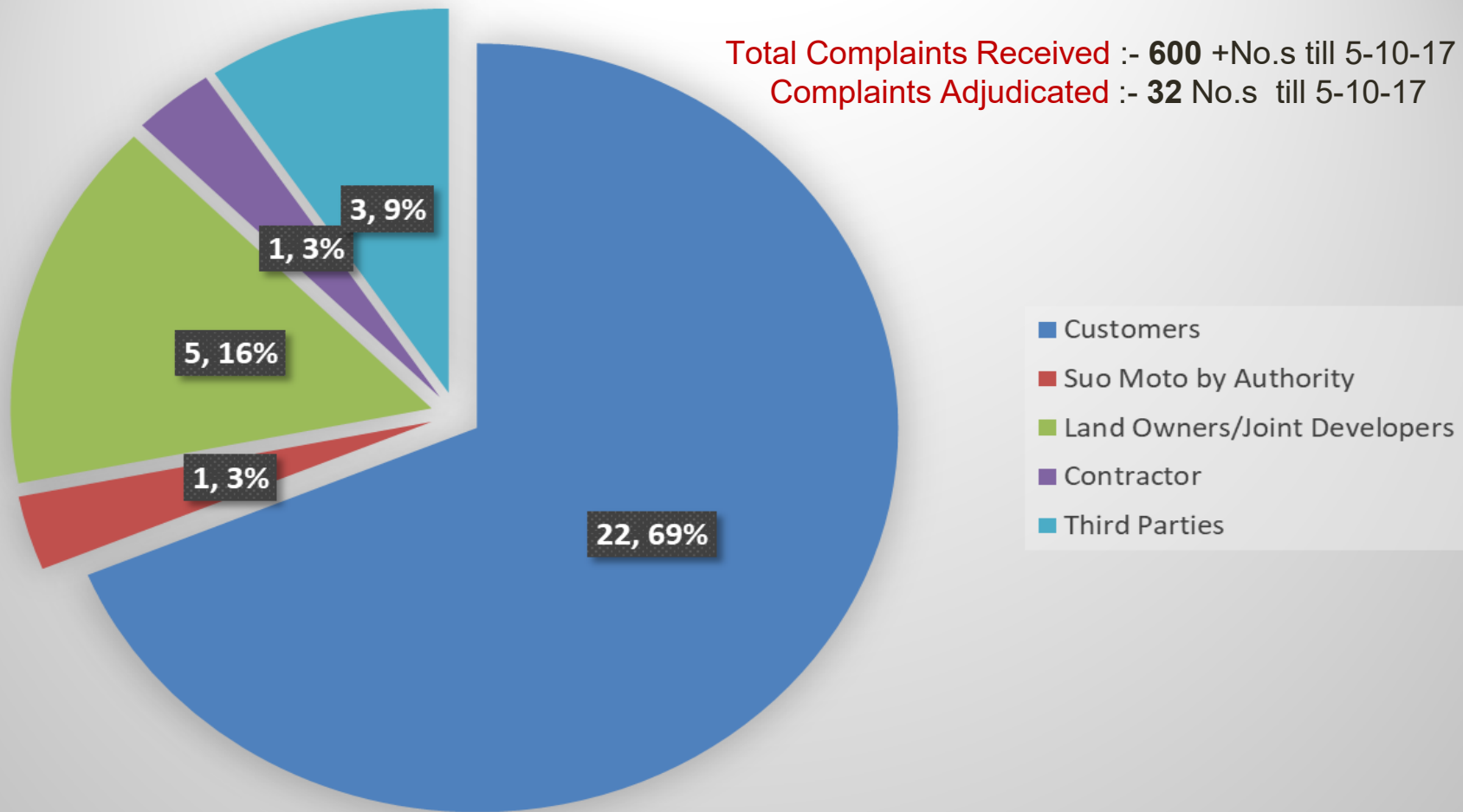


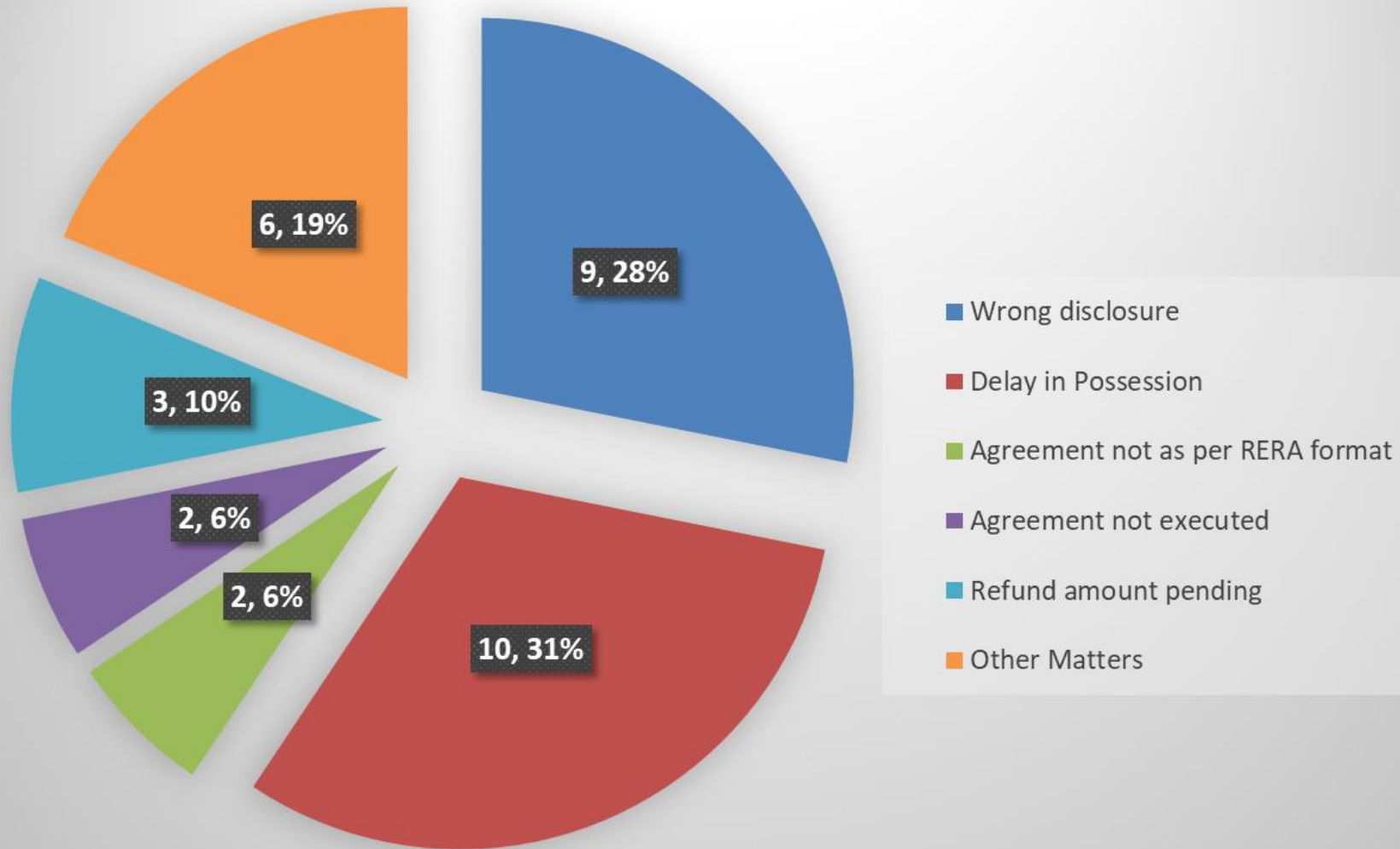
# Analysis of Important Rulings - MahaRERA



