to apply for registration within the time stipulated u/s 4(1)	Penalty up to 5% of estimated project cost as determined by the authority.

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61	If any promoter contravention any other provisions of this Act or rules or regulations made there under.	Penalty up to 5% of estimated project cost as determined by the authority.
62	Contravention of Section-9 & Section 10	Penalty of INR 10,000/-day during which the default continues extending up to 5% of cost of unit sold.
63	If any promoter fails to comply with, or contravenes any order or directions of the Authority	Penalty for every day during which default continues, which may cumulatively extend up to 5% of estimated project cost as determined by the authority.
64	If any promoter fails to comply with, or contravenes any order or decision or directions of the Appellate Tribunal	I. Imprisonment up to 3 years; or II. Fine for every day during which default continues, which may cumulatively extend up to 10% of estimated project cost as determined by the authority., or III. With both.
65	Contravention of Orders of RERA authorities	Penalty up to 5% of cost of unit sold
66	Contravention of orders of Appellate tribunal.	Imprisonment for up to 1 year or with fine extend up to 10% of cost of unit sold.

Research by : Adv. Salman Y. Shaikh, Associate

Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

**2. Compounding of offences by Court- Section 70**

**Notwithstanding Code of Criminal Procedure, 1973, if any person is punished with imprisonment under this Act:**

I. The court may compound the offence on paying 10% of the estimated cost of the real estate project.

II. The promoter shall comply with orders of Appellate Tribunal within a period of not more than 30 days of compounding orders of court.

III. On such payment and compliance of court order, the promoter who is in custody shall be set at liberty and no proceeding shall be instituted or continued against such person.

IV. The acceptance of such money for compounding shall be deemed to be an acquittal order

Research by : Adv. Salman Y. Shaikh, Associate

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**3. Offences by Company**

- I. In case of offence by company or partnership firm, Officer in charge as well as company shall be deemed to be guilty of the offence and be liable to be proceeded accordingly.
- II. Such person shall not be liable for punishment if he proves that offence was committed without his knowledge or that he exercise all due diligence to prevent such offence.
- III. Where an offence under this Act has been committed by company or partnership firm, and it is proved that the offence was committed with the consent or connivance of or due to neglect of any director or partner, manager, secretary or any other officer of the organization, then such person shall also be deemed to be guilty of that offence and be liable to be proceeded against and punished accordingly.

Research by : Adv. Salman Y. Shaikh, Associate

Verified by : Adv. Ashish Ved, Co-Founder & Senior Partner

Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

## **CHAPTER 8: CASE LAWS & CITATIONS**

### **Rohit Chawla & 72 Ors vs. M/s Bombay Dyeing & Mfg. co.Ltd**

*“Can’t take buyers for granted. Highest refund order by MahaRERA “  
Appeal No. AT00600000000110106, Order dt. 31<sup>st</sup> December, 2019.*

The Hon’ble Appellate Tribunal directed the Developer to pay flat buyers an interest of 10.5 per cent apart from the invested money of Rs 2 crore each and also refund the MVAT paid by the flat buyers.

The Appellate tribunal, also for the first time, directed the developer to return the VAT and service tax with an interest of 10.5 per cent. It has also informed Appellants that in case they required additional compensation for violation of sections 12 (misleading advertisements), section 14 (change of layout and plans) and section 18 (delayed possession of flat) under RERA, they may file a separate complaint before the adjudicating officer of RERA as the regulatory authority is not empowered to grant additional compensation.

Research by : Adv. Salman Y. Shaikh, Associate

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MahaRERA also cannot hereafter compel flat buyers to continue in the projects citing the larger interest of other flat buyers. The tribunal order also has included references from the Apex Court and Bombay High Court judgements.

**Avinash Saraf V/s. Runwal Homes Private Limited**

“For delay in possession, the allottee can claim complete refund”

*Complaint No. CC00600000000032, Order dt. 13<sup>th</sup> October, 2017*

The complainant contended that they have paid 97% of total consideration of the flat. The date of possession of the flat was August, 2016, as per agreement of sale executed in November 2014, but the respondent failed to give the Possession in time and therefore asked to refund whole money with interest and legal cost.

