

उ.प्र. भू-सम्पदा विनियामक प्राधिकरण

राज्य नियोजन संस्थान (नवीन भवन)

कालाकांकर हाउस, पुराना हैदराबाद, लखनऊ-226007

पत्रांक: 12709/यू0पी0 रेरा/SOP/2022-23

दिनांक: 31 अक्टूबर, 2022

कार्यालय ज्ञाप

REVISED DELEGATION AND GUIDELINES FOR DECIDING COMPLAINTS AND ENFORCEMENT OF ORDERS BY THE AUTHORITY AND ITS BENCHES IN LIGHT OF THE RERA ACT, THE RULES AND JUDICIAL PRINCIPLES LAID DOWN BY THE HON'BLE COURTS AND HON'BLE APPELLATE TRIBUNAL

Authority has been empowered under section 81 of the Real Estate (Regulation and Development) Act, 2016 to delegate, by general or special order in writing, to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary. Authority has been empowered under 38 sub section 2 to regulate its own procedure and accordingly the Authority, after thorough deliberation, had made delegation to its members in the following manner and laid down the following procedure for deciding the complaints filed under section 31 of the Act and enforcement of its orders:

The Authority, vide its office order dated 30.09.2021, had resolved to follow, as far as possible, the broad approaches as provided in the same in deciding the complaints brought before it.

Further the Authority in its 93rd meeting on 06-06-2022, taking into account the need to decide very large number of pending complains expeditiously, had delegated its powers to decide complaints filed under section 31 to single member benches up to 31-12-2022 in the manner provided therein using powers of delegation conferred on it by section 81 of the RERA Act.

The Authority had laid down the procedure for enforcement of its orders in the manner provided under order dated 2nd September 2020.

The Authority found it pertinent to reconsider and modify its previous decision to delegate the hearing of complaints to its members, the approach for deciding complaints filed under section 3, the manner and procedure to be followed in the matters of enforcement of its orders in view of the following:

1. The principles enunciated by the Hon'ble Supreme Court in its judgment in Newtech Promoters and Developers Pvt Ltd and Others vs State Of U.P. and Others passed on 11-11-2021.
2. The matters raised by the parties before the Hon'ble High Court which necessitate some changes in the approach being followed by the Authority and its benches.
3. Important directions of the Hon'ble Appellate Tribunal conveyed through its orders.

The Authority, in the light of facts and circumstances stated above and with a view to streamline the disposal of complaints and enforcement of its orders, using the powers conferred upon it under section 38 and 81 of the RERA Act and all other enabling provisions of the Act, the Rules and the Regulations, in partial modification of its earlier orders and guidelines, hereby resolves to lay down the following procedures and guiding principles to be followed by its Benches/Hon'ble Members and officers in the matters of deciding complaints filed with it under section 31 of the Act and for enforcement of its orders under section 40 of the Act and rule 23 and 24 of the Rules further to its earlier decisions regarding the same.

Delegation to single or double member Benches for hearing complaints filed under section 31

There are over 5000 complaints filed by the aggrieved persons under section 31 of the Act pending with the Authority out of which over 4200 complaints are in the NCR region and over 800 complaints in the Non NCR region. Further to this, about 500 new complaints are filed in the NCR region and 125 complaints in the Non NCR region every month. Therefore, the Authority, with a view to facilitate speedy disposal of complaints and ensuring justice to the parties as per the object of the Act, using the powers conferred upon it under section 81 of the Act, makes delegation to its members in the following manner:

1. At the Lucknow headquarters, the complaints will be heard by its two single member benches, namely Bench 1A and 1;
2. At the NCR Regional Office Gautambudh Nagar, the complaints will be heard by three single member benches, namely Bench 1A, 1 and 2;
3. The arrangement for hearing of complaints by the single member benches will remain effective till 31st December, 2022.
4. The single member benches shall hear the complaints only relating to refund of investment with the prescribed interest and payment of interest at the prescribed rate on account of delay in possession, including the reliefs claimed for execution of registered sale/lease /sub-lease deed and handing over possession of the unit, i.e. claims within the scope of section 12 and 18 of RERA Act, and other minor reliefs;
5. The complaints by the promoters or the AOAs shall be heard by two member benches.
6. Complaints with prayers of major reliefs beyond the scope of sections 12 and 18 shall be heard by the two member benches consisting of the members presiding over the bench 1A and 1 at the headquarters and members presiding over bench 1 and 2 at NCR regional office.
7. Complaints by allottees of projects with twenty or more complaints will be heard by the two member benches.
8. Hon'ble Chairman may constitute multi-member benches for hearing one or more complaints on reference of a bench or on the basis of some other sufficient ground brought to his notice in writing.

