



Rajasthan RERA

Rajasthan Real Estate Regulatory Authority
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Website: <http://rera.rajasthan.gov.in>

No. F1(31)RJ/RERA/2019/2833

Dated: 08.12.2021

Minutes of the 9th Meeting of the Authority – 15.11.2021

The 9th meeting of the Rajasthan Real Estate Regulatory Authority was held on 15.11.2021 at 3.00 pm under the Chairmanship of Shri Nihal Chand Goel, Hon'ble Chairman of the Authority, in his chamber at Udyog Bhawan, Jaipur.

Present:

1. Shri Nihal Chand Goel, Hon'ble Chairman (in Chair)
2. Shri Shailendra K. Agarwal, Hon'ble Member
3. Shri Salvinder Singh Sohata, Hon'ble Member

In attendance:

1. Shri Hari Kumar Godara, Adjudicating Officer
2. Shri Ramesh Chandra Sharma, Registrar

Agenda-wise discussion held and decisions taken:

Agenda-1 Confirmation of the minutes of 8th Meeting of the Authority held on 24th August, 2021

Decision

- 9.1 The minutes of 8th meeting of the Authority were confirmed.

Agenda-2 To discuss the provisions of section 3(2) of RERA Act, 2016

Decision

- 9.2.1 The provisions of section 3, particularly clause (a) of sub-section (2) of section 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), were discussed in detail. In this context, observations of the Authority in its order dated 05.08.2020 passed in the matter of "Suo Moto vs. Shivaaz Developer LLP" (File No. F.15(44)RJ/RERA/C/2019) were also noted. Having taken into account the intent and purposes of the Act and the fact that the threshold for the requirement of registration has been mentioned in Proviso to the said clause (a) as "five hundred square meters or eight apartments", it was decided as in para 9.2.2 following.

9.2.2 All such real estate projects are required to be registered under the Act where the area of land proposed to be developed exceeds five hundred square meters or the number of apartments proposed to be developed exceeds eight (inclusive of all phases). That is to say that a real estate project is required to be registered under the Act, if it satisfies either of the following two conditions:

- (i) The area of land proposed to be developed exceeds five hundred square meters; or
- (ii) The number of apartments proposed to be developed exceeds eight.

Conversely, a real estate project is not required to be registered under the Act, if it satisfies both the following conditions:

- (i) The area of land proposed to be developed is less than or equal to five hundred square meters; and
- (ii) The number of apartments proposed to be developed is only eight or less than eight.

Thus, if either of these two conditions is not met, the real estate project is not exempt from registration under clause (a) of sub-section (2) of section 3 of the Act.

Moreover, for the purpose of determining whether a real estate project requires to be registered under section 3 or should be treated as exempt under clause (a) of sub-section (2) of section 3 of the Act, the area of land and the number of apartments proposed to be developed in the project will be reckoned on the basis of the project as it is marketed, not so much on the basis of how it is physically being constructed or developed on the ground. To illustrate –

- (1) If a promoter proposes to develop a project comprising nine or more plots, apartments or buildings, on a piece of land having an area of 500 sq. mtr. or less and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or buildings in that project, the project is liable to be registered under the Act.
- (2) And, even if a promoter proposes to develop a project comprising only one or less than nine plots, apartments or buildings, but on a piece of land having an area of more than 500 sq. mtr. and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or

buildings in that project, the project is liable to be registered under the Act.

- (3) Further, even if only one or less than nine plots, apartments or buildings are proposed to be constructed or developed on a piece of land having an area of 500 sq. mtr. or less, but advertised, marketed, booked, sold or offered for sale as part of a group of more than eight such plots, apartments or buildings, whether adjoining or not, the group of plots, apartments or buildings so advertised, marketed, booked, sold or offered for sale, is a project liable to be registered under the Act, even though individually such plots, apartments or buildings, being less than nine in number and constructed/developed on independent pieces of land having an area of 500 sq. mtr. or less, may not require to be registered.
- (4) In none of the above 3 cases, or any other case where the project is otherwise required to be registered, if the promoter does not ever advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in that project, he is not required to register such project, because the requirement of registration under section 3 of the Act is triggered only if and when the promoter proposes to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in the project that he proposes to develop or is in the process of developing.