The Authority held that: (i) RERA has jurisdiction even for agreement executed before RERA came into effect if the cause of action survives after RERA come into force. (ii) Possession without occupation certificate is illegal

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(held by NCDRC and Hon'ble High Court in another case) (iii) the complainant was granted full refund, with interest and cost of complaint.

The complainant got finally Rs. 1,74,17,986/- + Rs.8,86,800/- towards stamp duty registration charges + Rs. 11,00,000/- towards interest till 30th April 2017 + interest at SBI marginal cost of lending rate plus 2% p.a. till the date of final payment to the complainant.

**Maharashtra Real Estate Regulatory Authority (Complainant) v. Sai Estate Consultant Chembur Pvt. Ltd. (Respondent)**

*“Real Estate Consultant slapped for advertising unregistered Real Estate project”*

*Suo-Moto Case No. 1 of 2017, dated 5<sup>th</sup> June, 2017.*

In its first decision in a case taken up suo moto, the Real Estate Regulatory Authority (RERA) norms that have given a big boost to home buyers, a Chembur-based real estate consultant firm has been asked to pay Rs 1.2 lakh as fine for a misleading advertisement of an ongoing construction project.

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In addition to the fine, the firm has also been asked to tender an apology. The action comes as result of a complaint, filed in this regard from consumer activist outfit, the Mumbai Grahak Panchayat. “We welcome this bold order, and hope builders and real estate agents learn lessons from it,” the activist outfit was quoted as saying by Indian Express.

**Krishna Kishore Agarwal & Veena Agarwal Vs. Sahyog Homes Ltd.**

*“Memorandum of Understanding enough to prove ownership “*

*Complaint No CC0060000056265, Order dt. 24<sup>th</sup> July, 2017.*

Though the complainants only had a Memorandum of Understanding (MOU) as evidence that they invested in a flat in a project developed by the Respondent. The Maharashtra Real Estate Regulatory had ruled that it is proof enough of ownership and directed the developer to refund Rs.82.95lakh with 10.75 percent interest from 2012.

The Respondent had claimed that the Complainants were not homebuyers but investors and that the MoU was not registered.

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MahaRERA member Madhav Kulkarni observed that the Appellate Tribunal had held that even in the absence of a registered agreement, such Complaints are maintainable. Stating that the developer should not have accepted such a huge amount when the project was not progressing as per schedule, Kulkarni held that the builder had failed to deliver possession of the flat as per the agreement and directed the company to refund the paid amount from the date of payment till final realisation.

**Gaurav Makkar Vs. Shining Sun Constructions (Marble Arch)**

*“MahaRERA to execute Agreement for sale on behalf of errant builder who failed to comply Authority’s Order”*

*Order passed in Complaint No. CC006000000001389 dt. 31" May 2018.*

Complainant filed a case against Shining Sun Constructions (Marble Arch) respondent on March 23, 2018, the complainant complained that he has booked flat in respondents’ registered project Marble Arch situated in New Bombay. Though the respondents received more than 10% of the total consideration of the flat, they failed to execute the agreement for sale in

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complainant's favour and thereby contravened Section 13 of Real Estate (Regulation and Development) Act, 2016 (RERA.)

The complaint has been decided on March 23, 2018. The respondents have been directed to execute the agreement for sale in complainant's favour of flat and also to pay her Rs. 20,000/- towards the cost of the complaint. A penalty of Rs. 50,000 is also imposed u/s 61 of RERA.

