

DEVELOPERS BETTER HURRY,
**DELAYED POSSESSION NOT
ONLY A BUYER'S WORRY!**



In India real estate sector is one of the significant sectors for economic growth and development of country. To ensure this sector works well, buyers need to have the security of timely delivery of the premises purchased by them. Unfortunately, delay in completion of a housing project is becoming very usual. While there are multiple factors that contribute for delay of such projects, ultimately a homebuyer suffers due to delay as it results in huge monetary loss and mental stress.

Various complaints had been filed before the judicial authorities with respect to delays caused by builders while handing over possession of apartment to homebuyers. In order to control the situation of delays, Parliament has enacted Real Estate (Regulation and Development) Act, 2016 ("RERA"). RERA aims to protect the interest of the buyer by ensuring accountability and transparency between promoter and buyer and introduces professionalism and pan India standardization.

RERA is applicable to real estate projects exceeding 500 sq. meters. land or development of more than 8 apartments. In this article we shall look at the relief provided to the buyer under RERA and complaint mechanism for delay in possession.

Delayed Possession:

Delay occurs when a promoter fails to complete the project and give possession of the premises within the specific period as stated in the agreement for sale.

- If the promoter fails to handover the possession of premises on agreed date, the buyer has options to:
- withdraw from the project and claim refund of amount paid to promoter with interest at such rate as may be prescribed including demand compensation; or

- continue with the project and demand interest for every month of delay till the handover of possession of premises.

The rate of interest payable to the buyer is prescribed under RERA which differs from state to state as per respective state rules. For e.g. according to Rule 18 of MahaRERA Rules 2017, the rate of interest payable by the promoters to the buyers shall be State Bank of India highest Marginal Cost of Lending Rate (which the State Bank of India may fix from time to time for lending to the general public) plus two percent.

Thus, RERA puts a cogent responsibility on the promoter to deliver the possession of the premises within the committed timeframe and failure to do so attracts clear consequences.

Complaint Against Promoter and Real Estate Agent:

Any aggrieved buyer who has any interest in the registered project may file a complaint under RERA with the real estate regulatory authority or adjudicating officer in the form and manner as prescribed under the respective state rules. Under RERA it is mandatory that every complaint should be disposed off as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it cannot be disposed of during the said period, the Authority is required to record in writing its reasons for the same. In terms of grievance redressal, MahaRERA has received 20,106 complaints out of 13,658 complaints have been resolved till December 2022[2]

[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2]<https://maharera.mahaonline.gov.in/searchlist/PublicViewDashboard>

There are plethora of cases, wherein MahaRERA has granted interest and directed promoters to pay penalty in case of delayed possession:

A) Shree Shakun Realty Pvt. Ltd. vs. Vijay Solanki[4]: In this complaint agreement for sale was executed and registered on 10 January 2014. Promoter agreed to give possession of the flat



A) In recent complaint MahaRERA directed Orbit Enterprise[3] to give possession of apartments to the complainant Saif Ali Khan Pataudi within 15 days from the date of order along with interest for delayed possession from actual possession date i.e. 01 February 2018 (31 July 2017 plus 6 months' grace period granted under MOFA) till the date of occupancy certificate i.e. 12 February 2021 at the rate of Marginal Cost Lending Rate of SBI plus 2%. Moreover, the complainant Saif Ali Khan failed to make payment of balance amount as per the agreement for sale although the possession was offered to him with occupancy certificate on 12 February 2021.

In view of this the Authority directed actor Saif Ali Khan Pataudi to pay interest for the delayed payment from the date of default till the actual date of payment at the Marginal Cost Lending Rate of SBI plus 2%.

on or before 31 December 2014. However, Promoter failed to hand over possession of flat on or before December 2014. Allottee demanded refund of amount paid to Promoter along with interest and compensation by withdrawing from the project under Section 18(1) of RERA. The Regulatory Authority heard both the sides and directed Promoter to refund the amount paid by Allottee along with interest. Aggrieved Promoter has filed appeal and relied on clause 8 of the agreement for sale to claim reasonable extension for giving possession due to unavoidable circumstances. In view of Appellant Authority, in Section 8 of MOFA extension for handing over possession is initially for 3 months and thereafter for 3 months for reasons beyond control. However, there is no such extension provided under Section 18 (1) of RERA.

[3] Saif Ali Khan Pataudi vs Orbit Enterprises Ltd. and Ors. Complaint No. CC00600000057769

[4] Appeal No. AT00600000021263 in Complaint No. CC00600000056702 Decided On: 16th February 2021



A) Thus, due date as mentioned in the agreement for sale is absolute and it is not subject to any extension under Section 18 (1) of RERA. The Appellate Tribunal dismissed the appeal filed by Promoter and confirmed the impugned order dated 30th January 2019 passed in the Complaint No. CC00600000056702. The order of the Appellate Authority was challenged in the High Court. The High Court also dismissed the appeal and upheld the impugned order passed by MahaRERA and Appellant Tribunal and directed that the amount which the allottee has paid to the Promoter be returned back with simple interest at the rate of 10.55% p.a. from the date of their payment till the refund.

Jervis and Rose Creado vs Aishwarya Light Construction Company[5]: In this complaint, MahaRERA in its order had denied the Allottee to claim interest on delayed possession of flat as the agreement of sale was not registered. Since the Promoter accepted 20% of consideration value of the flat from the Allottee.