Agenda-3 To discuss the matter of Form-O & Form-N

Decision

9.3.1 Under Rule 35 and Rule 36 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017, read with the decision taken by the Authority in its 8th meeting held on 24.08.2021, the complaints where the only relief sought is of compensation, are required to be filed in Form-O as Application to Adjudicating Officer, while the complaints where any relief of interest, penalty, refund, possession or any other direction to the respondent is sought, are required to be filed in Form-N as Complaint to the Authority. In complaints filed in Form-N, if the complainant so wishes, he can also make a prayer of granting him liberty to seek the additional or alternative relief of compensation from the Adjudicating Officer and file an application in Form-O for that purpose.

9.3.2 But some complainants have in the past, due to lack of clarity on the respective jurisdictions of the Authority and the Adjudicating Officer, filed complaints in the inappropriate form before the inappropriate forum. In this context, the Authority has decided that –

- (1) the complaints pending for hearing before the Adjudicating Officer, wherein some relief other than compensation has been (or has also been) sought, shall be transferred by him to the Authority, under intimation to the parties concerned, while also informing them of the date of hearing before the Authority (which date shall be settled by him in consultation with Dy. Registrar (Court) attached with the Authority);
- (2) the complaints pending for hearing before the Authority, wherein the only relief sought is of compensation, shall be transferred by the concerned Bench of the Authority to the Adjudicating Officer, under intimation to the parties concerned, while also informing them of the date of hearing before the Adjudicating Officer (which date shall be settled by it in consultation with Asstt. Registrar (Court) attached with the Adjudicating Officer);
- (3) the complaints pending for hearing before the Authority, wherein a comprehensive relief of refund, interest, penalty or possession, as also of compensation, has been sought, will continue to be heard and disposed of by the Authority, i.e., by the concerned Bench of the Authority in respect of the relief(s) sought other than that of compensation. If, while the Authority is deciding the complaint, holding it to be a case of violation of the provisions of the Act and/or the rules and regulations made thereunder, the complainant insists on the additional or alternative relief of compensation being granted, the Authority may either grant him liberty to file an application in Form-O before the Adjudicating Officer or transfer the case file to the Adjudicating Officer for determination and award of compensation, if any be found due to the complainant.

9.3.3 In the matter of complaints that have not yet been fixed for hearing and new complaints that get filed in future (in Form-N or Form-O), it was decided in 7th meeting of the Authority that the Registry will check each and every complaint (whether filed in Form 'N' or Form 'O') with regard to jurisdiction, to determine whether it falls within the jurisdiction of the Authority or the Adjudicating Officer according to the procedure laid down in the matter of "Amit Kumar Lamba V/s Shekhar Home Developers"

decided by the Authority on 23.04.2019. For deciding whether a complaint is to be referred to the Authority or to the Adjudicating Officer or the complainant is to be advised to file it in the other Form, Deputy Registrar will send it to Registrar. On the basis of relief claimed in the complaint filed, Registrar will decide whether it is to be referred to the Authority or to the Adjudicating Officer. The complaints wherein refund is demanded shall necessarily be referred to the Authority.