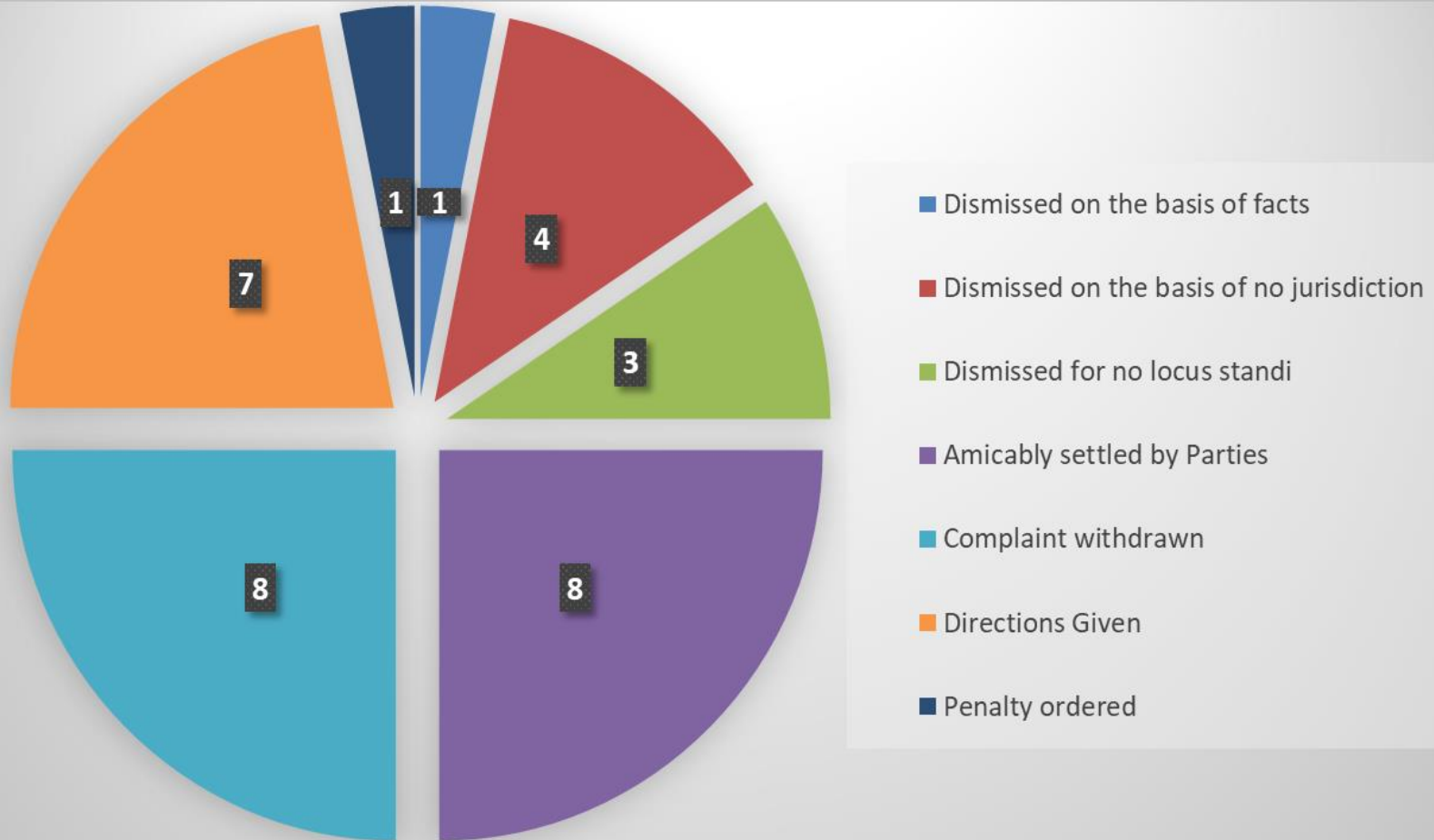
# Types of Aggrieved parties before MahaRERA



