



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>

Minutes of 13th Meeting of the Authority – 17.04.2023

The 13th meeting of the Rajasthan Real Estate Regulatory Authority was held on 17.04.2023 at 3:00 PM under the Chairmanship of Shri Nihal Chand Goel, Hon'ble Chairman of the Authority, in the Conference Room of the Authority 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 Richhpal Singh Kulhari, Adjudicating Officer
2. Shri Ramesh Chandra Sharma, Registrar
3. Shri Arpit Sancheti, Joint Registrar (Projects)
4. Shri Kunthi Lal Jain, Joint Registrar (Administration & Accounts)

Agenda-wise discussion held and decisions taken:

Agenda-1. Confirmation of the minutes of 12th Meeting of the Authority held on 21st July, 2022.

Decision

- 13.1** The Minutes of 12th meeting of the Authority were confirmed.

Agenda-2. Discussion on annual statement of accounts for the year 2021-22.

Decision

- 13.2.1** Shri Kunthi Lal Jain, Joint Registrar (Admn. & Accts.) of the Authority, submitted that annual accounts of the Authority for the year 2021-22 have been prepared in Form-P prescribed under the Rajasthan Real Estate (Regulation and Development) Rules, 2017, with the assistance of the Chartered Accountant firm, M/s Mahaveer Gandhi & Associates, who were engaged for the purpose. He then presented the annual accounts so prepared.



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13.2.2

The Authority, after due consideration, passed the following resolution:

It was resolved that the compiled and audited annual accounts of the Authority, i.e., Receipts and Payment Account for the year 2021-22, Income and Expenditure Account for the year 2021-22 and Balance Sheet as on 31st March, 2022 be and are hereby received, considered and approved by the Authority.

It was further resolved that the annual accounts so approved and signed in the meeting by the Chairman and both the Members of the Authority will be forwarded by the Registrar of the Authority to the Principal Accountant General, Rajasthan for CAG's audit report thereon.

Agenda-3. Discussion on Authority's budget for the year 2023-24.

Decision

13.3

Members approved the Budget of the Authority for the year 2023-24. The same was signed in the meeting by the Chairman and both the Members of the Authority.

Agenda-4. Discussion on Draft New Regulations.

Decision

13.4

The draft set of new regulations, as prepared by a committee headed by the Adjudicating Officer, was discussed. Various suggestions for improvement therein were made by the members. Accordingly updated/revised set of regulations will be presented before the Authority in a later meeting of the Authority for its consideration and approval.

Agenda-5. Discussion on registration of industrial plot schemes being developed by RIICO.

Decision

13.5

In view of a reference received from UDH department, Government of Rajasthan, the Authority considered the question whether the industrial plot schemes developed by RIICO, it being a government organization, are liable to be registered with this Authority and whether RERA Act is applicable only to residential,



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commercial and mixed use plots, to the exclusion of industrial areas and industrial plots.

It was noted that the definition of "promoter" as contained in section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), includes within its ambit, under its sub-clause (iii), any development authority or any other public body in respect of allottees of plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the plots. Thus, if RIICO, a public body created by the State Government, launches a project for sale of industrial plots, RIICO would undoubtedly be treated as a promoter. RIICO is also a development authority of the Government of Rajasthan in respect of industrial infrastructure and industrial development in the state and in that sense also it is covered under the definition of "promoter" as contained in section 2 (zk) (iii) of the Act.

Further, the definition of "real estate project" as contained in section 2 (zn) of the Act reveals that the development of land into plots for the purpose of selling is covered within its scope. The same is irrespective of the fact that the plots are for residential, commercial, industrial or any other use. If we apply this definition to the projects being undertaken by the RIICO, it would clearly reveal that the industrial plot schemes being developed and sold by RIICO are real estate projects within the meaning of the Act.

