



Rajasthan RERA

Rajasthan Real Estate Regulatory Authority
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Minutes of the 8th Meeting of the Authority – 24.08.2021

The 8th meeting of the Rajasthan Real Estate Regulatory Authority was held on 24.08.2021 under the Chairmanship of Shri Nihal Chand Goel, Hon'ble Chairman of the Authority.

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

Agenda-wise discussion held and decisions taken:

Agenda-1 - Confirmation of the minutes of 7th Meeting of the Authority held on 10th August, 2021

Decision

8.1 The Minutes of 7th meeting of the Authority were confirmed.

Agenda-2 - To consider the matter of the powers of Adjudicating Officer as raised in Writ Petition No. 7916/2021 and connected matters, and take a considered view to be conveyed to the Hon'ble High Court as response of the Authority

Decision

8.2.1 In the context of the doubts expressed and the anomalies noticed in the filing of complaints with the Authority and the adjudicating officer, respectively, under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), the Authority had clarified the matter and issued detailed directions vide its order dated 23.04.2019 passed in Complaint No. RAJ-RERA-C-2018-2193 "Amit Kumar Lamba versus Shekhar Homes Developers". Subsequently, vide Authority's order dated 29.01.2021 passed in complaint No. RAJ-RERA-C-2019-3313 "P L Malhotra Versus M/s Emerald Earth Pvt. Ltd.", the aforesaid directions stood partially amended insofar as these related to complaints filed under section 12 of the Act. Later, in the context

of a representation dated 13.07.2021 submitted by CREDAI, NCR Bhiwadi Nimrana, the Authority, in its 7th meeting held on 10.08.2021, issued some further directions in the matter.

8.2.2 Now, in the context of a writ petition (Writ Petition No. 7916/2021 and connected matters) before the Hon'ble Rajasthan High Court, it has become expedient for the Authority to take a comprehensive view of the matter and accordingly file a reply to the writ petition.

8.2.3 In this context, the matter was discussed at length and the considered view of the Authority in the matter of respective powers of the Authority and the adjudicating officer to hear and decide complaints filed under section 31 of the Act, that has emerged unanimously, is as under:

(1) The Act has created two adjudicating forums – (i) the Authority, established under section 20(1) of the Act; and (ii) the adjudicating officer, appointed under section 71(1) of the Act.

(2) Section 31 of the Act provides for filing of complaints with these two forums, in the following terms:

“31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be [emphasis supplied], for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.”

(3) A bare reading of the above-quoted section 31 and the use therein of the term “as the case may be” after “the Authority or the adjudicating officer” shows that the complainant cannot choose the forum. He has to file his complaint with the Authority in respect of matters that the Authority is competent to hear and decide under the Act and he has to file his complaint with the adjudicating officer in respect of

matters that the adjudicating officer is competent to hear and decide under the Act.


- (4) Section 71(1) of the Act defines the substantive powers of the adjudicating officer as “adjudging compensation under sections 12, 14, 18 and section 19”. Relevant part of section 71(1) reads as under:

“71. (1) For the purpose of adjudging compensation [emphasis supplied] under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:..”

Sub-section (2) and sub-section (3) of section 71 of the Act provide for the procedural powers of the adjudicating officer in dealing with the “application for adjudging compensation” and provide that, after holding the inquiry, “he may direct to pay such compensation or interest, as the case may be, as he thinks fit...”. Section 72 of the Act then enumerates the factors the adjudicating officer must take into account while “adjudging the quantum of compensation or interest, as the case may be, under section 71”.

- (5) Section 37 and section 38(1) of the Act define the substantive powers of the Authority as the powers “to issue directions” and “to impose penalty or interest”. Relevant sections read as under:

“37. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

 “38. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.”

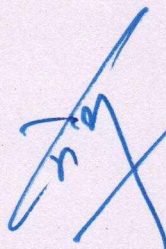
Sections 35, 36, 38(2) & (3) and section 39 of the Act provide for the procedural powers of the Authority in dealing with complaints or suo moto matters.