# Types of Complaints before MahaRERA



# Types of Adjudication by MahaRERA



**Case Law 1 :- Maharashtra Real Estate Regulatory Authority**  
**V/s.**  
**Sai Estate Consultant Chembure(p) Ltd**

**Suo-Moto Case No:-** 1/2017

**Decided on:-** 5 th June 2017

**Facts of the Case:-**

- a. The respondent, is a Real Estate Agent registered with MahaRERA Authority.
- b. The respondent had published advertisements of unregistered Real Estate Projects.
- c. MahaRERA **suo-moto** took cognizance of the fact that the Real Estate Agent was promoting the Real Estate project that was not registered with MahaRERA

**Order:-** 1) The MahaRERA Authority directed the respondent to withhold the advertisements with immediate effect and rectify all the hoardings by putting MahaRERA registration no on the same.

2) Respondent was restrained from advertising any project for marketing, booking and selling or offer for sale or inviting persons for purchase of any building/apartment which is not registered under MahaRERA.

3) The respondents shall put stickers on the future advertisements mentioning Rera registration no of respondent as well as of projects to be marketed.

**Case Law :- Maharashtra Real Estate Regulatory Authority**  
**V/s.**  
**Sai Estate Consultant Chembure(p) Ltd**

4) Penalty was levied by Authority as per Rs.10000/- per day of the violation and accordingly for a violation of 12 days Respondent was directed to pay Rs.1,20,000/-

**Ratio- Decidendi :-**

- 1) Every Real Estate agent who has registered himself as per provisions of the Act or Rules and Regulations made thereunder shall quote respective registration number in every sale facilitated by him under the Act.
- 2) Every Real Estate agent shall not facilitate sale or purchase of any plot or apartment or building in any Real Estate Project or part of it, situated in planning area which is not registered with the Authority.
- 3) Maharashtra Authority has power to take suo-moto cognizance in exercise of its powers conferred by S.35 of the Real Estate (Regulation and Development) Act, 2016



## **Case Law 2:- Sejal Gandhi V/s. Jayant Mehta**

**Decided on:-** 21 st September 2017

### **Facts of the Case:-**

- a. Complainant alleged that the Respondent has not registered her building with MahaRERA, inspite of the building not having received occupancy certificate.
- b. The Complainant also alleged that the Respondent is not adding her name in the list of occupants displayed in the Name Display board of the said building.
- c. The Respondent argued that the said building is not part of the project that is registered with Maharera and the said building is already occupied and therefore is not required to registered with MahaRera.
- d. The Respondent further mentioned that Complainant is neither member of the said building (CHS) nor a new buyer.

**Order:-** 1) The MahaRERA Authority held that since the said building is not part of the project that is registered with Maharera, the complaint was dismissed for want of jurisdiction.

2) It was also held that since the said building is already occupied does not require to be registered with Maharera.

## **Case Law:- Sejal Gandhi V/s. Jayant Mehta**

**Decided on:-** 21 st September 2017

3) The MahaRERA Authority directed respondent to add the name of the concerned buyer( father of the Complainant) in the display board of the said building.

### **Ratio - Decidendi:-**

The Real Estate projects which does not have Occupancy Certificate(OC) or Building Completion Certificate from the competent authority but are already completed and occupied by the allottees, such projects are not required to be registered with Maharashtra Authority U/s.3 of the Act.



## **Case Law 3 :- Amol Kadam V/s. Horizon projects**

**Decided on:-** 19 th September 2017

### **Facts of the Case:-**

- a. Complainant has filed the complaint for return of the booking amount in its entirety.
- b. The Complainant has withdrawn/cancelled his apartment from the project and respondent developer has refunded a substantial percentage of the booking amount paid by the complainant.
- c. The Respondent argued that in accordance with the terms and conditions of the allotment letter signed between respondent and the Complainant, the booking amount paid by the Complainant is liable to be entirely forfeited in case of complainant intends to withdraw from the project for no fault of the developer.

