ricago

GRC Bulletin

May 2022

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About

ricago is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.

ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

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CORPORATE LAWS

SEBI CIRCULAR ON GUIDELINES IN PERSUANCE OF AMENDMENT TO SEBI KYC REGISTRATION AGENCY REGULATIONS, 2011

The SEBI vide its circular MIRSD/Cir- 26 /2011 dated December 23, 2011, had issued guidelines to implement the SEBI KYC Registration Agency (KRA) Regulations, 2011. SEBI KRA Regulations, 2011, has been amended on January 28, 2022, vide a Gazette Notification No. SEBI/LAD-NRO/GN/2022/72 (Annexure A). In a view of implementing the regulations effectively, the following additional guidelines are being issued on April 06, 2022

- KRAs will continue to serve as a repository for KYC data in the securities market, with responsibility for storing, safeguarding, and retrieving KYC documents, as well as submitting them to the Board or any other statutory authority as needed.
- KRAs will independently verify the records of existing and new clients whose KYC was completed using Aadhaar as an OVD. The records of those clients who have completed KYC using non-Aadhaar OVD shall be validated only upon receiving the Aadhaar Number.
- KRAs shall validate the following details:
    - Aadhaar through UIDAI authentication mechanism
    - Mobile number and email ID using OTP
    - Pan using the Income Tax Database
- The KRAs shall create systems in consultation with SEBI and in coordination with one another, and they must follow uniform internal guidelines outlining aspects of KYC attribute identification and KYC validation procedures.
- The systems of Registered Intermediaries (RIs) and KRAs must be connected to provide for the seamless transfer of KYC documents from RIs to KRAs.
- KRAs shall promptly inform the respective RIs of deficiency/inadequacy in the client's KYC documents, if any, that are observed for validation.
- Following successful completion of KYC validation, KRA will provide the customer with a unique client identity known as a KRA identifier, which the client can use to open an account with any other intermediary without having to redo the KYC procedure.
- The KYC records of new clients (who have used Aadhaar as an OVD) shall be validated within 2 days of receipt of KYC records by KRAs.
- KYC records of all existing clients (who have used Aadhaar as an OVD) shall be validated within a period of 180 days from July 01, 2022.

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- KRA shall intimate the KRA identifier to the client within 2 working days of receipt of KYC records by the KRAs by post or email and maintain the proof of dispatch.
- Clients whose KYC records are not found to be valid by KRA shall be allowed to transact in the securities market only after their KYC is validated.
- Providing KYC is mandatory for validation by KRAs

The validation of all KYC records (new and existing) shall commence from July 01, 2022.

#Source: Click here for more details

CORPORATE LAWS

SEBI NOTIFIES THE SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE SECURITIES) (AMENDMENT) REGULATIONS, 2022

The SEBI notified notification no. SEBI/LAD-NRO/GN/2022/77 on Issue and Listing of non-convertible securities regulation 2022. This notification shall come into effect on 11th April 2022.

The key amendments include a) maintenance of 100% coverage by listed entities, b) furnishing of separate due diligence certificate, c) disclosures for creation of charge in the debenture trust deed, and d) insertion of new schedule IVA. The amended regulations are discussed in detail hereunder.

Amendment to regulation 23(5): in obligations of the Issuer wherein the Issuer shall ensure 100% security cover or higher security cover as per the terms of the offer document.

Amendment to 38(2): requires leading managers to ensure 100% security cover or higher security cover as per the terms of the offer document and/or Debenture Trust Deed, sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities.

Amendment in regulation 40 and 44: Debenture trustee while furnishing due diligence certificate to Board and Stock exchange it shall

(a) in case of secured debt securities, in the format as specified in Schedule IV of these regulations; and
(b) in case of unsecured debt securities, in the format, as specified in Schedule IVA of these regulations.

Amendment in regulation 43 and 48: The charge created in respect of the secured debt securities disclosures for creation of charge in the debenture trust deed.

Amendment in Schedule I Part A Clause 2.2.3

Details of credit rating, along with the latest press release of the Credit Rating Agency in relation to the issue and declaration that the rating is valid as of the date of issuance and listing. Such press releases shall not be older than one year from the date of opening of the issue.