It is also noted here that Tamil Nadu Real Estate Appellate Tribunal vide its judgment dated 27.09.2019 passed in Appeal No. 55/2019, "GMR Krishnagiri SIR Limited V/s Tamil Nadu Real Estate Regulatory Authority," has held that under RERA there is no differentiation of housing plots, commercial plots and



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industrial plots. Any plot or apartment or building when sold under the name and style of real estate certainly this Act shall be applicable. After examining the entire Act and its legislative history, the said Tribunal has further held that the very purpose of the enactment is only for the regulation of sale of plots and apartments and not for any other purpose. Hence, the respondent, Real Estate Regulatory Authority has rightly not differentiated plots into housing plots, commercial plots or industrial plots. The said judgment makes the provisions of the Act very clear in so far as its applicability to industrial plots is concerned.

In other states like Punjab and Haryana also, State Industrial and Infrastructure Development Corporations have started registering their industrial projects with their RERA Authority. In Rajasthan also, private developers of industrial areas are already registering their projects with this Authority. Under the RERA Act private developers and Government development bodies have to be placed on a level-playing field.

Therefore, this Authority is of the considered view that industrial plot schemes developed by RIICO are required to be registered with Rajasthan RERA as real estate projects.

Accordingly a reply to the UDH Department may be sent in response to their reference in this regard with intimation to RIICO.

Agenda-6. Discussion on completed and exempt real estate projects.

Decision

13.6

Members took note of the orders on the subject passed by the Bench of Hon'ble Chairman in the matter of "Suo moto v/s Shree Krishna Associates" and connected matters on 22.08.2022 and in



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the matter of "Suo moto v/s Trimurty Colonizers & Builders" and connected matters on 09.01.2023.

Agenda-7. Discussion on cancellation of allotment/agreement in the case of defaulting allottees.

Decision

13.7

While discussing the problem arising from the default of the allottees after the agreement for sale is executed and registered in a real estate project registered with this Authority, members took note of the fact that agreement for sale is being executed between the promoter and the allottee in the prescribed performa as provided under section 13(2) of the RERA Act read with Rule 9 of the RERA Rules. Accordingly, in case the allottee fails to abide by the terms of payment specified in the agreement for sale, the promoter may cancel the allotment and terminate the agreement after giving due notice to the allottee. However, the encumbrance on the property as registered in the Sub-Registrar office continues to operate till it is deleted under the instructions of the competent court.

In this regard, Section 31 of the Specific Relief Act, 1963 provides as under as to when cancellation may be ordered by the "Court":

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.



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The Real Estate (Regulation and Development) Act, 2016 is a special Act enacted for adjudication of the disputes between the allottees and the promoters of real estate projects. Section 79 of the said Act ousts the jurisdiction of the Civil Court in such matters; and section 89 provides overriding effect to the provisions of the said Act. Further, Section 88 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.

Thus, even if it is assumed that the jurisdiction for redressal of the grievance lies with the Civil Court, this Authority can entertain and adjudicate the matter with regard to cancellation of agreement for sale executed in relation to a real estate project registered with this Authority, in view of Section 11(5) read with Section 31 of the RERA Act. On consideration of the evidence, if it is found that the termination of the agreement for sale has been validly done, the Authority may approve such action of the promoter, declare the agreement to be void or voidable, order its cancellation and accordingly direct the concerned Sub-Registrar to note the cancellation, delete the encumbrance on the particular plot/apartment/building and to correct all its records accordingly. In some of such cases allottee might have availed the home loan or any other kind of loan on the basis of tripartite agreement, and the concerned bank/financial institution may continue to insist upon payment of EMI. Therefore, in such cases, the Authority may also inform the lending bank/financial institution about the cancellation of agreement for sale and direct it to take necessary steps towards foreclosure of the mortgage and closure of the loan account. This view is fortified by the judgment of the Hon'ble Maharashtra REAT passed in **Platinum Properties**



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Vs. Ashok Tukaram Khaladkar (Appeal No. 006-10798) decided on 02.04.2019, by the judgment of Karnataka REAT passed in **L & T Construction Equipment Ltd. Vs. The Karnataka RERA and Ors.** (Appeal No. 351/2020) decided on 18.02.2022 and also by the judgment of the Karnartaka Real Estate Regulatory Authority in the matter of VBHC Mumbai Value Homes Private Limited V/s Ms. R.N. Chandrakala in Complaint No. CMP/201230/0007363 decided on 02.01.2023.