Authority has directed the said Promoter to register the agreement of sale within 30 days under Section 18 of RERA. The order of regulatory authority was challenged in the Appellant Tribunal. The Appellate Tribunal passed the order on 17 June 2022 setting aside MahaRERA's impugned order and directed the Promoter to pay the interest at the rate of State Bank of India highest Marginal Cost Lending Rate plus 2% on the amount paid by the allottee from January 2018 till the actual possession of flat to be handed over. In addition, tribunal ordered the Promoter to pay Rs 10,000 as cost to the Allottee.

It was held that in the absence of a formal agreement, any other document, such as an allotment letter, brochure, pamphlet or email communication mentioning the date of possession can be considered to work out the delay in possession.

[5] Tanish Associates Partnership Firm and Ors. vs. Vishwanath Yerwa and Ors. Appeal No. AT005000000052360 in Complaint CC005000000022352 decided on 30 June 2022

Impact of Force Majeure Event:

Section 6 of RERA has envisaged force Majeure event and states that the registration granted under RERA may be extended by the Regulatory Authority on an application made by the promoter due to force majeure occurrence. For the purpose of this section, the expression of "Force Majeure" shall mean war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project. It seems that there is no such provision in RERA extending the timelines committed for handover of the possession to the buyer. Generally, most of the agreement for sale contains force majeure clause which exempt promoter's liability on occurrence of force majeure event. The promoter takes disadvantage of such clause as per their convenience.

In one such instance, demonetization was cited as a force majeure event by Tanish Associates Partnership Firm[5] but the contention was not accepted. In this appeal the promoters were aggrieved by the order of the MAHaRERA to pay interest for the delayed possession from 01 July 2017 till 11 December 2019 together with cost of Rs. 20,000/- and thus promoters had filed appeal before the Appellate Tribunal. The learned counsel for promoters submitted that project was delayed because of the demonetization scheme. In view of Tribunal, delay on account of demonetization will not come to rescue of promoter from legal liabilities under RERA. Hence the appeal was dismissed. An exception was made during the pandemic and Covid-19 pandemic was considered as a natural calamity and a force majeure event by Finance Minister of India[6].

In order to control the situation of Covid-19 the MahaRERA by its order dated 02 April 2020 extended registration and completion dates for 6 months for all real estate projects expiring on or after 15 March 2020[7]. Similar relief was announced in certain other states as well.

Appeal Under RERA:

Any person aggrieved by any decision or order of the real estate regulatory authority or adjudicating officer may file an appeal before the real estate appellate tribunal having jurisdiction over the matter. Furthermore, any person aggrieved by any decision or order of the real estate appellate tribunal may file an appeal before the High Court of the state having jurisdiction over the matter. Every appeal has to be filed within a period of sixty days from the date on which a copy of the decision or order is received by the aggrieved person.

Jurisdiction Barred:

Under section 79 of RERA, civil courts are barred to entertain disputes in respect of matters which real estate regulatory authority or adjudicating officer or real estate appellate tribunal is empowered under RERA to determine. However, the consumer forums (National, State or District) are not barred. Section 71 of RERA allows the buyer to withdraw his complaint from the consumer forum (National, State or District) regarding matter under Sections 12, 14, 18 and 19 of RERA and file an application before the adjudicating officer under RERA. The Adjudicating officer has to dispose off such application within a period of sixty days from the date of receipt of such application.

[5]Tanish Associates Partnership Firm and Ors. vs. Vishwanath Yerwa and Ors. Appeal No. AT005000000052360 in Complaint CC005000000022352 decided on 30 June 2022

[6]<https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>

[7]<https://maharera.mahaonline.gov.in/Upload/PDF/Final%20Order%20for%20Revision%20of%20Duration%20v4.pdf>



Penalties:

There are different penalties mentioned under RERA depending upon the offences for non-compliance of provisions and orders of regulatory authority and appellate tribunal.

Offence	Penalty
Violation of other provisions of RERA by promoter other than provided under section 3 or section 4 of RERA	Penalty extends up to 5% of the estimated cost of real estate project
Failure to comply with orders of Authority by promoter	Penalty for every day of defaults which may cumulatively extend up to 5% of the estimated cost of real estate project
Failure to comply with orders of Appellate Tribunal by promoter	Imprisonment up to 3 years or fine for every day which may cumulatively extend up to 10% of estimated cost of real estate project or with both penalties
Failure to comply with orders of Authority by real estate agent	Penalty for every day of default which may cumulatively extend up to 5% of the estimated cost of the property whose sale or purchase has been facilitated by the real estate agent
Failure to comply with orders of Appellate Tribunal by real estate agent	Imprisonment up to 1 year or fine for every day which may cumulatively extend up to 10% of estimated cost of the property whose sale or purchase has been facilitated by the real estate agent or with both penalties

Conclusion:

We can draw a conclusion that the RERA regulates the promoter and gives protection to the buyer's investment. If every buyer is looking at home as a dream, the RERA helps to achieve this dream and in case someone breaches, the regulations can suitably penalise the Promoter. All the buyers should be aware about the provisions of RERA. The major benefit of this act is transparency in transaction and speedy redressal of any dispute between promoter and buyer.

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