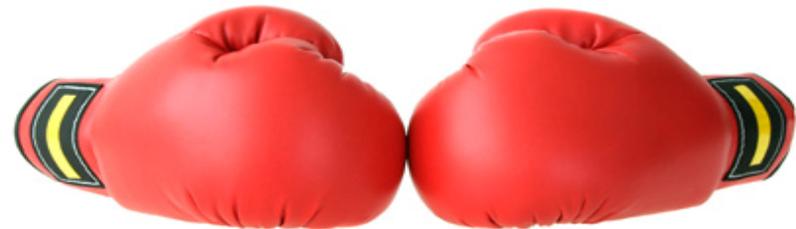


*De Jure*

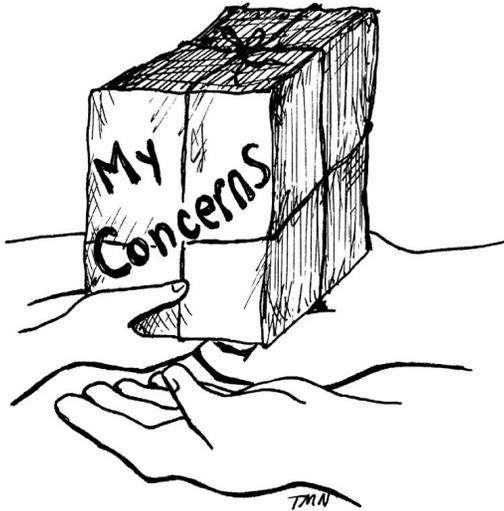
*July 14, 2016*

## Double Whammy against the Developer



---

## CONCERNS OF REAL ESTATE BUYERS



The real estate buyers more often suffer by ill practices by few errant developers/ promoters ("**Developers**"), mainly being (i) inordinate delay in getting possession of the flat/unit, (ii) paying more than 20% of the purchase consideration in advance before executing and registering the agreement for sale under the provisions of Maharashtra Ownership of Flats Act, 1972 ("**MOFA**"), (iii) altering the layout plans and specifications of flat/ unit without being informed by the Developer, (iv) not registering the agreement for sale within a period of four (4) months after paying earnest/ advance monies, (v) not disclosing clear and marketable title of the Developers in relation to the subject property, (vi) not taking steps in formation of society/ condominium/ company ("**Organisation**"), and (vii) not conveying the ownership of subject property in favour of the Organisation.

## RELIEFS

The Parliament passed the Real Estate (Regulation and Development) Act, 2016 ("**RERA**"). RERA aims to protect the interest of real estate buyers and regulate the real estate sector, by increasing transparency and accountability and regulating the buying and selling of commercial and residential units or projects together with timely completion of projects by the promoters. On April 26, 2016, Ministry of Housing and Urban Poverty Alleviation notified sixty nine sections of RERA (Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92) and which have come into effect from May 1, 2016.



---

## NEW WEAPON

On July 1, 2016, Maharashtra Police has issued a circular ("**Circular**"), *inter alia*, directing the police officials in the State of Maharashtra to take cognisance of the complaints filed by the real estate buyers against the Developers amongst others violating the provisions of MOFA and Maharashtra Town Planning Act, 1966 ("**MRTP**"), by registering First Information Report ("**FIR**"). Thus, now the real estate buyers, who are aggrieved by the ill practices of the Developers, have been provided with a new weapon in their hand to whip the Developers by approaching the nearest police station having jurisdiction to register the FIR against such Developers.



## FIRST BLOW

Within few days of the Circular, Kondhwa Police Station, Pune has booked a builder for allegedly duping few members of a society at Mohammadwadi to the tune of few crores by leaving the project half constructed.

Source: News article titled as 'Wronged Flat Owners Get FIR Relief' published by Pune Mirror on July 4, 2016

## ENABLING PROVISIONS

While it has been in discussion since enactment of RERA, as to whether MOFA is repealed or is still in force, it is important to note that RERA has repealed the Maharashtra Housing (Regulation and Development) Act, 2012 and not MOFA. RERA has carved out an overriding provision (Section 89) whereby its provisions will override all other laws, which are inconsistent with the provisions of RERA. As such the provisions of MOFA (*such as Sections 4 and 7 amongst other provisions*), which are inconsistent with the provisions of RERA, are overridden by provisions of RERA, though there is no specific notification to that effect.

---



## OUR VIEWS

We have no sympathy for the errant Developers, who not just wilfully ignore to comply with what is required to be complied by them in the real estate project, but occasionally use the real estate project as a tool to divert the funds to other projects. However, we do sympathise with the Developers, that are brought under the clutches of real estate buyers for being unable to complete the real estate projects, more particularly due to delay on the part of the concerned authorities in granting the sanctions and approvals beyond the reasonable period.

Considering that there is already an established machinery in place by virtue of civil court, consumer forum and District Deputy Registrar of Cooperative Societies for enforcing the provisions of MOFA, RERA, MRTTP Act, Maharashtra Apartment of Ownership Act, 1970, *amongst other laws*, it would be ideal to allow the time to test the waters of aforesaid existing machinery (*in particular, the new RERA*) to resolve genuine concerns of the real estate buyers. In our view, there is no need to give a new weapon in the hands of real estate buyers against the Developers, which could be misused in certain cases. Giving a colour of criminal angle to civil offences by allowing the police officers to take cognisance of civil offences, it has become like '**Cutting The Cord**' between the real estate buyers and the existing machinery, which is nothing but a double whammy against the Developers. Moreover, what will be the fate of police officers, who are already burdened with so many duties towards the citizens, including the national security being at the forefront, and now to also take cognisance of such offences? Wouldn't such (*harsh*) criminal angle dissuade the new generation from becoming developers?

### **Contributed by:**

**Prem Rajani:** [prem@rajaniassociates.net](mailto:prem@rajaniassociates.net)

**Amit Kolekar:** [akolekar@rajaniassociates.net](mailto:akolekar@rajaniassociates.net)

---

---

## AREAS OF PRACTICE

| Capital Markets | Private Equity | Mergers and Acquisitions | Corporate Litigation & Arbitration | Projects & Project Finance |  
| Real Estate & Trust | Corporate & Commercial | Banking & Finance | Structuring | TMT | IPR | Employment

---

## DISCLAIMER

This update only contains a summary/ limited description of the topic dealt with hereinabove for general information purposes and should not be construed as a legal opinion or be relied upon in absence of specific legal advice. For further information or legal advice please feel free to contact us.

---

## Contact US



## Rajani Associates

simple solutions

**Address:** Krishna Chambers  
59 New Marine Lines  
Churchgate  
Mumbai 400020  
Maharashtra, India  
**Telephone:** (+91-22) 40961000  
**Facsimile:** (+91-22) 40961010  
**Email:** [dejure@rajaniassociates.net](mailto:dejure@rajaniassociates.net)  
**Website:** [www.rajaniassociates.net](http://www.rajaniassociates.net)

---