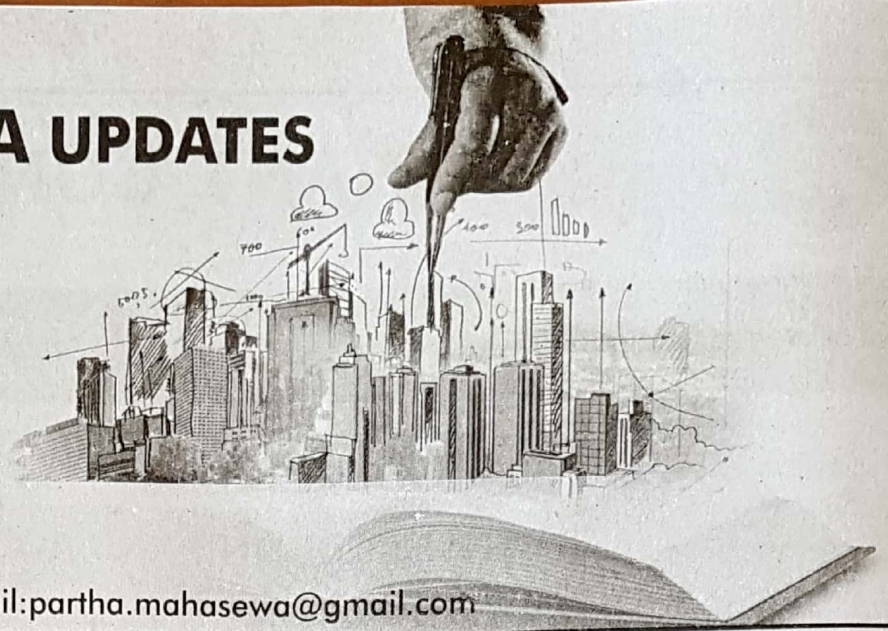




RERA UPDATES



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After the introduction of the RERA Act in 2016, Maharashtra was the pioneer in implementing the same in the state on the 1st of May, 2017. The Authority in the state is identified as MahaRERA (Maharashtra Real Estate Regulatory Authority). It is about 20 months that the Act is in force in Maharashtra and there are approximately 28,000 ongoing Real Estate projects which are registered with the Authority. The state also framed the MahaRERA rules in the year 2017.

During its journey, there were a lot of amendments which were made in the rules. The term Co-Promoter was deleted and all the promoters including the land owner promoter, the developer promoter and the investor promoters shall be commonly called as Promoters. The person who develops the real estate project is called as the Developer promoter. The person who owns the land or who has provided the land for developing the real estate project is the land owner promoter. The person who has invested money in the project against share in the profits is called as the investor promoter. According to the RERA Act, all the above categories of people are called as Promoters. As per the provisions of the Act, all the Promoters are jointly and severally liable to complete the project by the committed date.

The Promoters are also together accountable for any violations that are committed by any of them. This brings into discussion the status of

the Co-operative housing society in case of redevelopment. The housing society is the owner of the land/ plot on which it exists. Hence as per the above definition, the housing society also becomes a Promoter. Further, the housing society is also responsible for timely completion of the project along with the developer. This has created a lot of confusion and has opened a huge Pandora box. The housing society, being the land owner, though has signed the development agreement with the developer, but may not be aware of all the transactions that transpired between the developer and the new flat buyers both financial and otherwise.

Hence the housing society is averse to be categorised as a Promoter in the project. There have been many instances wherein the aggrieved flat buyers have filed complaints with the MahaRERA Authority and have included the name of the housing society as Promoters/ Respondents.

The housing societies have strongly objected to this stating that they should not be held liable for the violations committed by the developer. The Authority has held that as the housing society has entered into the development agreement with the developer, it should also be equally liable along with the developer for all the breaches. There have been many orders to this effect which have been challenged before the Hon'ble MahaRERA Tribunal. In the recent past there have been some judgments

delivered by the Hon'ble Bombay High Court wherein in a particular instance the Court has held that the new flat buyers shall remain as allottees even if the society terminates the development agreement with the earlier developer and appoints a new one. In a separate instance, the Court has ruled that in case of any problem that might arise in a redevelopment project, the rights of the existing society members shall be protected first before the rights of the new flat buyers are protected.

The above Judgments of the Hon'ble Bombay High Court has rekindled the argument whether the housing society in case of redevelopment should be termed as a Promoter in the project or not. The arguments and counter arguments have started again. We have to wait and watch what stand that the RERA Authority is going to adopt in matters of redevelopment.

In another major decision take by the MahaRERA Authority, a circular has been

issued which states that all the new agreement for sale entered between the developer and the flat buyer shall be registered only if the project in which the apartment is present is registered with MahaRERA. This is one more step towards making the process more transparent and customer friendly.

Some of the developers have opposed this move stating that as their project has received the OC and hence did not require registration or in cases where the developer has not booked any apartment before obtaining OC and hence was not registered. Again, we have to wait until further clarification issued by the Authority.

There are several other clarifications that a common man and flat buyer requires. We shall try to address the same in our future editions. Members and readers who wish to seek clarification on any matter related to RERA or who wish to avail of any professional services, may feel free to contact me on the above mentioned phone number/ email id.