General Principles for Deciding Complaints by the Benches of the Authority

1. The Authority or its benches, as the case may be, may award interest for delay in possession to the complainant from the promised date of possession, taking into account grace period, if any, as given in the agreement for sale up to the date of actual possession or the offer of possession after obtaining the OC/CC whichever is later, at the rate specified in the agreement for sale

till 01-05-2017 and at the highest SBI MCLR for longest duration applicable on the date of order + 1 percent w.e.f. 01-05-2017 i.e. the date of enforcement of section 3 of the RERA Act.

2. The Authority or its benches, as the case may be, may order for refund of all the investment of the allottee with interest at the highest SBI MCLR for longest duration as effective on the date of the order + 1 percent, payable from the date of deposit of amount with the promoter in all cases where the project is extraordinarily delayed or there is no possibility of completion of the project.
3. The Authority or its benches, as the case may be, may direct the complainant to take possession of the unit if the CC/OC has been obtained by the promoter with interest for delay in possession at the highest SBI MCLR for longest duration effective on the date of the order + 1 percent.
4. The Authority or its benches, as the case may be, may not reopen the questions relating to the demand and payment if the allottee has already taken possession of the unit and accounts have already been settled between the parties.
5. It is the paramount responsibility of the Authority to create an atmosphere wherein the projects can be completed and the allottees can get their houses. This responsibility remains intact even in case of delayed projects faced with growing number of complaints for relief of refund or possession, as the case may be, against the promoter. If the Authority decides to grant refund to all complainants, the project might suffer further delays because of draining of finances in the process. The enforcement of such orders also poses challenge and the relief may elude such allottees. Therefore, the following process may be followed:
 - A. If there be more than twenty complaints (pending) by the allottees of a particular project, all such complaints will be listed before the concerned two member Bench of NCR or Non- NCR, as the case may be, for hearing and disposal. The project will be got inspected through the technical division of the Authority, preferably within a fort night or latest by the next date of hearing. This exercise will be undertaken to ensure a holistic approach in

deciding the complaints with view to protect the interest of all the stake holders and further the object of the Act.

- B. In case the registration of the project has not lapsed or the promoter has applied for extension of registration and the promoter is giving a credible affidavit on the basis of a resolution of the company board/mamngement to complete the project, the Authority or its benches, as the case may be, may first ask the allottee to continue in the project with the concurrent payment of interest for delay by the promoter. If the allottee agrees to the proposal of the promoter, the Authority or its benches, as the case may be, may pass a strict order for the promoter to complete the project and provide possession to the allottee by the date specified by it along with interest for delay at the highest SBI MCLR for the longest duration as effective on the date of order + 1 percent after obtaining the O.C. or C.C. of the project, as the case may be.
- C. In case, the allottee disputes the commitment given by the promoter or insists on withdrawal from the project, the Authority or its benches, as the case may be, with a view to take a holistic approach in deciding such a complaint, may order a technical inspection of the project through its technical division to scrutinize the claims of the promoter. If, on the basis of the report of the inspecting team, the Authority is not convinced with the commitments of the promoter, it may permit the allottee to exit from the project.
- D. In case, the inspection report supports the claims of the promoter, but the allottee still does not want to continue in the project, the Authority or its benches, as the case may be, may send a notice to the Association of the Allottees and hear them in the matter. If the association is in favour of the completion of the project on the basis of the commitments of the promoter, the Authority may advise the allottee to continue in the project with payment of interest for delay. However, if the allottee does not agree to continue in the project against the wishes of the AOA of the project, the Authority may grant the claim of the allottee to exit from the project with a condition that the promoter will pay 50 percent of the payable amount in such instalments as may be decided by it and the remaining 50 percent after the resale of the

unit or the completion of the project or the lapse of the time allowed by the Authority for completion of the project, whichever is earlier. However, if the association does not support the proposal of the promoter, the Authority or its benches, as the case may be, may allow the allottee to exit from the project.