The Judge said that the complainant complained that the Respondents have not complied with the order. Hence it requests to execute/enforce the same. *It was further directed that the Secretary of Maha RERA shall execute and register the agreement on behalf of the Respondents at the cost of the complainant.*

**Umma Teckchandani Vs. P.G Enterprises**

*"MahaRERA to decide on deals done under earlier law too"*

*Complaint No. CC006000000012532, Order dt. 1<sup>st</sup> August, 2018.*

In a matter related to delay in delivery, and compensation for the same, a Mumbai based realty developer had challenged the authority's jurisdiction

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claiming that the Homebuyer had entered into an Agreement in 2014 under MOFA. However, MahaRERA establishing its jurisdiction, stated that there was enough time for the developer to complete the project before the provisions of the RERA Act came into force on May 1, 2017 and will now fall under the Authority's ambit as it is an incomplete project that is yet to receive an occupation certificate.

**Jayesh Tanna Vs. Maharashtra Real Estate Regulatory Authority & Ors.**

*“Compliance of 43(5) mandatory to hear Appeal says HC to Developer”*

*Writ Petition (L) No. 4294 of 2018 Bombay High Court, Order dt. 28<sup>th</sup> January, 2019.*

The allottees filed a complaint against the builder due to delay in delivery of the project. The due date of possession was 2015 and builder failed to handover the possession until April 2018. Therefore after 3 years of delay, frustrated by the act and omissions of the builder the complainant had approached the RERA for a refund of the amount paid along with interest. Accordingly, Authority passed the refund orders along with interest.

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Aggrieved of the order the builder filed an appeal before the Maha-RERA Tribunal. The tribunal told the developer to deposit 50% of the refund amount as per Section 43 (5) of RERA before the appeal can be heard. The tribunal thereafter dismissed the appeal as the builder failed to deposit the amount as directed by the tribunal. Further, the tribunal dismissed their plea for more time to deposit the money.

Thereafter the builder challenged the order passed by the Tribunal before the Bombay High Court by preferring the second appeal, which was withdrawn. Subsequently, a writ was filed by the builder, wherein the high court while interpreting section 43(5) of the act which states:

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

*Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total*

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*amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”*

In light of the same, the high court upheld the decision of the Appellate tribunal by directing the builder to deposit the 50% of the refund amount as ordered by the authority in order to hear the plea.

**Goregaon Pearl CHSL Vs. Dr. Seema Mahadev Paryekar**

*Whether A Society, Being A Landowner, Is A "Promoter" Under Real Estate Regulation Act, 2016?*

*Writ Petition (L) No. 2023 of 2017 Bombay High Court, Order dt. 14<sup>th</sup> October, 2019.*

In a case of Redevelopment Agreement with Society, on termination of Agreement with Promoter what is status of Society? Is Society a Promoter? What happens to Rights of Flat buyers of free sale component?

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The Hon'ble High Court was pleased to observe that: *The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject to all liabilities of a promoter, such as liability of disclosure of plans and specifications, outgoings etc. under Section 3 of MOFA, entering into agreements in accordance with Section 4, giving possession of flats and suffering the consequences of Section 8, forming co-operative societies of flat purchasers under Section 10, and so on. This would be plainly inconceivable. Prima facie, thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the Society in relation to the purchasers."*

**Mr. Jatin Mavani Vs M/s. Rare Township Pvt. Ltd.**

*"Multiple proceedings discouraged by RERA"*

*Complaint No. CC00600000055013, Order dt. 14<sup>th</sup> December, 2018.*

The complainant was one of the member of the Rising City Ghatkopar Association. The said fact has not been denied by the complainant. The said

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complaint was filed with the MahaRERA by the allottees seeking directions from MahaRERA to allow cancellation of the flat bookings by the allottees who want to do so without cancellation fees and direct the respondent to refund the amount paid by the allottees along with interest and compensation. In the said complaint after hearing the arguments of both the side, the MahaRERA has already given verdict directing the respondent promoter to execute the registered agreements for sale with the members of the Rising City Ghatkopar Association.

