



सत्यमेव जयते

Rajasthan RERA

Rajasthan Real Estate Regulatory Authority

2nd & 3rd Floor, RSIC Wing, Udyog Bhawan,

Tilak Marg, C-Scheme, Jaipur-302005

Phone No.: 0141-2851900 Website: <http://rera.rajasthan.gov.in>

No. F.1(31)RJ/RERA/2019/491

Dated 12th March, 2021

Order

Sub: Recall of Ex Parte Orders

A question whether this Authority can and should allow its ex parte orders to be recalled has been engaging attention of the Authority for sometime past. The matter was discussed at length in the meeting of the Authority held on 24.02.2021, where the Authority took note of the following:

- (i) Speedy dispute redressal is a declared purpose of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and, under section 29(4) of the Act, the Authority is expected to dispose of all complaints ordinarily within a period of sixty days.
- (ii) Section 38(2) of the Act states that the Authority shall be guided by the principles of natural justice and, subject to the other provisions of the Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.
- (iii) Under section 39 of the Act, the Authority has powers to rectify its order if there is a mistake apparent from the record. However, the Act has not given to the Authority the power to review its orders.
- (iv) But, in a matter of UP RERA (Writ Petition No. 32301 of 2019 "M/s T.G.B. Realty Pvt. Ltd. versus State of UP and 7 Others"), Hon'ble Allahabad High Court has observed that the power of substantive review alone can be exercised if such a power is conferred under the relevant Act or the Statute but this is not the position in regard to dealing with application(s) for procedural review. Recalling an order passed ex parte falls within the purview of procedural review rather than a substantive review; and every court/tribunal [which includes RERA] has an inherent power of procedural review. And, therefore, an application for recall of an ex parte order cannot be denied merely for the reason that there is no provision to that effect in the Act/Statute.
- (v) Section 35(2) of the Act has conferred on the Authority the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of certain matters

including "summoning and enforcing the attendance of persons and examining them on oath", which, in the opinion of the Authority, covers Order IX of the Code of Civil Procedure, 1908 concerning appearance of parties and consequence of non-appearance. Thus, the Authority can lawfully use the provisions of Order IX of the Code of Civil Procedure, 1908 for admitting and deciding application(s) for recall of its ex parte orders. This view derives support also from section 88 of the Act, which provides that "The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

- (vi) In cases where the affected party goes in appeal against an ex parte order on the ground that it was not actually heard before the order was passed, such matters get invariably remanded by appellate courts with a direction to decide the matter afresh after hearing the appellant. This only means an avoidable expense for the parties and delay in conclusion of the disputes.

Having considered the above, the Authority felt that given the purpose of speedy dispute redressal and the prescribed ordinary time limit of sixty days for the Authority to decide matters, it cannot allow an unlimited opportunity of hearing to the parties before it. Though the Authority takes care to ensure that ex parte orders are passed by it only where notice for hearing is reported to have been served on the parties, it need not deny an opportunity of hearing to a party who can prove to the satisfaction of the Authority that actually the notice for hearing was not duly served and even otherwise it had no knowledge of the date of hearing or that it was prevented by any sufficient cause from attending the hearing on the scheduled date and time.

Therefore, in exercise of the powers conferred on it under section 35(2), 37 and section 38(2) of the Act, and as resolved in its aforesaid meeting, the Authority hereby issues the following directions in the matter:

- (1) Party/parties to the complaint that is/are affected by an ex parte order passed by the Authority shall be allowed to apply for recall of such ex parte order. For this purpose, an ex parte order shall mean an order passed by the Authority, deciding a matter on merits or otherwise, in the absence of one of the parties to the complaint on the date and time fixed for hearing.
- (2) An application for recall of ex parte order shall be submitted online on the web portal of the Authority on payment of a standard fee of Rs. 5,000/- in each case. Facility for online submission of such applications shall be added to the Authority's web portal with immediate effect.


