



KERALA REAL ESTATE REGULATORY AUTHORITY
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Present: Sri. P H Kurian
Chairman

Smt. Preetha P. Menon.
Member I

Dr. B Sandhya
Member II

Order No. K-RERA/T1/102 /2024

Dated 10.07.2024

ORDER

Sub: Post Registration Compliance for K-RERA Registered Projects under Real Estate (Regulation and Development Act, 2016, Kerala Real Estate (Regulation and Development) Rules, 2018 and Kerala Real Estate Regulatory Authority (General) Regulations, 2020 – revised orders issued

1. The responsibilities of the Kerala Real Estate Regulatory Authority (K-RERA) include monitoring real estate projects and ensuring that registered projects adhere to legal and regulatory requirements. After a project is registered, promoters must follow several post-registration requirements to ensure the project progresses as promised and to protect buyers' interests.
2. With four years of experience in monitoring registered projects and adjudicating complaint cases filed under Section 31 of the Act, 2016, the Authority observes that many promoters are not fully complying with post-registration requirements. Based on these observations, the Authority has concluded that a comprehensive set of directions are required to ensure compliance. Therefore, in exercise of powers conferred upon the Authority under Section 37 of the Act read with Section 34, the Authority hereby issue the following set of directions for post-registration compliance. These directives will serve as a comprehensive guideline for promoters and aims to minimize disputes between promoters and allottees. The overall goal is to enhance transparency, accountability, and trust

within the real estate sector of the state of Kerala. The order dated 5th June 2024 on this same matter is hereby cancelled.

1) Allotment Letter

As required under Section 11(3) of the Act, 2016 the promoter shall issue an allotment letter, clearly indicating the booking amount, at the time of booking. A model allotment letter shall be issued shortly by the Authority.

2) Quarterly Progress Reporting (QPR)

- a) As per Section 11(1) of the Act, 2016, promoters must upload the quarterly progress of registered projects on the K-RERA web portal within seven days of the end of each quarter. The Authority has observed that some promoters are not timely uploading the Quarterly Progress Reports (QPR) on the web portal, which has resulted in the imposition of penalties. The Authority takes this non-compliance seriously and will impose strict penalties for any failure to comply.
- b) Stagewise photographs, indicating the stage of the completion shall be uploaded as part of QPR in space provided for it.
- c) Promoters are not required to upload the QPR once the Form No. 6 is uploaded on the K-RERA web portal.
- d) Even if there is no progress during the quarter, the same figures of the previous quarter shall be filled for that quarter.
- e) As per Rule 17(4), the promoter is solely responsible for the authenticity and accuracy of the details and documents submitted and uploaded to the website. The promoter must ensure these details are correct at all times.

3) Advertisement

- a) According to Section 11(2) of the 2016 Act, all advertisements materials in print and electronic and social media shall contain the RERA registration number of the project and K-RERA web address (rera.kerala.gov.in). A QR code of the registered projects shall appear in such advertisements. Any information disseminated through

advertisements must be consistent with the details provided in the K-RERA website and agreement for sale.

- b) The promoter shall upload any advertisements materials including brochures and prospectus (including those on social media) to the project's webpage on the web portal of K-RERA as soon as the advertisement is released (Rule 17(1)(b)(1)).
- c) It is observed that some promoters incorrectly advertise projects as 'K-RERA approved' instead of 'K-RERA registered,' a misrepresentation that the Authority will further consider as serious violation of the Act.

4) Financial Compliance

- a) The Promoter is required to open two accounts in a Scheduled Bank for each project, one account as a collection account to deposit all the amount collected from the allottee for the project and another account as a designated account to transfer the seventy percent of the amount collected. These funds can only be used for construction and land-related costs, ensuring that the money is used for its intended purpose.
- b) Withdrawals from the designated account must be based on the certification issued by the Architect, Engineer, and Chartered Accountant using Form No.2, Form No.3, and Form No.4, respectively, so as to ensure that the withdrawal is proportional to the percentage of completion of the project. These forms must be uploaded to the project's webpage immediately after the withdrawal, as required by Section 4(2)(1)(D) and Regulation 5(3), and the promoter shall not wait for the end of the quarter.
- c) The Authority has been receiving request to change their designated bank account after the project registration. Such requests will be considered after verifying the bank statement of the old designated account and evaluating the reasons provided by the promoter for the change.

5) Adherence to Sanctioned Plans:

Promoters shall ensure that the project is completed according to the sanctioned plans. Any alterations or additions in the sanctioned plans/layout plans/ specifications of the building or the common areas

shall be made only with the prior written consent of at least two-thirds of the allottee and approval of K-RERA (Section 14 (2) (ii) of the Act).

6) Annual Report on Statement of Accounts (Form 5)

As per Section 4(2)(l)(D) of the Act, 2016, an annual report on statement of accounts of the project in Form No. 5, from a Chartered Accountant, must be uploaded on the web portal by 31 October of each year until the project is completed and Form No. 6 is uploaded. This statement must confirm that the funds collected for the project have been used solely for that project and that withdrawals have been made in proportion to the percentage of project completion. This form has been made available for public view in the website and is an important element of transparency and trust. Promoters shall adhere strictly to this mandate.