The Tribunal was pleased to observe that *“Since the complainant is also a party to the said proceeding, he cannot separately agitate this complaint before the MahaRERA, as it will amount to agitate multiple proceedings on the same issue, which is not permissible in RERA Act, 2016. In the present case since the MahaRERA has already given judgment in the proceeding filed by the complainant through the Rising City Ghatkopar Association, the same issue cannot be agitated before the MahaRERA again”*

In view of these facts, the authority dismissed the complaint as not maintainable.

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**Man Global Ltd. (MGL) Vs. Bharat Prakash Joukani & Ors.**

*“Single- Member bench can’t decide RERA Appeals”*

*Second Appeal Stamp No. 14845 of 2019 Bombay High Court, Order dt. 7<sup>th</sup> August, 2019.*

The Hon’ble Bombay High Court quashed and set aside a ruling by the administrative member of Maharashtra Real Estate Appellate Tribunal on Tuesday, and ruled that as per the Real Estate (Regulation and Development) Act (RERA) provisions, a sole member of a tribunal bench has no jurisdiction to dispose of appeals or applications.

Hearing two second appeals by developer Man Global Ltd (MGL) against Bharat Prakash Joukani and Ram Prakash Joukani, Justice RD Dhanuka delved into the question of law – whether a sole member of the Tribunal can decide any appeal or application under RERA provisions or the same has to be heard and decided by a bench comprising two members, including one judicial member.

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**Geetanjali Aman Construction & Anr Vs. Hrishikesh Ramesh Paranjpe**

**& Ors.**

*“Building with 22 flats, nine shops granted exemption from registration as the plot area remained less than 500 sq. mtrs”*

*Appeal in Complaint No. SC10000670 in Complaint No. SC10000691, Order dt. 10<sup>th</sup> July, 2019.*

The Hon'ble MahaRERA Appellate Tribunal had quashed two MahaRERA orders penalising a developer for not registering his project and rules that a housing project need not come under MahaRERA purview if a developer's project meets either of the two parameter- developable area of less than 500 sq. mtrs or less than 8 flats.

The Order by Three Member bench exempted the developer Geetanjali Aman Constructions from registering the project with MahaRERA and also set aside Rs. 30 Lakh penalty imposed on the firm for non-registration.

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## **CHAPTER 9: CHALLENGES & SHORTCOMINGS OF THE ACT**

One of the key challenges faced by MahaRERA, during the past three years, was lack of regular updates of project information by promoters. Though, more than 22600 projects were registered with MahaRERA, not all of them regularly updated the status of their projects. The key reasons for the same were:

### **1. Lack of Awareness:-**

One of the major reasons for non-updating of information is lack of awareness among the promoter community about the provisions of the Act. Many promoters are not aware of their responsibilities under RERA. They believe that RERA registration is like one time license valid till end of project. Some of them had also outsourced their RERA registration to Consultants / CA / Architects as one-time activity, which after registration ignored the project.

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## **2. Ingrained Behaviour:-**

Real Estate Sector has always encouraged opaque practices and thrived on information asymmetry. Hence there was resistance among small group of Promoters on regular updates of information.

## **3. Implementation of Order:-**

Under the provision of Section 40 of the RERA Act, the recovery warrant orders are issued for unpaid amount (interest, compensation or penalty) by the adjudicating officers against developers for reimbursing flat buyers or to implement a specific order. These cases are forwarded to collectors for attachment of the properties and recovery of dues to be paid to the affected parties. Though recovery warrant orders had been issued against several projects, the revenue authorities have not executed them for various reasons. So far the reimbursement has taken place only in a few hundred cases, while the remaining are in various stages of execution. With rising complaints of non-execution of such orders, MahaRERA is hoping to come to the aid of such projects.

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#### **4. Debt blow to developers:-**

The escrow account provision under RERA, which requires developers to keep aside 70 percent of the advance payments from the customers for a specific project and prohibits diversion of funds to other investment ventures, is expected to take a toll on the debt levels of real estate developers. RERA poses many challenges before developers in terms of cash flow, which would raise the debt levels of the builder community. Developers will now have to depend on external capital which will mount their financial burden, given the subdued sale dynamics and weak home buying sentiment. Besides, a constraint on pre-launches, the most sought after way for developers to raise funds for initial expenses and land acquisitions, further aggravates the problem.