Accordingly, after due discussion and deliberation, it is resolved as under -

- A. The promoter may file regular complaint in Form 'N', narrating the details and the steps taken before and after the cancellation of allotment and termination of the agreement for sale.
- B. Such complaint shall be scrutinized and processed by the Registry expeditiously in the manner as provided for the regular complaints filed under Section 31 of the RERA Act, keeping in view that notices in such complaints shall be issued as per direction below in Para C.
- C. Considering the nature of such complaints, it is directed that the Registrar shall directly issue a notice of reply-cum-hearing to the respondent/allottee, directing him to file the reply within 2 weeks and to appear for hearing before the Authority on the date given therein (which date will be a court day immediately following the period of 2 weeks given for reply).
- D. On service of such notice, the Registrar shall place the matter before the Authority on the scheduled date of hearing.
- E. The Authority shall give priority to disposal of such cases, by giving short dates, if any adjournment be required, so that the matter may be disposed of at the earliest.



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- F. If the Authority is of the view that the cancellation of allotment and consequent termination of the agreement is valid and liable to be approved, then the agreement for sale shall be declared as void or voidable and cancelled; and accordingly the Sub-Registrar office concerned shall be directed to note such cancellation in its record and delete the encumbrance as recorded on the basis of the said agreement for sale.
- G. In case where a home loan or any other kind of loan has been availed by the allottee on the allotted unit, a copy of the order shall also be sent to the concerned bank/financial institution for taking steps towards foreclosure of the mortgage and the loan account.

Agenda-8. Any other matter with the permission of Hon'ble Chairman:

Additional Agenda-1. Resolution with regard to ongoing projects being excluded under the provisions of Explanation (vi) to Rule 4.

Decision

- 13.8.1** Relevant provisions of the Act and the Rules were considered and it was decided that in a Plotted Development Project having exclusion under clause (vi) of Explanation to Rule 4 of the Rules, if a Group Housing/Villa project is constructed on any plot(s) thereof, the group housing/villa project is liable for registration under section 3 of the Act, unless such group housing/villa project itself is otherwise exempt under the Act or excluded from registration under other clauses of Explanation to Rule 4 of the Rules.



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Additional Agenda-2. Initiating a publication series of the Authority.

Decision

- 13.8.2** Members took note of minutes of the meeting held at the level of Hon'ble Chairman of the Authority on 05.04.2023, wherein decisions were taken to institute a publication series of the Authority.

Additional Agenda-3. Approval of Annual Report year 2017-18.

Decision

- 13.8.3** The Annual Report for the year 2017-18 was approved, for transmitting the same to UDH Department for placing it on the Table of the House of Rajasthan Legislative Assembly.

Additional Agenda-4.

Decision

- 13.8.4** With the permission of the Hon'ble Chairman, Registrar of the Authority apprised the meeting about the lapsed/revoked projects whose possession has been taken over by the Registrar in pursuance of various orders of the Authority, and that some more projects may have to be taken over in due course. He requested that further course of action may be decided for getting these projects completed with the assistance of a third party under section 8 of the Act.

The matter was considered and it was decided that Rajasthan Housing Board may be requested to take up such projects on the request of the Authority and get their remaining development works completed and recover the cost incurred by it from receivables of the sold inventory and the sale of unsold inventory in the project concerned. For this, RHB will also be paid an administrative fee, to be mutually decided in consultation with Finance Department and the same will also be similarly recovered by it.

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

(Ramesh Chandra Sharma)

Registrar



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No. F1 (31) RJ/RERA/2019/1139

Dated: 19.04.2023

Copy to the following for information and necessary action:

1. PS to Chairman
2. PS to Member (Shri Shailendra K. Agarwal)
3. PS to Member (Shri Salvinder Singh Sohata)
4. PS to Adjudicating Officer
5. PS to Registrar
6. Joint Registrar (Administration & Accounts)
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