Amendment in Schedule II Part Clause 2.3.3

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Details of credit rating, along with the latest press release of the Credit Rating Agency in relation to the issue and declaration that the rating is valid as of the date of issuance and listing. Such press releases shall not be older than one year from the date of opening of the issue.

Insertion of a New Schedule IV A - Format of Due Diligence Certificate to be given by the Debenture Trustee before the opening of the Issue.

#Source Click here to read more

CORPORATE LAWS

RBI ISSUES NOTIFICATION ON ESTABLISHMENT OF DIGITAL BANKING UNITS

The Reserve Bank of India in pursuance of announcements made in the Union Budget 2022-23, guidelines have been prepared for setting up of Digital Banking Units (DBUs) by commercial banks on the basis of recommendations of a Working Group formed by RBI which included representatives of banks and Indian Banks' Association (IBA).

What is a Digital Banking Unit?

DBU is a specialised fixed point business unit/hub housing certain minimum digital infrastructure for delivering digital banking products and services, as well as servicing existing financial products and services digitally, in both self-service and assisted mode, to enable customers to have cost-effective/ convenient access and better digital experience to/ of such products and services in an efficient, paperless, secured and connected environment with most services being available in self-service mode at any time, all year round.

Highlights of the guidelines

- Scheduled Commercial Banks (other than RRBs, PBs and LABs) with past digital banking experience are permitted to open DBUs in Tier 1 to Tier 6 centres, unless otherwise specifically restricted, without having the need to take permission from the Reserve Bank of India in each case.
- Each DBU shall be housed distinctly, with separate entry and exit provisions. They will be separate from an existing Banking Outlet with formats and designs most appropriate for digital banking users.
- Banks are free to adopt an in-sourced or out-sourced model for operations of the digital banking segment including DBUs. The outsourced model should specifically comply with the relevant regulatory guidelines on outsourcing.
- In order to accelerate digital banking initiatives, each DBU will be headed by a sufficiently senior and experienced executive of the bank, preferably Scale III or above for PSBs or equivalent grades for other banks who can be designated as the Chief Operating Officer (COO) of the DBU.

Products and Services to be offered by DBUs

Each DBU must offer certain minimum digital banking products and services. Such products should be on both liabilities and assets side of the balance sheet of the digital banking segment

1. Liability Products and services: Account Opening: Saving Bank, Current account, Fixed deposit and Recurring deposit account, Digital Kit for customers,

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Mobile Banking, Internet Banking, Debit Card, Credit card and mass transit system cards; Digital Kit for Merchants: UPI QR code, BHIM Aadhaar, POS, etc.

2. Asset Products and services: Making applications for and onboarding customers for identified retail, MSME or schematic loans. This may also include an end to end digital processing of such loans, starting from online application to disbursal. Identified Government sponsored schemes that are covered under the National Portal.

3. Digital Services: Cash withdrawal and Cash Deposit only through ATM and Cash Deposit Machines respectively, Passbook printing, Internet Banking, transfer of funds (NEFT/IMPS support), updation of KYC / other personal details, Lodging of grievance digitally and acknowledgement thereof and also tracking of resolution status, Account Opening Kiosk, Kiosk with e-KYC/ Video KYC, Digital on boarding of customers for schemes such as Atal Pension Yojana (APY), Insurance on boarding for Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PMSBY).

Digital Banking Customer Education:

Existing and on boarding of customers in a fully digital environment, various tools and methods shall be used by DBUs to offer hands-on customer education on safe digital banking products and practices for inducing customers to self-service digital banking services. This effort has to be clearly translated to incremental digital penetration of the financial services a DBU is catering to and will have to be monitored.

Business Correspondent:

The banks will have the option to engage digital business facilitator/business correspondents in conformance with relevant regulations (Ref. Master Circular DBOD.No.BAPD.BC.7/22.01.001/2014- 15 dated July 01, 2014) to expand the virtual footprint of DBUs.

Reporting Requirements:

Banks shall report the Digital Banking Segment as a sub-segment within the existing “Retail Banking Segment” in the format as specified under paragraph 4 of Annexure-II (Part B) of the Reserve Bank of India (Financial Statements – Presentation and Disclosures) Directions, 2021. It is clarified that the digital banking products/services applicable to segments other than ‘Retail Banking’ need not be reported at this stage.