#### **5. Deterrent to joint ventures:-**

While on one hand, RERA focuses on Joint Ventures (JVs), on the other hand, it seems to dissuade an alliance between land owner and developers by terming the land holders as the promoters.

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With the paucity of funds to acquire land, developers will now have to rely more on JV with land owners. However, RERA appears to dissuade JVs between developers and land owners by terming the latter as promoters. Now, many landlords would be sceptical of taking responsibility of the project and, hence, will be hesitant to tie up with developers. This will further restrict the supply of land or make it more expensive through higher upfront payments.

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## **CHAPTER 10: MAHA-RERA REGISTRATION PROCESS**

Procedure to register on the MahaRERA website:

1. Visit the <https://maharera.mahaonline.gov.in/> website.
2. Select the New Registration link under the Login button.
3. Select your user type in the new window that opens. You can select from among:
  - a. *Promoter*
  - b. *Real estate agent*
  - c. *Complainant*
4. Enter all the required information.
5. Verify your email ID, so you can login to your account.
6. Submit the documents required based on your selection.
7. Make payment depending on the area of the project.

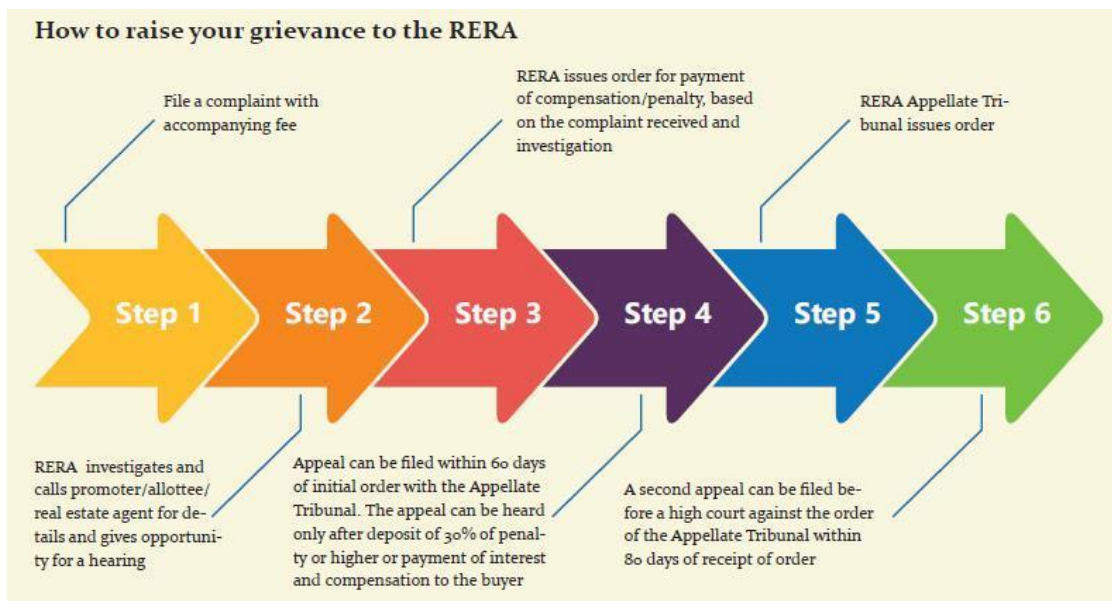
(Registration fees is at Rs. 10 per sq meter carpet area of the building project, with minimum fees Rs.50,000/- and maximum fees of Rs.10 lakh)

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## **CHAPTER 11: ONLINE COMPLAINT REGISTRATION**



**Sec. 31:** Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

The process of filing complaints in MAHARERA.

