



No. 102/K-RERA/T3/2019

Dated : 09/11/2022

ORDER

Directions to the Promoters carrying out “Plot Developments” which comes under the purview of the Real Estate (Regulation & Development) Act 2016-

1. After inception of this Authority, a total number of 855 real estate projects in the State have been registered before this Authority out of which only 20 are plotted developments. At the same time, the Authority has been receiving several complaints from allottees of such Plotted Development projects against the Promoters concerned alleging violations of promises given to them. While considering such complaints, it has been noted with serious concern that most of such plot development projects have not been registered under Section 3 of the Act 2016. As the ‘registrability’ of the project in question in a complaint is correlated with the ‘maintainability’ of the complaint before this Authority, we have proceeded with suo-motu actions against such Promoters, by sending show-cause notices under Section 59(1) of the Act, to explain reasons for not registering the project. This Authority also notes that such developments have been carried out without even obtaining a Development permit from the local authority concerned as required under the relevant rules. In most of the such cases, registration of projects becomes difficult for lack of the Development Permit from the local authority because Section 4(c) of the Act 2016 provides that the Promoter shall submit “*authenticated copies of the approvals and commencement certificate from the competent authority obtained in accordance with the laws applicable*” along with the application for registration under section 3 of the Act 2016. The Authority have clear information that, a large number of such plot developments are being done in Kerala for residential as well as commercial purposes, without obtaining the Development permit from the local authorities, as provided under Rule 4(1) of the Kerala Municipality Building Rules 2019 and Rule 4(1) Kerala Panchayath Building Rules 2019. The Authority also notes with concern that the local authorities are not initiating any actions against such offenders even while issuing permits to the buildings/houses/villas constructed in such developed plots. Such

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developments without obtaining Development permits for plotted development of real estate projects coming under the purview of the Act 2016 leads to difficulties in registration of projects under section 3 of the Act which affects ultimately, the interest of the allottees therein. Authority is of the opinion that if such delinquencies are allowed to continue in the State, the whole Scheme and the very purpose of the Act 2016 shall be hopelessly defeated.

2. This Authority has been constituted for the accomplishment of the objectives of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act 2016”], which includes “*the regulation and promotion of the real estate sector in the State and to ensure sale of plot, apartment or building, as the case may be, or sale of a real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector*”. For achieving the said objective, the law prescribes registration of real estate projects before the Authority as per Section 3 of the Act 2016 in the manner provided under Rule 3 of the Kerala Real Estate (Regulation & Development) Rules 2018 [hereinafter referred to as “the Rules 2018”].

3. Section 3 which is the key provision of the Act 2016 stipulates as follows : *(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed

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does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act; (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. Explanation. —For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately".

(3) With regard to the 2nd Proviso of Section 3 of the Act 2016, it is to be noted that as per Section 28 of the Kerala Town & Country Planning Act 2016, entire State of Kerala shall be deemed to be Local Planning Area for the purpose of the said Act and hence the whole of Kerala comes under Section 3 of the Act.

(4) Real Estate Project is defined in Section 2 (zn) of the Act 2016 as "*the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto*".

4. In view of the above facts and circumstances and in exercise of the powers conferred under Section 37 of the Act 2016, the Authority hereby issue the following directions to the Promoters executing "Plot Developments" in the State of Kerala which are coming under the definition of "Real Estate Project" as per Section 2 (zn) of the Act 2016 and provisions of Section 3 of the Act 2016 :-

(1) All the Promoters who carry out land development Projects as clearly detailed above, shall register the project with Kerala Real Estate Regulatory Authority under Section 3 of the Act, after obtaining the required Development Permit from the Local Authority concerned. Any

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failure to do so, shall result in severe penal actions under Section 59 of the Act 2016.

(2) If the Promoter is not the owner of the Land to be developed into plots, the Promoter shall produce copy of the registered Joint Development Agreement along with the application for registration, as provided under Rule 4(f) of the Rules 2018.

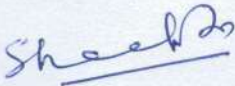
(3) The Secretary(T&A) shall send a copy of this order to the Addl. Chief Secretary, LSGD, Government of Kerala with a request to issue appropriate directions to enable the implementations of this order.

Sd/-
Preetha P Menon
Member I

Sd/-
M P Mathews
Member II

Sd/-
P H Kurian
Chairman

Issued by



Secretary (T&A)
K-RERA