



KERALA REAL ESTATE REGULATORY AUTHORITY
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Plamoodu-Charachira Road, Thiruvananthapuram-695003.
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No. 809/KRERA/2022

Dated: 23.06.2022

PUBLIC NOTICE

Sub: Procedure of filing Application for setting aside ex-parte orders, application for restoration of complaints, petitions for restoration of orders and other instructions.

- Ref:-**
- 1. Public Notice No. 609/KRERA/2021(L) I dated 20/3/2021.**
 - 2. Public Notice No. 609/KRERA/2021(L) II dated 20/3/2021.**
 - 3. Public Notice No. 3271/KRERA/2021 dated 22/12/2021.**

I. Setting aside ex-parte order and restoration of Complaints.

1. Section 31 of the Real Estate (Regulation & Development) Act, 2016 provides that “any aggrieved person may file a complaint with the Authority or the Adjudicating Officer of the Authority for any violation or contravention of the provisions of the Act, or the rules and regulations made there under against any promoter allottee or real estate agent, as the case may be.” Rules 36 & 37 of the Kerala Real Estate (Regulation & Development) Rules, 2018 deals with the manner of holding enquiry by the Authority and Adjudicating Officer respectively in complaints. As per Section 39 of the Act, the Authority has power to rectify its order if there is a mistake apparent from the record. But the Act is silent about the power of the Authority to review its orders and powers for setting aside an ex-parte order and restoration of complaints dismissed by the Authority. However Section 38(2) of the Act provides that the Authority shall be guided by the principles of natural justice and, subject to the other provisions of the Act and rules made thereunder, the Authority shall have powers to regulate its own procedure.

2. In the judgment of UP RERA (writ Petition No. 32301 of 2019 "M/s T.G.B Realty Pvt Ltd vs 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.

3. Having considered the above if the petition for setting aside an ex-parte order or restoration of complaints are not considered by the Authority on ground that there is no specific provision in the Act or Rule, it shall be against the principles of natural justice. Otherwise, the aggrieved parties would be left with no options other than to approach higher forums/courts, seeking remedy which will be against one of the very objectives of the Act, to introduce speedy dispute redressal system. Therefore in exercise of the powers conferred under Section 37 and Section 38(2) of the Act, 2016 read with Regulation 29(3) of the Kerala Real Estate Regulatory Authority (General) Regulations, 2020, the Authority hereby issues the following directions in the matter of setting aside ex-parte orders and in restoration of complaints dismissed for default,-

(i) Party/parties to the complaint who is/are affected by an ex-parte order passed by the Authority or where the Authority issued order of dismissal on ground of default of the Complainant, shall be allowed to apply for setting aside of such ex-parte order or for restoration of complaints. 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 and default means failure to attend for hearing.

- (ii) An application for setting aside of ex-parte order or for restoration of complaint shall be submitted on payment of a standard fee of Rs. 5000/- in each case. Fee shall be paid in the form of demand draft taken in the name of Kerala Real Estate Regulatory Authority from a scheduled bank payable at Thiruvananthapuram.
- (iii) Before allowing the application, notice thereof shall be issued to other parties in all cases.
- (iv) 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.
- (v) Applications for setting aside of ex-parte orders or restoration of complaints will be allowed only in matters where 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.
- (vi) No such application may be allowed in respect of any order against which an appeal has been preferred under the Act.

II. Rectification of the orders of the Authority.

For rectification of errors in orders of the Authority as provided under Section 39 of the Act, 2016, application (I A) with affidavit shall be filed

III. Further instructions on filing of complaints

In addition to the guidelines and directions contained in the public notices referred 1 to 4 above, the following guidelines shall be followed while filing complaints,-

- (i) Complaints shall be filed by the individual allottee in a real estate project or by association of allottees or by any aggrieved consumer

association registered under any law for the time being in force. If the complaint is filed by a registered association, copy of certificate of registration shall be annexed with the complaint.

(ii). The complaints both in Form M and Form N shall contain detailed facts clearly showing the violations of the provisions of the Act/Rules/Rgulations committed by the Respondents. In complaints, where interest for delay, refund, compensation etc are claimed, detailed statement of accounts shall be furnished. The relief sought in the complaint shall be specifically numbered.

(iii). In case if a company/Firm is a Respondent, the company/Firm shall be arrayed as first Respondent and representatives of the company shall be included as subsequent respondent in the party array.

(iv). If the complainant is represented through an Advocate, vakalath shall be attached. If the complainant is represented by power of attorney holder, original power of attorney shall be produced for verification. If the complainant is represented by any authorized person under section 56 of the Act, authorization in form No. 7 of the Kerala Real Estate Regulatory Authority (General) Regulations, 2020 containing the address of the representative with all particulars shall be produced. In all cases e-mail address and mobile number for proper communication shall be produced.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. M.P Mathew
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)