1) Visit <https://maharera.mahaonline.gov.in/>

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- 2) You will be prompted with Login and Password. Click on New Registration. Select user type as Complainant as shown in the image below. Select Appropriate User Name and Password. Once you are done click on Create user.
- 3) Once your id is created you can log in with provided credentials to RERA portal. Upon registration, you need to provide personal information including your residence details.
- 4) On left side navigation pane, you will find an option to Add New Complaint.
- 5) Particulars of the Complainant and the Respondent.
- 6) Registration number and address of the project.
- 7) A concise statement of facts and grounds of claim with proper explanation and documentary evidence.
- 8) After registration is complete, you need to make payment of Rs.5000 plus necessary taxes by going to the payment link.
- 9) After a complaint is filed, both the parties i.e. the Complainant and the Respondent viz. the Promoter/Developer are informed of the tentative date of hearing when the matter is likely to be heard. Both the parties will be given opportunity to present their facts and evidences after which RERA will pass appropriate orders.

**\*\* Procedure for online complaint registration for RERA Authority and RERA Appellate Tribunal remains unchanged.**

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## **CHAPTER 12: BENCHES AND CONTACT DETAILS**

### **MUMBAI HEADQUARTERS**

Maharashtra Real Estate Regulatory Authority  
6th & 7th Floor, Housefin Bhavan, Plot No. C - 21, E - Block,  
Bandra Kurla Complex, Bandra (E), Mumbai – 400051.  
Tel. No. 022 68111600

### **MUMBAI DIVISION OFFICE**

**(Hon. Member 1 and Hon. Member 2)**

Maharashtra Real Estate Regulatory Authority  
501, Express Building, 14-E Road  
Churchgate, Mumbai-400020

### **MUMBAI SUBURBAN DIVISION OFFICE**

**(Conciliation and Adjudication)**

Maharashtra Real Estate Regulatory Authority  
3rd Floor, A-Wing, SRA Administrative Building,  
Anant Kanekar Marg, Bandra East, Mumbai, Maharashtra 400051.

### **PUNE DIVISION OFFICE**

Maharashtra Real Estate Regulatory Authority  
109 to 113, First Floor,  
Sayajirao Gaikwad Udyog Bhavan,  
Aundh, Pune -411 007  
Tel. No. : 020 29806545

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**NAGPUR DIVISION OFFICE**  
Maharashtra Real Estate Regulatory Authority  
Administrative Building No.1, 1st Floor,  
Adjacent to Udyog Bhavan, Civil Line,  
Nagpur – 440001.  
Tel. No. : 0712 2551400

(Office Timings: Monday to Friday 10:00 am to 6:00 pm)

Contact Person	Phone Number	Email id
Technical Officer	022-68111609	techoff1@maharera.mahaonline.gov.in
Legal Advisor	022-68111612	legaladv@maharera.mahaonline.gov.in
MahaRERA Helpdesk	022-68111620	helpdesk@maharera.mahaonline.gov.in
MahaRERA Payments Support	022-68111619	maharera.paymentquery@mahaonline.gov.in
MahaRERA conciliation forum		mahareraconciliation.helpdesk@gmail.com

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**MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL**

1st Floor, One Forbes, Dr. V.B. Gandhi Road,  
Kalaghoda, Fort, Mumbai - 400 001  
Office no. 022-22710200  
Helpdesk: [mahareat.helpdesk@gmail.com](mailto:mahareat.helpdesk@gmail.com)

**WORKING HOURS**

- The office working hours of the Tribunal shall be from 10.00 AM to 6.00 PM with 45 minutes recess from 2.00 PM to 2.45 PM.
- The sittings of Tribunal shall be from 11.00 AM to 2.00 PM and from 2.45 PM to 4.45 PM, with 45 minutes recess from 2.00 PM to 2.45 PM.
- The Filing Counter of the Registry shall be open on all working days from 10.00 AM to 4.00 PM or as may be notified by the Appellate Tribunal from time to time

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Mentor : Adv. Yusuf Iqbal Yusuf, Founder & Managing Partner

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*(This document has been compiled based upon information / documents available in public domain and sources believed to be true and reliable)*

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