7) Agreement for Sale (Section 13 Read with Rule 10-Annexure A)

- a) The promoter shall not receive more than 10% of the total value of the unit without entering into an agreement for sale in Annexure A, Rule 10 of the Rules, and registering the same. In some cases, the Authority has noted that these requirements have not been complied fully. viz: not registering the agreement, not following the prescribed format, changing the terms of the agreement, adding clauses contravening the provisions of the Act.
- b) The total price of the apartment/villa/plot based on the carpet area, along with a detailed breakup, shall be mentioned in the clause 1.2 of the agreement for sale. This price includes cost of the apartment, cost of other amenities, cost of common area, maintenance cost till handing over to the association of allottees, and including the taxes to be paid by the promoter. However, in case of any additional changes in tax rate shall be governed by (ii) of the explanation in clause 1.2 of the AOS. Charges for electrification, parking, water distribution, solid waste collection, any other common amenities are all included in the total price of the unit. Any fees to be paid by the allottee like electricity connection fee, water connection charges, stamp duty etc. to the government shall be borne by the allottee.

- c) Any additional terms and conditions mutually agreed upon, which are not consistent with the Act, rules or regulation, shall be clearly stated after Clause 33 of the agreement for sale as 34 onwards.
- d) The Authority notes that there exists a practice of collecting “Corpus fund” from the allottees in advance and to be handed over to the Association of Allottees once the project is complete. In case such a collection is made from the allottee, it shall be clearly mentioned after clause 33 of the prescribed agreement for sale. Such corpus fund shall be collected only just before the execution of sale deed of the unit and the amount so collected shall be handed over to the registered Association of Allottees at the time of handing over of the completed project to them.

8) Formation of Association of Allottees

- a) As per Section 11(4)(e) of the Act, 2016, promoters shall facilitate the formation of an Association of Allottees within three months of the majority of apartments or units having booked. Allottees are legally obliged to participate towards the formation of the Association of Allottees (Section 19(9)). The Authority observes that in some projects, allottees are hesitant to form the Allottee association, instead they want to form owners' association or residents' association after the unit is handed over to them. This argument is not legally tenable.
- b) The Authority hereby direct the promoters to issue a legally drafted letter to allottees after majority of the allottees having booked their units, citing Section 11(4)(e). The letter shall be in the form of invitation letter for meeting of the allottees for the formation of Association of Allottees. In order to facilitate the formation of the association, the promoter shall enclose model bylaws for the association. Promoter himself or a Senior representative shall attend the meeting and explain the need and modality of formation of the association.

9) Project Completion and Handing over

- a) On receipt of occupancy certificate, after completion of the project in all respects as promised to the allottees and as per the agreement for sale, the promoter shall upload a declaration in Form 6 on the web page of the

project. Once these documents are uploaded, the project is considered complete.

- b) The promoter shall ensure that receipts are provided upon handing over the individual units to allottees.
- c) Within 3 months of receipt of occupancy certificate, the promoter shall hand over the common amenities to the registered Association of Allottees and shall obtain a receipt for the same. They shall handover the originals of all documents relating to the project including deed of the project land, sanctioned plans, occupancy certificate, NOC's, licenses, annual maintenance contract documents, electrification plans, firefighting plan, plumbing plans, consent to operate etc. The original deed of the project land may be retained by the promoter if any units remain unsold at the time of handing over to the association. The original deed shall be handed over to the association once all the units are sold.

10) Project Transfer to a Third Party

- a) As per Section 15 of the Act, 2016, If the promoter wants to transfer the project to a third party, he shall obtain prior written consent from the two-thirds of allottees. A joint application shall be filed before the Authority by both promoter and intending promoter along with written consent from the two-thirds of allottees and a draft transfer agreement between the parties (There is no prescribed format for the joint application). If land owner is different from the promoter, the draft agreement shall be tripartite. The Authority upon consideration of the application, if necessary, after a hearing will issue a written prior approval for the transfer. Thereupon the agreement shall be registered and a copy of the registered agreement along with proof of physical transfer of the project shall be submitted to the Authority. The Authority will record the name of the new promoter in its record and issue a revised registration certificate. The designated account shall be changed to the name of new promoter. Such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings made by the erstwhile promoter.

- b) Such transfer shall not result in extension of time to the intending promoter to complete the project. However, after the project transfer, if further extension of time is required to complete the project, the intending promoter should apply online before the Authority under Section 8 of the rules, with the prescribed fees and written consent of the majority of allottees.

Sd/-
P H Kurian
Chairman

Sd/-
Preetha P. Menon.
Member I

Sd/-
Dr. B Sandhya
Member II

True Copy/Forwarded by/Order



Secretary (Technical & Administration)
Kerala Real Estate Regulatory Authority