**Order:-** The MahaRERA Authority held that in accordance with terms and conditions of the allotment letter, the respondent cannot be directed to refund any further amount.

**Ratio-Decidendi:-** The terms and conditions of the allotment letter signed between the developer and allottee/s while purchase of apartment are binding on both the parties. Developer has right to forfeit reasonable amount out of booking advance in case the allottee/s intends to withdraw from the project for no fault of the Developer.

## **Case Law 4 :- Swatantra Anand V/s. Paradigm Ambit Buildcon**

**Decided on:-** 18 th September 2017

### **Facts of the Case:-**

- a. The Complainant made grievances before the authority for non-payment of bill raised by him as a contractor for real estate project which is registered with MahaRera.
- b. The Complainant also alleged that respondent developer has also appointed sub-contractor without notice to the complainant.
- c. Further the respondent with malafide intention, has not disclosed his name as contractor while registering the project. Hence respondent violated provisions of S.4 of RERA Act, 2016.
- d. The respondent stated that the complainant is no longer a contractor in the project as his work contract has been terminated and the same was communicated to complainant as well.

### **Order:-**

- 1) The MahaRERA Authority held that complainant is not an interested party in the project due to his termination of works contract and therefore has no locus standi to file the present complaint.

## **Case Law:- Swatantra Anand V/s. Paradigm Ambit Buildcon**

**Decided on:-** 18 th September 2017

2) The Authority also held that issue of non-payment of bills to the complainant is a civil dispute matter and MahaRera would not like to entertain the same.

3) Moreover, the complainant has not produced on record any order of a competent court of law to show that his work contract is still valid. Hence, the information uploaded by the respondent cannot be said to violation of Sec.4 as alleged by the complainant.

**Ratio-Decidendi** :- The dispute pertaining to works contract are a civil disputes related to specific performance of contracts and therefore shall not fall within ambit of RERA Act,2016.

## **Case Law 5 :- Istekhar Shaikh V/s. Dhruva Woolen Mills**

**Decided on:-** 14 th September 2017

### **Facts of the Case:-**

- a. Complainant alleged that the Respondent has not disclosed the case pending against the respondent in respect of the project and the encumbrances thereon and thus has violated provisions of S.4 (2) (b), 4(2)(1) b and d of RERA Act, 2016 and Rule 3 (2) (c) and (e) of Maharashtra Rules 2017.
- b. The Complainant alleged that though he is not Allottee in the said real estate project but he has filed this complaint in the public interest.

**Order:-** 1) The MahaRERA Authority held that the Complainant is not Allottee of the project, he has no locus standi to file the complaint before the authority.

2) The Authority also held that it has no jurisdiction to hear a complaint filed as a “Public interest Litigation”

**Ratio-Decidendi :-** Third party who has no concern/interest in relation to the registered real estate project will have no locus standi to file the complaint before the authority and also authority has no jurisdiction to hear a complaint filed as a “Public interest Litigation”.

## **Case Law 6 :- Vishal Kamble V/s. Amol Bhilare & others**

**Decided on:-** 26 th September 2017

### **Facts of the Case:-**

- a. The Complainant has prayed before this authority to direct the respondents to give his 50% share in the project as per the registered development agreement executed between him as a landowner and the respondent as a developer.
- b. The Complainant also alleged that one of the respondent has been using two different names i.e one on the plans submitted to sanctioning authority and other on the agreement.
- c. It is further alleged that major flat bookings of flats and parking space were made to the customers without any notice to landlord.
- d. The respondents stated that development agreement is registered with landlord in the year 2012. Now after lapse of 5 years, the complaint is disputing the agreement on the ground of alleged forgery which is baseless.