6. The Authority or its Benches, as the case may be, can refer one or more complaints to the conciliation forum for amicable settlement of the matter, on the basis of the consent of the parties and pass final order on the basis of the recommendation of the conciliation forum.

7. The Authority is not empowered to review its orders and, therefore, the review of the orders shall be strictly avoided.

8. Under section 39 of the Act, the Authority is empowered to rectify any mistake apparent from record within a period of two years from the date of its order, with a view to rectifying any mistake apparent from record. Such amendment must be made if the mistake is brought to notice by the parties, although the Authority can make amendments suo moto also. The following points shall be kept in mind during rectification proceedings under section 39:

A. The substantive part of the order sought to be rectified can not be amended.

B. Application for rectification shall not be entertained if an appeal has been preferred against such order and this expression includes both the pending and decided appeals.

C. If the application for rectification has been filed by one of the parties, no amendment in the order shall be made without sufficient notice to the other party and without sufficient servicing of the notice which means without actually hearing the other party.

D. The Authority shall not rectify an order passed on merit except when it is procedural review, i.e. the applicant party is able to establish beyond doubt that the earlier order was passed ex parte which means that he is able to establish that he did not have the notice of the matter from any source whatsoever. Even in such

matters, no amendment order shall be passed without actually hearing the other party as given under point C above.

E. The Authority shall not pass any interim or stay order during the proceeding under section 39. However, it may expedite the disposal of rectification application with a view to impart justice.

F. Application for rectification of recovery certificate shall not be entertained by the Benches of the Authority. Such applications are to be dealt with by the secretary on the administrative side. If any application for rectification is filed under section 39 of the Act, the same will be disposed of with the observation that the application is being forwarded to the secretary for necessary action as per rules at his end. The application will be forwarded to secretary in his Lucknow or NCR office, as the case may be.

9. The Authority or its Benches, as the case may be, may proceed to decide a complaint ex parte. However, it shall exhaust all the steps required for the servicing of notice upon the concerned party. When public notice is issued for ensuring sufficient servicing of notice, the date mentioned under the public notice shall not be for the final hearing but rather for presence or filing of objection by the concerned party. If the party does not appear on the date, the Authority or its Benches, as the case may be, may pass an order to proceed ex parte recording its satisfaction about sufficient servicing of the notice with the names of newspapers in which the public notice has been published. A copy of the extracts of the newspapers shall be kept on the file and next date fixed for final hearing/disposal of the complaint.

10. The Authority or its Benches shall not grant a relief not prayed for by the complainant. It may advise the complainant, if it so feels on the basis of the facts and circumstance of the case, to modify his prayers and then can permit to modify the complaint on basis of such application in writing. The Authority or its Benches, as the case may be, may disallow the relief if the same does not appear to be admissible in the light of the evidence available on the file.

11. A settlement filed by the parties must be supported by a notarized affidavit and the presiding officer should clearly record on the file the status of attesting of the same by the parties.

12. Where the project is being completed under section 8 of the Act through the AOA or the competent Authority or some other developer or even through the same promoter, the allottees wanting to quit the project, may generally not be permitted to quit and instead may be advised to continue in the project. If an allottee is still insistent on withdrawal from the project and is allowed to quit, he will have relief against the original promoter only. The orders of such refund or even the pre-existing orders of refund, may not be executed through the recovery certificates which includes the realization of the payable amount through the sale of the assets/land of the project. Such orders shall continue to be a charge on the project and the promoter shall be liable to comply with the same at an appropriate stage once the project is completed.

13. The period of obstruction in the development of the project on account of force majeure conditions and orders of the hon'ble Supreme Court, hon'ble High Court, hon'ble NGT or other competent courts, if submitted before the Authority with credible evidence substantiating such obstruction, may be excluded from the period of entitlement of the allottee for payment of interest on account of delay in completion of the project/possession of the unit.

