



# Haryana Government Gazette

Published by Authority

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No. 47-2020] CHANDIGARH, TUESDAY, NOVEMBER 24, 2020 (AGRAHAYANA 3, 1942 SAKA)

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## PART III

### Notifications by High Court, Advertisement, Notices and Change of Name etc.

THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

#### Notification

The 17th August, 2020

#### **The Haryana Real Estate Regulatory Authority, Gurugram (Constitution of Mediation and Dispute Resolution Forum) Regulations, 2020**

**No. 21/RERA GGM Regulations 2020.**— In exercise of the powers conferred on it under section 85 of the Real Estate (Regulation and Development) Act, 2016 read with section 32(g) of the Real Estate (Regulation and Development) Act, 2016 and all others powers enabling it in that behalf, the Haryana Real Estate Regulatory Authority, Gurugram having considered it necessary to provide for measures to facilitate amicable conciliation of disputes through dispute settlement forums; hereby makes the Haryana Real Estate Regulatory Authority, Gurugram, [Constitution of Mediation and Dispute Resolution Forum) Regulations, 2020 as under :-

#### **1 Short Title and Object :**

- i. These Regulations may be called the Haryana Real Estate Regulatory Authority, Gurugram (Constitution of Mediation, and Dispute Resolution Forum) Regulations, 2020.
- ii. One of the functions of real estate regulatory authority as specifically provided in section 32(g) is to take measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set-up by the consumer or promoter's associations. So, keeping in view one of the function of the Authority detailed above, a need was felt to frame regulations on the abovementioned subject and the same have been framed after taking into consideration the mandate of the Hon'ble Apex Court of the land in various pronouncements as well as the regulations made by other regulatory authorities in the country.
- iii. These Regulations shall be applicable throughout the jurisdiction of the Haryana Real Estate Regulatory Authority, Gurugram.

**2 Appointment of Mediator**

- i. The parties to the proceedings may agree on the name of the sole mediator/panel of mediators for mediating between them.
- ii. Where, there are two or more sets of parties and are unable to agree on a sole mediator, the authority may ask each party to nominate the mediator or may nominate/appoint the mediator/panel of mediators, as it deems fit.
- iii. Where parties agree on a sole mediator under clause (i) or where the mediator/panel of mediators is nominated/appointed by the authority under clause (ii), the mediator need not necessarily be from the panel of mediators referred to in Regulation 3 nor bear the qualifications referred to in Regulation 4 but should not be a person who suffers from the disqualifications referred to in Regulation 5.

**3 Panel of Mediators**

- i. The HARERA shall, for the purpose of appointing the mediator between the parties in the proceedings, prepare a panel of the mediators and put the same on the Notice Board within thirty days of coming into force of these regulations, with a copy to the relevant bodies.
- ii. The consent of the persons whose names are included in the panel shall be obtained before empanelling them.
- iii. The panel shall contain Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.
- iv. The panel of mediators appointed shall normally be for a period of one year from the date of appointment and further extension of the panel of mediators or; any mediator shall be at the discretion of the Authority.

**4 Qualifications of persons to be empanelled**

- i. The following persons may be enlisted in the panel of mediators under Regulation 3, namely :
  - (a) Retired District & Sessions Judge/Additional District and Sessions Judge and retired Civil Judges ;
  - (b) Legal practitioners with at least ten years standing at the Bar at the level of the Supreme Court or High Court or the District Courts.
  - (c) Experts or other professionals with at least fifteen years standing or retired senior bureaucrats
  - (d) Persons who are trained/experienced mediators/ expert communicators.