#Source: [Click here for more details]

TAX LAWS

CBDT NOTIFIES THE E-DISPUTE RESOLUTION SCHEME, 2022

The Government of India has on 5th April 2022 notified a scheme under Income Tax Act, 1961. It is called the e-Dispute Resolution Scheme, 2022 which shall come into force on 5th April 2022.

The dispute resolution under this Scheme shall be made by the "Dispute Resolution Committee' (DRC) on applications made for dispute resolution under Chapter XIX-AA of the Act in respect of a dispute arising from any variation in the specified order by such persons or class of persons, as may be specified by the Board

1. ***Procedure in dispute resolution in this Scheme:***

Application for dispute resolution

- The DRC, subject to prescribed conditions, shall grant waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has:
  - paid the tax due on the returned income in full if available; and
  - Co-operated with the Dispute Resolution Committee in the proceedings before it.
- The Central Government shall constitute a DRC for every region of the Principal Chief Commissioner of Income-tax for dispute resolution. An application to the DRC shall be made in Form No. 34BC by the person, who opts for dispute resolution under section 245MA. Such application shall be accompanied by a fee of Rs. 1,000.

Screening of application

- the DRC shall examine the application with respect to the specified conditions and criteria for the specified order; if the application is rejected the assessee shall serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.
- the DRC shall, on a request by the assessee, provide him with an opportunity of being heard virtually and the assessee shall furnish a response to the show-cause notice within the specified date and time or such extended time to the DRC.
- The DRC may, after considering the response furnished by the assessee

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reject or accept or reject if no response is received. The decision of the DRC shall be communicated to the assessee at his/her registered e-mail address

- the assessee shall, within thirty days of receipt of the communication that the application is admitted be required to submit a proof of withdrawal of appeal filed under section 246A of the Act or withdrawal of application before the Dispute Resolution panel, if any, to the DRC convey that there is no aforesaid proceeding pending in his case, failing which the Dispute Resolution DRC may reject the application.

Procedure to be followed by Dispute Resolution Committee

- The DRC may seek a report from the assessing officer on the issues covered in the application or on any other issue arising during the course of proceedings
- The DRC may before disposing of the application, call for further information from the assessee or any other person by sending an email to his registered email address. The assessee shall respond within the time specified as mentioned by the DRC.
- The DRC after close perusal of the document available from the assessee, income-tax authority or any other person may decide to make/ not make modifications to the variations in the specified order and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of rule 44DAC, and pass an order of resolution accordingly which shall be treated as an order not prejudicial to the interest of the assessee.
- The DRC shall serve a copy of the order of resolution or order disposing off the application.
- The assessee shall furnish proof of payment of the said demand to the DRC: thereafter the DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC

2. DRC shall have the power to waive penalty or grant immunity from the prosecution provisions of the Act on fulfilment of conditions specified in rule 44DAC;
3. No appeal or revision shall lie against the modified order;
4. All the communication between the DRC and the assessee shall be in electronic mode;

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5. No personal appearance before the DRC;
6. Proceedings are not open to the public.

Key Highlight:

The Finance Act, 2021 has inserted Section 245MA to provide for the constitution of Dispute Resolution Committee. DRC will provide an opportunity to resolve a dispute arising from any variation in the 'Specified Order' and fulfil the 'Specified Conditions'.

#Source: Click here for more details

OTHER LAWS

MINISTRY OF FINANCE NOTIFIES THE FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (AMENDMENT) RULES, 2022

On 12 April, Ministry of Finance, vide. Press Note No. 1. The objective of the amendment is to align the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 with the modified FDI policy. These rules shall come into force on 12th April 2022. And shall be called "**Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022.**"

Sr. No	Details
1	**Substitution: Clause 2(e)** The words "five years" shall be substituted with the words "ten years"
2	**Substitution: Clause 2(k) In the explanation for clause (i)** "(i) Equity shares issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 or any other applicable law, shall include equity shares that have been partly paid. "Convertible debentures" means fully and mandatorily convertible debentures which are fully paid. "Preference shares" means fully and mandatorily convertible preference shares which are fully paid. "Share Warrants" are those issued by an Indian Company in accordance with the regulations made by the Securities and Exchange Board of India, the Companies Act, 2013 or any other applicable law. Equity instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.";
3	**Substitution: Clause 2(s) In the explanation** "If a declaration is made by a person as per the provisions of the Companies Act, 2013 or any other applicable law, as the case may be, about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as a foreign