To partially modify and give effect to the above decision of the Authority, it was further decided that –

- (i) To determine whether a complaint falls within the jurisdiction of the Authority or the Adjudicating Officer, the Registry will henceforth refer, not to the Authority's decision in the matter of 'Amit Kumar Lamba V/s Shekhar Home Developers', but to the subsequent decision taken by the Authority under Agenda-2 of 8th meeting of the Authority held on 24.08.2021.
- (ii) The Registry will make a preliminary scrutiny of each and every complaint (whether filed in Form-'N' or Form-'O') in following aspects, before issuing show cause notice to the respondent(s):
 - (a) whether the complaint is within the territorial jurisdiction of this Authority, i.e., whether the project in question is located in Rajasthan;
 - (b) whether the subject matter of the complaint is under the purview of RERA Act;
 - (c) whether the complaint is within the jurisdiction of the Authority or the Adjudicating Officer and has been filed in appropriate Form (Form-'N' or Form-'O', as the case may be);
 - (d) whether the complainant is an aggrieved person. In the case of complaints filed by the allottees, it shall be particularly seen that the complaint has been filed in the name of the person(s) in whose favour the agreement for sale has been executed or the booking receipt or allotment letter has been issued; and
 - (e) whether name and other particulars of the respondent(s) have been correctly shown as per the project details registered with the Authority or the agreement for sale or other documents submitted with the complaint.

- (iii) Based on this preliminary scrutiny, the Registry shall convey its objection, if any, to the complainant, who will then modify the complaint accordingly. For this, an objection module shall be incorporated in the existing online complaint module. And, if the complaint/ modified complaint is found to be in order, a show cause notice shall be issued to the respondent(s) along with a copy of the complaint.
- (iv) After filing the complaint online, the complainant shall submit as many hard copies of the complaint as are the respondents plus one. It will be the duty of the party/counsel submitting a reply, rejoinder or any other applications/documents, to serve an advance copy thereof on the opposite side before submitting the same to the Authority. All replies, rejoinders or any other applications/documents shall be submitted to the Authority only in a single copy.

Agenda-4 To discuss the provisions of section 32 of CPC for enforcing attendance of parties at hearing stage

Decision

- 9.4 After discussions, it was decided that when a party is not present at the hearing despite service of notice, usually the Authority or the Adjudicating Officer need not take any further action to enforce his attendance. In such cases, as contemplated under Rule 35(2)(j) of RERA Rules, 2017, matter can be heard/decided ex parte. Where the complainant does not submit the required documents or remove the defects/deficiencies pointed out, the complaint may be dismissed in default by the Registrar at the stage of preliminary scrutiny and by the Authority or the Adjudicating Officer, as the case may be, if it has been taken up for hearing.

Agenda-5 To discuss the provisions for enforcing attendance of parties at execution stage, Order 21 Rule 37-40 of CPC

Decision

- 9.5 After discussing relevant provisions of the Act, the Land Revenue Act and the CPC, it was decided that following action may be taken in case of execution of orders passed by the Authority:

- (i) In the first instance, when the notice for execution of order comes up for the hearing, the Authority may impose per-day penalty under section 63 of the Act, while granting

some further time for complying with the order and for depositing the penalty.

- (ii) At the next or adjourned hearing, if the order remains uncomplied, the Authority may proceed to recover the ordered amounts either by issuing a recovery certificate under section 40(1) to the District Collector concerned or by issuing directions under section 40(2) of the Act to the Registrar of the Authority. Where considered necessary, the Authority may also resort to suspension/revocation of registration of the project, arrest/civil imprisonment of the judgment-debtor or any other measures considered appropriate in the facts and circumstances of the case.

Agenda-6 To discuss the present system of Show Cause Notice and Notice for Hearing

Decision

- 9.6 It was decided that the present system of first issuing a show cause notice for reply on the receipt of complaint and subsequently a notice for hearing on the receipt of reply, shall be dispensed with; and henceforth one comprehensive notice, in the nature of a show cause-cum-hearing notice, will be issued to the respondent(s), alongwith a copy of the complaint, while indicating the day, date, time and place for appearance of the parties. A copy of the notice shall be endorsed to the complainant, requiring him to appear on the date fixed for hearing.