**Order:-** 1) The MahaRERA Authority held that the complainant is seeking directions for specific performance of the development agreement. However, the MahaRERA has no jurisdictions to try or entertain such civil disputes.

## **Case Law:- Vishal Kamble V/s. Amol Bhilare & others**

**Decided on:-** 26 th September 2017

- 2) The Authority also directed the complainant to provide the necessary details such as Bank account, declaration in Form- B of co-promoters, Aadhar card etc to respondents and also directed respondent to correct and update the relevant information on project webpage by joining complainant and other co-owners as co-promoters.

### **Ratio- Decidendi:-**

- 1) The dispute pertaining to specific performance of contracts and seeking directions for the same does not fall within jurisdiction of MahaRERA and MahaRERA has no jurisdiction to try or entertain such civil disputes.
- 2) The Authority has powers to direct landowner to join as a co-promoter in relation to real estate project registered with the authority.

## **Case Law 7 :- Kishor Jadhav V/s. Jayantibhai Patel & others**

**Decided on:-** 19 th September 2017

### **Facts of the Case:-**

- a. The Complainant has alleged that the disclosure made in by the respondent in MahaRERA registration is false and that he is actual promoter and respondent is co-promoter by virtue of Joint Development agreement.
- b. In this case one project was registered with both the parties i.e Complainant and Respondent as well with two different registration no.s. Compalinant herein has shown Defendant as co-promoter whereas Defendant herein has not shown complainant as a co-promoter in his project registration.
- b. The Complainant has prayed to cancel the registration of project by the respondent..

**Order:-** 1) The MahaRERA Authority observed that the IOD uploaded in the project ,issued by SRA in the name of both complainant and respondent jointly therefore they should have jointly registered the said project as AOP.

2) Hence Authority cancelled one of the registration of project registered by respondent herein.



## **Case Law 7 :- Kishor Jadhav V/s. Jayantibhai Patel & others**

**Decided on:-** 19 th September 2017

3) The Authority also directed that the complainant and respondent the respondent should jointly update the relevant information and make suitable modifications in the information of the project registered by the Complainant herein.

**Ratio –Decidendi :-** The single project is not permissible to be registered for two times as envisaged under RERA Act and rules thereunder.

## **Case Law 8 :- Kamlesh Ailani V/s. Ekta Parksville Homes**

**Decided on:-** 6 th September 2017

### **Facts of the Case:-**

- a. The Complainant was filed for refund of advance payment made in respect of purchase of flat in the respondent's Real Estate Project.
- b. The Complainant alleged stated that flat had been booked in the year 2102-2013 and the developer has promised for possession by 2016. However, developer failed to complete and deliver the said flat within the agreed time and was not willing to refund the advance when complainant asked to cancel the booking.
- c. After Complaint was filed Complainant agreed to refund entire booking amount and thus simultaneously executed "Cancellation deed of their purchase of said flat and termination of the Agreement for sale.

**Order:-** 1) The MahaRERA Authority disposed off the complaint as withdrawn by the complainant in terms of consent terms filed by both the parties.

**Ratio-Decidendi:-** In an order on issue of maintainability of complaint the authority stated that RERA act is prospective in application and shall be applicable post April 2017. Since project was ongoing and possession was not given, the complaint was proceeded further.

## **Case Law 9 :- Shrikant Merchant V/s. Shreepati Castle (AOP)**

**Decided on:-** 7 th September 2017

### **Facts of the Case:-**

- a. The Real Estate project is being developed by an Assosiation of Persons (AOP) i.e by Complainant and Respondent.
- b. The Complainant was filed by one of the member of the AOP alleging that internal disputes exist between the AOP members and project was registered without consent of the existing complainant.
- c. Complainant stated that they have neither signed any documents nor given any details to the member of AOP and hence demanded for all information submitted while registration of project.