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	investment”
4	**Substitution: Clause 2(y)** “Indian company” means a company as defined in the Companies Act, 2013 or a body corporate established or constituted by or under any Central or State Act, which is incorporated in India.
5	**Inserted: clause (ama)** “Share-Based Employee Benefits” means an issue of equity instruments to employees or directors or employees or directors of the holding company or joint venture or wholly-owned overseas subsidiary or subsidiaries who are resident outside India, pursuant to Share Based Employee Benefits schemes formulated by an Indian Company”
6	**Inserted: clause (ana)** “subsidiary” shall have the same meaning as is assigned to it in the Companies Act, 2013, as amended from time to time”
7	**Substitution: Rule 8** Issue of Employees Stock Options, sweat equity shares and Share Based Employee Benefits to persons resident outside India - An Indian company may issue “employees’ stock option”, “sweat equity shares”, and “Share-Based Employee Benefits” to its employees or directors or employees or directors of its holding company or joint venture or wholly-owned overseas subsidiary or subsidiaries who are resident outside India (Provisions provided)
8	**Substitution: Rule 19** (1) Where a scheme of compromise or arrangement or merger or amalgamation of two or more Indian companies or reconstruction by way of demerger or otherwise of an Indian company, or transfer of undertaking of one or more Indian company to another Indian company, or involving division of one or more Indian

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	company, has been approved by the National Company Law Tribunal (NCLT) or other authority competent to do so by law, the transferee company or the new company, as the case may be, may issue equity instruments to the existing shareholders of the transferor company resident outside India, subject to the following conditions'
9	**Substitution: in Schedule I para 2 (f)** "Explanation: For the purpose of this rule, 'real estate business' means dealing in land and immovable property with a view to earning profit from there and does not include development of townships, construction of residential or commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships, real estate broking services and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014 and earning of rent or income on lease of the property, not amounting to transfer

In the Table after Sl. No. F.8.1, the following Sl. No. and entries shall be inserted

(1)	(2)	(3)	(4)
F.8.1.A	Life Insurance Corporation of India	20%	Automatic

#Source Click here to read more

JUDICIAL INSIGHT

SC: INCOME TAX NOTICE NOT INVALID MERELY BECAUSE IT WAS SENT TO AMALGAMATING COMPANY

Factual Background

- Mahagun Realtors Pvt. Ltd. ("MRPL") was engaged in development of real estate. By an order of the High Court dated 10.09.2007, MRPL amalgamated with Mahagun India Pvt. Ltd. ("MIPL") with effect from 01.04.2006.
- In survey proceedings conducted on 20.03.2007 some discrepancies were noticed and consequently a search and seizure operation was carried out on 27.08.2008. Statements of the common directors of the companies were recorded under the provision of Income Tax Act, 1961 ("Act"), wherein they conceded that true income of the entities were not reflected.
- On 02.03.2009, the revenue issued notice to the assessee to file Return of Income for the year 2006-2007 under Section 153A of the Act within a period of 16 days. As MRPL failed to do so, it was issued a show cause notice under Section 276CC of the Act. MRPL assured to file the return by 30.06.2009. It was eventually filed on 28.05.2010 with the particulars of MRPL.
- The assessment order issued on 11.08.2011 showed the assessee as "Mahagun Realtors Private Ltd, represented by Mahagun India Private Ltd".
- It was challenged before the Commissioner of Income Tax and partly set aside. The appeal preferred by the revenue before the ITAT was rejected and MRPL's cross objection was allowed solely on the ground that at the time of assessment order the MRPL did not exist as it had already amalgamated with MIPL.
- Relying on the judgment of the Apex Court in *Principal Commissioner of Income Tax v. Maruti Suzuki India Limited 2019 SCC OnLine SC 928*, the High Court had dismissed the appeal filed by revenue.