Agenda-7 To discuss the issues concerning attachment of units in incomplete projects

Decision

- 9.7 The members took note of the order passed by the single bench of Hon'ble Chairman in Complaint No. 2020-3958 & connected matters. In the interest of the Act's overarching objective of project completion, it was decided that incomplete flats in incomplete projects may not be attached, except when the construction is stalled at initial stage and project land is to be attached alongwith the structures thereon or when registration of the project has lapsed and the Authority decides to oust the promoter from the project under section 8 of the Act. If, however, the project is completed and there are some unsold flats or flats of the promoter, it may be best to attach such flats in the execution proceedings. Other properties of the promoter may be attached if the complainant furnishes, by way of an

affidavit, the details of such properties, during the execution proceedings.

Agenda-8 Adoption of certain rules of the State Government with suitable modifications

Decision

9.8 The item was withdrawn to bring it up afresh in the form of a Schedule of Powers for the purpose of using the extant rules of the State Government in the Authority.

9. Additional Agenda Items taken up with the permission of Chair

- (1) To note the observations contained in the judgment of the Hon'ble Supreme Court passed on 11.11.2021 in the matter of M/s Newtech Promoters and Developers Pvt. Ltd., particularly on the permissibility of single-member benches in a Real Estate Regulatory Authority

Decision

9.9.1 Having discussed the contents of the aforesaid judgment of the Hon'ble Supreme Court, it was found that the judgment of Hon'ble Allahabad High Court passed on 04.02.2020 in civil writ petition No. 2248 of 2020, which was the guiding factor for this Authority when it decided to constitute single-member benches in the Authority in its 5th meeting held on 25.09.2020, has been upheld by the Hon'ble Supreme Court. Regulation 24 (a) and decision dated 05.12.2018 of UP RERA Authority, which has been duly considered by the Hon'ble Supreme Court in the said judgment, is in pari materia with Regulation 9 and decision dated 25.09.2020 of this Authority and, therefore, the said decision dated 25.09.2020 of this Authority is fully covered by the said judgment passed by the Hon'ble Supreme Court; and the orders being passed by the single-member benches of this Authority do not suffer from any defect of jurisdiction/quorum under the provisions of the Act.

Accordingly, it was decided to bring this fact to the notice of Hon'ble Rajasthan High Court by way of an application in the writ petitions pending before it on the subject.

- (2) Registration of development agreements

Decision

9.9.2 Based on a decision taken in the 4th meeting of the Authority, an order was issued by the Authority on 12.02.2020 that for the

purpose of registration of a project where the promoter is not the owner of the project land, the Authority will accept the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, duly executed, entered into between the promoter and such owner, if and only if such agreement is registered under the Indian Registration Act, 1908.

Having regard to the fact that registration of such documents has never been compulsory under the said Act, and with a view to ameliorate the difficulties of the promoters who had paid the due stamp duty before the aforesaid order was issued on 12.02.2020 but have not got the document registered, it was decided that a clarification may now be issued to the following effect:

That if the collaboration agreement, development agreement, joint development agreement or such other agreement was executed and stamp duty was paid at the prevailing rates before the issue of aforesaid order dated 12.02.2020, and the document is certified by Inspector General, Dy. Inspector General or Collector (Stamps) to have been duly stamped, it will be accepted by the Authority, without insisting on its registration.

There being no other business, the meeting ended with a vote of thanks to the Chair.


(Ramesh Chandra Sharma)
Registrar

Copy to the following for information and necessary action:

1. PS to Chairman
2. PS to Member (Shri Shailendra Agarwal)
3. PS to Member (Shri Salvinder Singh Sohata)
4. PS to Adjudicating Officer
5. PS to Registrar
6. AO-cum-Joint Registrar (Account)
7. Joint Registrar (Law)
8. Joint Registrar (Projects)
9. Dy. Registrar (Complaints)
10. Dy. Registrar (Court)
11. Dy. Registrar (Legal)
12. Guard File
13. Website of RERA


Registrar