14. The promoter will be entitled to receive an amount corresponding to the proportionate share of the allottee in lieu of the additional amount of compensation paid by it to the farmers, in compliance of the orders of hon'ble court/concerned industrial/development authority, on production of the evidence of actual payment. If the promoter has obtained a stay order against the order to pay the additional compensation to the farmers, it will not be entitled to receive the amount of additional compensation from the allottees till the final orders in the matter. This may be specifically provided in the orders and if the allottee fails to pay such amount of additional compensation after and as per the final orders of the hon'ble court, the promoter can have recourse to relief through the Authority.

15. The Authority may order the allottee to pay to the promoter at the original rate, for any area in excess of the allotted area of the unit as a result of deviation from the sanctioned plan, if the allottee has consented to continue in the project.

16. The promoter can demand from the allottees for payment of labour cess, water connection charges to the authority, GST, etc on proportionate basis if supported by evidence of actual payment, keeping into view the specific provisions in the agreement for sale (Judgment of hon'ble Supreme Court in the Supertech vs Rajni Goyal).

General guidelines for Enforcement of the Orders of the Authority under section 40 (1) and (2) of the Act and rule 23 or 24 of the Rules

The provision and procedure for enforcement of all the orders of the Authority relating to payment of money has been laid down under Section 40 (1) read with rule 23 and for enforcement of orders other than payment under section 40 (2) read with rule 24. The Authority hereby lays down the following guidelines for enforcement of its orders at the level of the Benches and the Secretary:

Enforcement of the orders of refund and payment of interests

After the passage of due date of compliance of the order of the Authority/Bench, a web generated notice will be sent to the opposite party under section 40 of the Act file compliance report of the order within fifteen days of the notice.

In case of non-compliance of the order by the opposite party within the due date, the complainant may file an online application for enforcement of the order of the Authority using the 'Request for Execution' facility on the home page of the website of the Authority. When such a request is received, the following procedure will be followed:

1. It will be first seen by the execution branch at Lucknow headquarters or the NCR office, as the case may be, whether this request has been filed after the lapse of the due date for compliance fixed in the order. In case, due date for compliance of the order is not over, the complainant will be advised to file the request after the lapse of the date for compliance fixed by the Authority

or one of its Benches. If the request has been filed after the due date, concerned execution office will issue a notice to the opposite party under sub-section 1 of section 40 read with rule 23 to submit compliance report of the order of the Authority within 15 days, also specifying in the notice that in case the opposite party does not submit the compliance report of the order in time, a recovery certificate will be issued as per the provisions of sub section 1 of section 40 read with rule 23 for recovery of the entire payable amount as arrears of land revenue by the concerned Collector.

2. In case the opposite party does not submit the compliance report as directed or the same is found insufficient, the file will be sent to the accounts branch for computation of the recoverable amount. In case the complainant had not filed the relevant receipts/documents with his complaint or the request for execution, he will be informed in writing for submitting the supporting receipts/documents.
3. The accounts branch will get the payable amount computed with the help of the chartered accountant and return the file to the execution branch for submission by the O/C of the execution branch to the Secretary for signatures on the recovery certificate. The recovery certificate will be sent to the concerned collector and uploaded on the websites of the Authority and the Department of Revenue.
4. The Secretary will write to the concerned Collectors at the end of every month for expediting the pending recoveries and also organise review meetings with the concerned Collectors under hon'ble Chairman, as the need be.
5. The Secretary will obtain from the concerned promoter and the competent authorities the details of the assets and unsold inventories of the defaulting promoters on the following heads which shall be given to the concerned Collectors, as and when received, for facilitating the recovery process:
 - a. List of unsold inventory in both the ongoing and completed projects with unit/tower/block/pocket wise details.
 - b. Area of vacant (unutilized) land in each of the projects along with location on the map.

- c. Unsold FAR in each of the projects.
 - d. Details of resale of the complainant's unit along with date and value of such resale.
 - e. In addition to the information under points (a) to (d), details of any other assets and properties of the company, including the land/plots owned by the company on which a project has not been launched yet.
6. The secretary will send the details of pending recovery certificates to the Board of Revenue with request for review at the level of the Board and following the same up with the concerned Collectors.
 7. When the recovered amount is received from the Collector, the same will be transferred to the concerned complainant after getting the requisite affidavit and bank account details from him.