Contentions raised by the appellant

Additional Solicitor General, Mr. N. Venkataraman, appearing on behalf of the revenue submitted that the assessment order named both MRPL and MIPL. It was averred that when the assessment, in substance, is in conformity with the law, minor defects can be cured under Section 292B of the Act. He attempted to distinguish the facts of the present matter from that of Maruti Suzuki (supra). It was submitted that unlike the instant case, in Maruti Suzuki the revenue was aware of the amalgamation and yet passed the order in the name of the amalgamating company.

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Contention raised by the respondent

Advocate, Ms. Kavita Jha, appearing on behalf of the MRPL argued that upon sanction of amalgamation scheme, MRPL stood dissolved in terms of Section 394 of the Companies Act, 1956. It was contended that amalgamating company, MRPL, could not have been considered as a 'person' under Section 2(31) of the Act. She averred that the assessment order issued against a non-existing entity was void-ab-initio. Citing *Spice Infotainment Limited v. Commissioner of Income Tax (2012) 247 CTR 500 (Del)*, it was argued that assessment framed in the name of amalgamating company which is non-existent is invalid and such defects cannot be cured in terms of Section 292B, as suggested by the ASG.

Issue of the Case

whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 ?

Obsrevation of the Supreme Court

The Court noted that amalgamation is different from winding up, in the sense that though the outer shell of the corporate entity is destroyed, the corporate venture continues. Upon amalgamation, the cause of action does not per se cease.

- Referring to *Commissioner of Income Tax v. Hukamchand Mohanlal 1972 (1) SCR 786*, the Court stated that when the predecessor dies the liability to pay their tax falls on their legal representatives. Referring to a catena of judgment and provisions of the Income Tax Act, the Court was of the view that the method of treatment of amalgamation was particularly indicated by the Act.
- On perusal of the same, the Court observed that the rights, assets and liabilities of the amalgamating company do not cease and that there are provisions of deeming fiction whereby the amalgamated company is deemed to carry the enterprise of the amalgamating entity.
- Citing *Bhagwan Dass Chopra v. United Bank of India (1998) 1 SCR 1088 and Singer India Ltd. v. Chander Mohan Chadha (2004) Supp (3) SCR 535,* the Court noted that in case of amalgamation, the rights and liabilities of one company is transferred to another and therefore the successor is entitled to liabilities and assets of the amalgamating company, in terms of the contract of transfer. It was of the view -

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> "The combined effect, therefore, of Section 394 (2) of the Companies Act, 1956, Section 2 (1A) and various other provisions of the Income Tax Act, is that despite amalgamation, the business, enterprise and undertaking of the transferee or amalgamated company- which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues."

Referring to the terms of amalgamation, the Court noted that there was a clause which provided that MRPL's liability will devolve in MIPL. Moreover, the return filed by MRPL suppressed the fact about amalgamation. Appeals before the CIT and the ITAT was filed in the name of MRPL, and from its conduct the Court determined that MRPL consistently held itself to be the assessee. Though the assessment order referred to MRPL it stated that the same is represented by MIPL. The Court held that the assessment order was issued in consonance with law -

"The approach and order of the AO is, in this court's opinion in consonance with the decision in Marshall & Sons (supra), which had held that:

an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Company."

Decision Held:

The impugned order of the High Court cannot be sustained; it is set aside. The appeal of the revenue against the order of the CIT was not heard on merits, the matter is restored to the file of ITAT, which shall proceed to hear the parties on the merits of the appeal- as well as the cross objections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs.

#Source: **Principal Commissioner of Income Tax (Central) - 2 v. M/s. Mahagun Realtors (P) Ltd.**

JUDICIAL INSIGHT

SC: CONSUMER PROTECTION ACT AND THE RERA ACT NEITHER EXCLUDE NOR CONTRADICT EACH OTHER

Facts of the Case:

- The Developer, M/s Experion Developers Private Ltd., is the promoter of apartment units, Windchants, in Sector 112, Gurgaon, Haryana. The Consumer booke d an ap artment measuring 3525 sq. ft. for a total consideration of Rs. 2,36,15,726/- in the Windchants and agreed for construction linked payment plan, which led to the execution of the Apartment Buyer's Agreement dated 26.12.2012.
- As per Clause 10.1 of the Agreement, possession was to be given within 42 months from the date of approval of the building plan or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or date of the execution of the agreement whichever is later.
- Clause 13 of the Agreement provided for Delay Compensation. Under this clause, if
  the Developer did not offer possession within the period stipulated in the Agreement, it shall pay liquidated damages of Rs. 7.50 per square foot per month till possession is offered to the Consumer.
- The Consumer approached the National Disputes Redressal Commission by filing an original complaint being, Consumer Case No. 2648/2017, alleging that he has paid a total consideration of Rs. 2,06,41,379/- and possession was not granted even till the filing of the complaint. He, therefore, sought a refund of Rs. 2,06,41,379/- along with interest @ 24% p.a.
- The Developer filed its Written Statement before the Commission stating that though
  the 42 months period expires on 26-6-20164, the purchaser will only be entitled to delay compensation under Clause 13, for a sum of Rs. 4,54,052/- . Justification for the delay is given by pleading that the Occupation Certificate for Phase-I of the project had already been obtained on 06.12.2017, and application for Occupation Certificate for Phase-2, had already been made. In the affidavit of evidence, the Developer contended that it secured the Occupation Certificate on 23.07.2018 and a notice of 3 possession was issued to the Consumer on 24.07.2018. It was claimed that since possession can be handed over, the complaint must be dismissed.
- The Commission, in its judgment dated 19.06.2019, allowed the complaint after referring to Clause 10, Clause 11, as well as Clause 13. The Commission found that the agreement is one-sided, heavily loaded against the allottee and entirely in favour of the Developers. Following the decisions of this

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Court in Pioneer Urban Land and Infrastructure Ltd. v. Govind Raghvan,5 ("Pioneer"), the Commission directed the Developer to refund the amount of Rs.2,36,15,726/- with interest @ 9% p.a.

- It is against these findings and the consequential directions of the Commission that the Developer filed the present Civil Appeal No. 6044/2019. The Consumer also filed an appeal being Civil Appeal No. 7149/2019, challenging the Commission's judgment to a limited extent for grant of an enhanced interest @ 24% p.a.

Issue of the case:

1. Whether the terms of the Apartment Buyers Agreement amount to an 'unfair trade practice' and whether the Commission is justified in not giving effect to the terms of Apartment Buyer's Agreement as laid down in the Pioneer case?
2. Whether the Commission has the power under the Consumer Protection Act, 1986 to direct refund of the amount deposited by the Consumer with interest?
3. Whether the relief granted by the Commission require any modification to serve ends of justice?

Observation of the Court:

In Issue No.1 A three-judge bench of this Court in IREO Grace Realtech (P) Ltd. V. Abhishek Khanna10 noticed the delay compensation clause, which is similar to the clause in the present case, which provided that the Developer would be liable to pay delay compensation @ Rs 7.5 per square foot which works out to approximately 0.9 to 1% p.a. The Court held that this Clause is one-sided and entirely loaded in favour of the Developer and against the allottee. The Court concluded that the powers of the Consumer Court were in no manner constrained to declare a contractual term as unfair and one-sided as an incident of the power to discontinue unfair or restrictive trade practices.

In Issue No.2 . Referring to the n Imperia Structures Ltd. v. Anil Patni case and it is crystal clear that the Consumer Protection Act and the RERA Act neither exclude nor contradict each other. In fact, this Court has held that they are concurrent remedies operating independently and without primacy. This Court in Pioneer Urban Land Infrastructure 11 Ltd v. Union of India held " RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such

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allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

In Issue No.3: This Court observed that the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution.

Decision Held:

- The Court is of the opinion that the interest of 9 per cent granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the Consumer for enhancement of interest. The interest of 9 per cent granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the Consumer for enhancement of interest.
- Appellant-Developer deposited a sum of Rs. 50,000/- in the registry of this Court as per proviso to Section 23 of the Act. This amount shall be made over to the Respondent-Consumer, to be adjusted against the final amount payable by the Developer to the Consumer.
- The Civil Appeal filed by the appellant developer is dismissed and he appeal filed by the consumer being civil appeal is allowed in part as indicated above. Parties shall bear their own costs

#Source: Experion Developers Pvt. Ltd. Versus Sushma Ashok Shiroor

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