- (3) As part of the application, the applicant will have to declare and undertake that he is ready and prepared to argue the original matter on merits on the very date his application for recall is allowed and that he will not seek any adjournment of hearing if his application for recall is allowed and he is called upon to argue the matter on merits there and then. The Authority may, however, allow an adjournment for the sake of its own convenience or for the convenience of the opposite party.
- (4) Before allowing the application, notice thereof shall be issued to other parties to the ex parte order, but no such notice shall be necessary where the complaint was dismissed when neither party was present.
- (5) Except for the *force majeure* events like Corona pandemic of which the Authority can take judicial notice, the applicant will be put to strict test to prove that he had any sufficient cause for his absence from the hearing.
- (6) Applications for recall of ex parte orders will be allowed only in matters which were/are decided by the Authority without considering the oral or written arguments of the applicant and the applicant is able to establish to the satisfaction of the Authority that the notice for hearing was not duly served and even otherwise he had no knowledge of the date of hearing or that he was prevented by any sufficient cause from attending the hearing on the scheduled date and time.
- (7) No such application may be allowed in respect of any order against which an appeal has been preferred under the Act.

This issues with the approval of Hon'ble Chairman.


(Ramesh Chandra Sharma)
Registrar

Copy for information and necessary action:

1. PS to Chairman, Rajasthan RERA
2. PS to Member (Sh. Shailendra K. Agarwal), Rajasthan RERA
3. PS to Member (Sh. Salvinder Singh Sohata), Rajasthan RERA
4. PS to Adjudicating Officer, Rajasthan RERA
5. PS to Registrar, Rajasthan RERA
6. SA, DoIT & RISL Sh. Mukesh Arora
7. Coordinator, Conciliation Forum, Rajasthan RERA
8. Chairman/President, Confederation of Real Estate Developers' Associations of India (CREDAI) Rajasthan, 424, 4th Floor, Laxmi Complex, MI Road, Jaipur - 302001
9. Chairman/President, Confederation of Real Estate Developers' Associations of India (CREDAI) NCR Bhiwadi Neemrana, E-127, Industrial Area, Bhiwadi, Alwar-301019
10. President, Township Developer Association of Rajasthan (TODAR), Prim Pavilion, E-66, Nakul Path, Lal Kothi Scheme, Jaipur - 302015
11. Chairman/President, Rajasthan Affordable Housing Developers Association (RAHDA) S-220, Time Square, Central Spine, Vidyadhar Nagar, Jaipur
12. Vice Chairman, RAJREDCO, Jaipur
13. Chairman, All India Federation of Tax Practitioners (CZ), c/o Shri Pankaj Ghiya, 10, Ganesh Colony, Bhairav Path, JLN Marg, Jaipur-302004
14. Chairman, RERA Awareness Committee, ICAI, Jaipur Branch, Jain Rathore & Associates, 105, Jagdish Enclave, Hawa Sadak, Civil Line Circle, Opp. Ram Mandir, Jaipur-302006.
15. Chairman, RERA Committee, Tax Consultant Association, Jaipur, 801-803, 8th Floor, Signature Tower, DC-2, Behind Apex Bank, Tonk Road, Jaipur - 302015
16. President, RERA India Educational & Resources Federation, 4F-42, Mahima Trinita Mall, Swage Farm, New Sanganer Road, Jaipur-302019
17. Chairman, The Indian Institute of Architects, Rajasthan Chapter, 400, F-72, 'Suryoday', Subhash Marg, Bagadiya Bhawan, C-Scheme, Jaipur-302001
18. Chairman/Secretary, Rajasthan Realtors Association (RRA), 308, 3rd Floor, Plot No. 1, Felicity Tower, Sahakar Marg, Lal Kothi, Jaipur- 302005
19. Chief Editor, RERA Times, Ghiya & Company, E-68, Ghiya Hospital Complex, Sector-12, Malviya Nagar, Jaipur - 302017
20. All officers of Rajasthan RERA
21. Guard File
22. Rajasthan RERA Website
23. All promoters (through their dashboard)


Registrar
(Ramesh Chandra Sharma)
Registrar,
Rajasthan RERA, Jaipur