Enforcement Of The Order Of Penalty

The following procedure will be followed with respect to the enforcement of the orders of the Authority under Chapter VIII:

1. These matters will be dealt with by the concerned divisions i.e. execution division or technical division or finance division of the Authority at Lucknow headquarters or NCR office, as the case may be.
2. After the lapse of the due date fixed by the Authority for the deposit of the amount of the penalty by the defaulter, concerned divisional head will issue a notice to the defaulter for depositing the payable amount within fifteen days failing which a recovery certificate will be issued as per the provisions of sub section 1 of section 40 read with rule 23 for recovery of the entire payable amount as arrears of land revenue by the concerned Collector.
3. In case the opposite party does not deposit entire amount of the penalty by the specified date or the same is found insufficient, the file will be sent by the concerned division to the accounts branch for computation of the recoverable amount.
4. The accounts branch will get the payable amount computed with the help of the chartered accountant and return the file to the concerned division for submission by the O/C of the concerned division to the Secretary for signatures on the recovery certificate. The recovery certificate will be sent to the concerned collector and uploaded on the websites of the Authority and the Department of Revenue.
5. The procedure under paragraph 5 to 7 under the 'enforcement of the orders of refund and interest' will apply to the enforcement of orders of penalty also.
6. A separate facility will be created on the website of the Authority for tracking of the compliance of orders of penalty.

Enforcement of Orders Other Than The Money Orders

Authority has been empowered under section 38 sub section 2 to regulate its own procedure and accordingly the Authority, further to its decision regarding the manner and procedure for enforcement of its orders in its 95th Meeting on 04-07-2022, does hereby lay down the following procedure for enforcement of its orders under the provisions of section 40 sub section 2 and rule 24 read with all the enabling provisions of the RERA Act and the U.P. RERA Rules:

After the passage of due date of compliance of the order of the Authority/Bench, a web generated notice will be sent to the opposite party section 40 of the Act read with rule 24 of the Rules to file compliance report of the order within fifteen days of the notice.

2. In case of non-compliance of the order by the opposite party within the due date, the complainant may file an online application for enforcement of the order of the Authority using the 'Request for Execution' facility on the home page of the website of the Authority. When such a request is received, the following procedure will be followed:

2.1. The application will be downloaded by the order execution office of the NCR or Non-NCR, as the case may be.

2.2. It will be first ascertained by the concerned office if the due date for compliance of the order by the opposite party has lapsed and also if there are any existing orders of Appellate Tribunal/Hon'ble High Court/Hon'ble Supreme Court. In case the due date for the compliance of the order has lapsed and in case there are no legal impediments in the execution of the said order, a notice will be sent to the promoter/opposite party under the signatures of the Joint Secretary or Deputy Secretary concerned under section 40 sub section 2 and rule 24 read with section 38 and 63 of the RERA Act to ensure compliance of the order and submit the compliance report to the Authority within fifteen days. If the due date has not lapsed or if there are any legal impediments in execution of order under question, the complainant will be accordingly informed by the joint secretary or the deputy secretary, as the case may be.

2.3. The compliance report submitted by the promoter/opposite party will be examined in the office and if it is found to be prima facie adequate, the same will be sent to the Legal Advisor along with the copies of relevant orders. The report will be examined by the Legal Advisor and submitted to Secretary along with his

observations and if the compliance report is found adequate by the secretary also, the matter will be closed with the approval of the Secretary and compliance report together with the remarks of the Legal Advisor and the Secretary uploaded on the compliance module and the web page of the complaint in question under intimation to the complainant.

2.4. If the complainant disputes the compliance report, he can file his objection on the compliance module of the Authority. In such an eventuality, the objection of the complainant will be downloaded by the system analyst and forwarded to the joint secretary or the deputy secretary, as the case may, for the matter to be reopened and dealt with in the manner given under the foregoing paragraphs.