**Order:-** 1) The MahaRERA Authority held that matter does on pertain to any specific violation of provisions of RERA Act,2016 and rues and regulations made thereunder and thus dismissed the matter and also directed respondent to provide the documents requested by the Complainant.

**Ratio-Decidendi:-** MahaRERA authority view is that the project developers/Joint developers should amicable resolve their disputes so that the interest of the consumers are protected and project completion is not hampered.

## **Case Law 10:- Nilesh Kundalakar V/s. Kings Empire Heights**

**Decided on:-** 26 th September 2017

### **Facts of the Case:-**

- a. The Complainant has entered into a development agreement with CHS i.e. said project and thus all approvals are issued in its name and complainant further entered into Joint development agreement with the respondent for developing said project.
- b. The Complainant alleged that the respondent has made various incorrect or incomplete disclosures in MahaRERA registration application pertaining to said project.
- c. Complainant prayed for cancellation of registration of said project, to freeze bank accounts etc .

**Order:-** 1) The MahaRERA Authority directed respondent to upload the correct and complete information and thereafter disposed off the complaint.

**Ratio-Decidendi:-** It is obligatory on part of developer registering the project with MahaRERA that he should disclose complete and correct information related to real estate project undertaken so as to avoid violation of the provisions of the said Act & rules made thereunder.

## **Case Law 11:- Rohit Kaushal V/s. Marvel Realtors & Developers**

**Decided on:-** 22 nd September 2017

### **Facts of the Case:-**

- a. The Complainant has filed this complaint under S.18 of RERA Act,2016.
- b. The parties have amicably settled their dispute in terms of consent terms

**Order:-** 1) The MahaRERA Authority disposed off matter in terms of consent terms jointly filed by Complainant and Respondent.

### **Consent terms Analysis :-**

- 1) Respondent confirmed that project will be completed on date given in the registration application i.e March 2018.
- 2) Application for Occupancy Certificate will be applied by the respondent on completion of construction work.
- 3) If respondent fails to complete the said project before given time of possession in that event respondent will pay rent of Rs.15,000/- per month for 3 BHK flats.
- 4) The respondent ensures that at the time of conveyance of the project to the Society, he will deposit Rs.1 Crore in society account.

## **Case Law 12:- Deepak Mansbadar V/s. Runawal Homes**

**Decided on:-** 18 th September 2017

### **Facts of the Case:-**

- a. The Complainant alleged that the respondents are not executing the agreement for sale inspite of the Complainants have paid 87 % of the consideration value of the flats.
- b. The Complainant further alleged that the said agreement is not in accordance with the provisions of RERA Act, 2016

**Order:-** 1) The MahaRERA Authority held that the complainant has failed to show that revised draft agreement for sale is in contravention of the said Act and rules thereunder and also directed respondent to execute agreement for sale in favour of complainant if complainant wish to continue with the said real estate project.

**Ratio-Decidendi:-** It is obligatory on part of developer that the clauses in the agreement for sale should be in accordance with Model form as prescribed under rules and regulations.

## **CONCLUSION FROM THE RULINGS OF MAHARERA**

- What you disclose at Registration and uploaded on RERA website is what you should advertise, commit and sell.
- Disputes between contractors/ suppliers/ Landowners are civil disputes and not to be taken before MahaRERA.
- Buildings that are completed and people staying ( irrespective of OC) prior to April 2017 do not need to be registered.
- Prefer to settle matter amicably with complainant before taking the matter forward.
- Carefully draft agreement with Customers , keep clauses for willful default by customer, cancellation without promoter's default, refund of money only on execution of cancellation deed.
- Disclose all relevant information in the registration application.
- Development/ Joint Development agreements should have clauses about responsibility for RERA registration and cooperation by other party



## **CONCLUSION FROM THE RULINGS OF MAHARERA**

- Possession date should be realistic.
- Draft of the Agreement for Sale to cover important clauses mentioned in the model RERA agreement.
- Disclose layout of the project on the land area which is already secured.

**THANK YOU**

