



Ayana Legal

# THE BUZZ

Monthly Newsletter By Team Ayana Legal

## Landmark Judgements

### **M/S. Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Ors. (2021 SCC OnLine SC 1044)**

In a landmark judgement the Supreme Court clarified certain aspects of the Real Estate (Regulation and Development) Act, 2016 :

- a. "The legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects..."
- b. "The clear and unambiguous language of the statute is retroactive in operation."
- c. "When it comes to refund of the amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulating authority which has

## RERA ACT -A QUICK GLANCE

With rapid urbanization came the increased demand for housing. The real estate and housing sector was largely unregulated and was completely inadequate to meet the needs of the buyers therefore a need for an oversight mechanism was felt. The Real Estate Regulatory Authority a.k.a RERA is an institution that was set up as a result of the of Real Estate (Regulation and Development) Act, 2016 to encourage greater transparency and accountability in real estate transactions.

### Key Features of the Act:

- a. The Act establishes a Real Estate Regulatory Authority in each state and union territory.
- b. The Act makes registration of real estate projects and registration of real estate agents with RERA mandatory. "No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, in any real estate project without registering the real estate project with the Real Estate Regulatory Authority in the manner as prescribed."
- c. "The questions which come up before the Authority shall be disposed within a period of sixty days from the date of receipt of the application. Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing."

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the power to examine and determine the outcome of a complaint." If the question is regarding compensation and interest thereon the Adjudicating Officer will have the power to determine it.

c. "Section 81 of the Act positively empowers the authority to delegate such of its powers and functions to any member by a general or special order" except the power to make regulations as mentioned under Section 85.

d. The validity of Section 43(5) which mandates the promoter to deposit a certain amount to the Appellate Tribunal prior to hearing of the case was upheld. The court referring to other Acts with similar provisions held that the intent was to safeguard the consumer from delay in payment of refunds and avoid litigation.

## Thank You

In these unpredictable times, we hope that you are taking care of yourself. Team Ayana Legal thanks you for the trust. Till we are back with our next edition, mask up, stay safe and keep smiling.

## Disclaimer

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d. RERA shall publish and make available for public viewing records of information relating to all real estate projects for which registration has been given, the names and photographs of real estate agents who have applied and registered under this Act, the names and photographs of promoters as defaulters including the project details.

e. "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 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."

f. "A 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 application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

e. The agreement for sale shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, the dates and the manner by which payments are to be made by the allottees and the date on which the possession is to be handed over and such other particulars, as may be prescribed.

f. "Any person aggrieved by any direction or order or decision of the Authority may prefer an appeal to the Appellate Tribunal. Every appeal shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority is received."

g. The Act further provides penalties for contravention of the provisions of the Act under Chapter VIII.