2.5. In all the cases where the compliance report is not submitted by the opposite party or where the compliance report is found inadequate by the office or where the complainant has disputed the compliance report submitted by the opposite party, following procedure will be followed:

a. The execution office of the NCR or Non-NCR, as the case may be, will send the file to the concerned Bench fixing a date of hearing under section 40 sub section 2 and rule 24 read with section 38 and 63 of the RERA Act with a notice to the promoter/opposite party to submit compliance report on the web page of the related complaint before the fixed date of hearing showing cause at the same time why a recommendation may not be made to the Authority for imposing appropriate penalty as per section 63 using the powers under section 38 of the Act. A copy of this notice will be sent to the complainant also with direction to be present during the hearing.

b. If the promoter submits the compliance report and the Bench is satisfied with the same, it may accept the compliance report after hearing the parties and close the matter with a speaking order which will be also uploaded on the complaint web-page.

c. If the Bench is not satisfied with the compliance report submitted by the promoter or if the promoter has not submitted the compliance report or if the promoter has not joined the hearing, the Bench may refer the matter to the Adjudicating Officer at NCR or Non-NCR office of the Authority for further proceedings for the enforcement of the order using powers under rule 24 and relevant powers under Order 21 of Code of Civil Procedure, 1908. In such cases, the concerned Bench will also fix date of hearing before the Adjudicating Officer and direct the parties to appear before the court of the Adjudicating Officer through the VC link to be shared by the Bench staff.

d. The staff in the Bench will be personally responsible for sending the hearing link to the parties and the file to the court of the Adjudicating Officer within seven days.

e. This Procedure will also be applicable to proceedings of enforcement already pending before any Bench of the Authority.

3. The Adjudicating Officer may, for the purposes of effective enforcement of the said order, use relevant provision relating to execution of orders under Order 21 of Civil Procedure Code (CPC) 1908 at the same time adhering to the principle of natural justice enshrined under section 38 sub section 2 of the RERA Act. When the Adjudicating Officer, following the process given herein above, is satisfied that the order of the Authority has been complied with by the promoter /opposite party, he will close the proceedings and get the file consigned in the record room. The order will be uploaded on the website of the Authority.

4. In case the promoter does not comply with the orders of the Authority/Adjudicating Officer to execute the registered sale deed/lease deed/sub lease deed and handing over of possession of the unit in question and he is of the opinion that there is a need to appoint a receiver for enforcement of the order, he may appoint the secretary/officer responsible for registration of properties in the office of the concerned competent authority or local authority, as the case may be, as receiver of the property in question for the purposes of the execution of the sale/lease deed/sub lease deed and handing over of the possession as per the orders of the Authority and the Adjudicating Officer.

5. The list of officers responsible for registration of properties in the competent authorities will be made available to the Adjudicating Officer by the Secretary, UP RERA.

6. The Adjudicating Officer shall make a reference to the concerned Bench in all cases where he feels that there is sufficient ground for imposing penalties for hearing under section 38 read with section 63/any other relevant provision of the RERA Act. The Bench may then make appropriate recommendation to the Authority following the procedure under paragraph 2.4 (e) above.

7. If the Adjudicating Officer feels that enforcement of the order is not possible even after exhausting all the powers and processes under the RERA Act, U.P. RERA Rules or the Regulations, he may refer the case to the Secretary for making a reference to the concerned Principal Civil Court having jurisdiction in the matter for enforcement of the order. Such cases shall be processed by the Legal Advisor

of the Authority who will be responsible for facilitating such references expeditiously.

8. Corresponding facility on the website of the Authority will be created by the Assistant Director (IT) within fifteen days.

(राजेश कुमार त्यागी)
सचिव

संख्या एवं दिनांक तदैव।

प्रतिलिपि:— निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

- (1) मा0 अध्यक्ष, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण को अवलोकनार्थ कृपया।
- (2) मा0 सदस्या, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण को अवलोकनार्थ कृपया।
- (3) प्रमुख सलाहकार, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।
- (4) विधि सलाहकार, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।
- (5) वित्त नियंत्रक, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।
- (6) वित्त परामर्शदाता, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।
- (7) संयुक्त सचिव/उप सचिव, उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।
- (8) सहायक निदेशक (सिस्टम), उ.प्र. भू-सम्पदा विनियामक प्राधिकरण।

(राजेश कुमार त्यागी)
सचिव