- (6) Rule 36 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') prescribes that "Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation under section 12, 14, 18 and 19 in Form-O"...
- (7) Rule 35 of the Rules prescribes that "Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer [emphasis supplied], in Form-N"...
- (8) Thus, in conclusion, while the Authority has wide-ranging powers under the Act, the adjudicating officer is appointed by the Authority, in consultation with State Government, under section 71(1) of the Act, for the limited purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the Act. This necessarily implies that, in the matter of complaints filed under section 31 of the Act, all powers under the Act, excepting the power of adjudging compensation, are to be exercised by the Authority. In more specific terms, the position of the Act is as under:
 - (a) The power to adjudge compensation has been specifically conferred on the adjudicating officer under sub-section (1) of section 71 of the Act, and, therefore, compensation will be awarded only by the adjudicating officer, and never by the Authority.
 - (b) The power to order interest has been specifically conferred on the Authority under sub-section (1) of section 38 of the Act, and, therefore, interest will be ordered only by the Authority, and never by the adjudicating officer.

Though the term 'interest' also occurs in sub-section (3) of section 71 and section 72 of the Act and Rule 36 of the Rules relating to the adjudicating officer, these provisions of the Act and the Rules are only procedural in nature, and, therefore, cannot override

the provisions of sub-section (1) of section 71 of the Act, which is a substantive provision dealing with the purpose of appointment and the powers of the adjudicating officer and does not mention 'interest'. Nor can these provisions override the provisions of section 38(1) of the Act, which specifically assigns the power of imposing interest to the Authority.

As a whole, section 71 of the Act means that the adjudicating officer is to be appointed by the Authority solely for the purpose of "adjudging compensation"; "application for adjudging compensation" shall be decided by him after holding an inquiry; and, after such inquiry, "he may direct to pay such compensation or interest, as the case may be [emphasis supplied], as he thinks fit". Here, the use of the term 'as the case may be' after 'compensation or interest' implies that the adjudicating officer can order either compensation or interest, and not both, in any particular matter. The application before the adjudicating officer will be solely for adjudging compensation (it cannot be for interest), though the adjudicating officer can, in his discretion, order interest in lieu of compensation. A look at Form-'O' prescribed for making an application to the adjudicating officer also makes it clear that the prayer before the adjudicating officer can be of compensation alone, and not of interest, even though the adjudicating officer has the discretion to award interest in lieu of compensation. Thus, the term 'interest' occurring in section 71(3) and section 72 of the Act and corresponding Rule 36 of the Rules is nothing but 'compensation in the form of interest' as against 'compensation as a lump sum amount'. And, that is why, just like compensation, the quantum of such interest is required to be adjudged by the adjudicating officer under section 72 of the Act, on a case to case basis, and this also shows that 'interest' adjudged by the adjudicating officer is distinct from 'interest' that the Authority has powers to order 'at such rate as may be prescribed' under section 12, 18 and 19 read with section 38(1) of the Act.



- (c) The power to impose penalty has been specifically conferred on the Authority under sub-section (1) of section 38 of the Act, and, therefore, any penalty will be ordered only by the Authority, and never by the adjudicating officer.
- (d) The power to order refund of the amount deposited by the allottees or the power to direct the promoter to deliver possession of an allotted unit to the allottee has not been specifically conferred on either forum under any provision of the Act. Therefore, the direction to refund the deposited amount or to deliver possession of an allotted unit to the allottee can only be issued by the Authority in exercise of the general powers of issuing directions as specifically conferred on the Authority under section 37 of the Act, and there is no way the adjudicating officer can direct refund of the deposited amount or delivery of the possession of an allotted unit to the allottee.

In this manner, one particular power is expected to be exercised by one particular forum. None of these powers under the Act is expected to be exercised by both the forums, so that forum shopping and conflicting orders are avoided.

8.2.4 Ideally, the Authority should be issuing a regulation to clarify matters as per this decision of the Authority. But, since the matter is presently sub-judice in the Hon'ble High Court, regulations may not be issued until the matter pending in the Hon'ble High Court is decided. Meanwhile, the Authority's reply to the aforesaid writ petition may be submitted to the Hon'ble High Court, based on this decision of the Authority.

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 K. Agarwal)
3. PS to Member (Shri Salvinder Singh Sohata)
4. PS to the Adjudicating officer
5. PS to Registrar
6. Joint Registrar (Administration)-cum-AO
7. Joint Registrar (Law)
8. Joint Registrar (Projects)
9. Dy. Registrar (Complaints)
10. Dy. Registrar (Court)
11. Dy. Registrar (Legal)
12. RERA website
13. Guard File


Registrar