**5 Disqualifications of persons**

- i. The following persons shall be deemed to be disqualified for being empanelled as mediators:
  - (a) any person who has been adjudged as insolvent or; Persons against whom criminal charges involving moral turpitude are framed by a criminal court and are pending or; Persons who have been convicted by a criminal court for any offence involving moral turpitude.
  - (b) any person against whom disciplinary proceedings have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment.
  - (c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
  - (d) Any legal practitioner who has or is appearing for any of the parties in any of the proceedings pending before the Authority.
  - (e) Such other categories of persons as may be notified by the Authority

**6 Temporary disqualification:**

- i. Every person appointed as a mediator in a dispute or in a pre-litigation matter shall inform the Authority and all the parties to the dispute, if he is in anyway interested either directly or indirectly, in any of the party to the dispute or interested in the subject matter of dispute, at the earliest point of the time of his discovery of such interest and not to accept the relevant conflict/dispute for resolution. If he/she fails to inform/disclose such information, such a failure would amount to misconduct.
- ii. The Authority shall on receipt of any information from any of the party or their representative that the Mediator appointed is interested or related to any of the party or interested in the subject matter of the dispute, appoint a new Mediator provided such information is substantiated with the prima facie evidence.
- iii. The Mediator who is temporarily disqualified in a particular matter, is not entitled to any remuneration in the said matter.

**7 Preference**

The Authority shall, while nominating any person from the panel of mediators referred to in Regulation 3, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualifications or experience in the mediation.

**8 Addition to or deletion from Panel**

The Authority may in its discretion, from time to time, add or delete any person from the panel of mediators.

**9 Duty of mediator to disclose certain facts.**

- i. When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- ii. Every mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (i).

**10 Withdrawal of appointment**

Upon information furnished by the mediator under Regulation 9 or upon any other information received from the parties or other persons, if the Authority is satisfied, that the said information has raised a reasonable doubt as to the mediator's independence or impartiality, it may withdraw the appointment and replace him by another mediator.

**11 Training as Mediator**

i. The candidates empanelled or selected for the panel of mediators are required to undergo Mediation Training conducted by HARERA, Gurugram.

ii. If any person is already working as a mediator in any mediation center under any other existing Rules/Regulations, such person need not to undergo the aforesaid training, if he/she has already undergone mediation training and he/she shall be deemed to have been trained under these Regulations.

**12 Procedure of mediation**

- i. The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- ii. Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:
  - (a) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;
  - (b) he shall hold the mediation at the place prescribed by the Authority;
  - (c) he may conduct joint or separate meetings with the parties;
  - (d) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect of those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties. However, in suitable/appropriate cases, the period of ten days may be curtailed/increased at the discretion of the mediator.
  - (e) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

**13 Representation of parties**

- i. The parties shall ordinarily be present personally or through constituted attorney at the sessions or meetings notified by the mediator. However, they may be represented by the counsel with the permission of the mediator in such sessions or meetings.
- ii. The party not residing in India, may be represented by the constituted attorney at the sessions or meetings. However, it may be represented by the counsel with permission of the mediator in such sessions or meetings.

**14 Consequences of non-attendance of parties at sessions or meetings on due dates**

If a party fails to attend two consecutive sessions or meetings notified by the mediator on account of deliberate or willful act, the other party or the mediator can apply to the Authority in which the proceeding are pending, and in that case, the Authority may issue the appropriate directions having regard to the facts and circumstances of the case.

**15. Administrative assistance**

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

**16 Offer of settlement by parties**

Any party to the proceedings may, 'without prejudice', to the rights either party, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

**17 Role of mediator**

The mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the party to take decision which affect them; he shall not impose any terms of settlement on the parties.

**18 Parties alone responsible for taking decision**

The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

**19 Time limit for completion of mediation**

On the expiry of thirty days from the date the Authority referred the matter to mediation before the mediator/panel of the mediators, mediation shall stand terminated, unless the Authority, which referred the matter, either *suo motu*, or upon request made by any of the parties/mediators, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of fifteen days.

**20 Parties to act in good faith**

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute(s), if possible.

**21 Confidentiality**

Any information whether oral or documentary received by the mediator during the process of mediation is confidential and the mediator shall not part with the same to anyone. Similarly, the proposals or admissions made by any party during the mediation process shall be confidential. Mediation proceedings shall not be recorded through any audio, video or mechanical process.

**22 Privacy**

Mediation sessions and meetings are private. Only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the permission of the mediators.

**23 Immunity**

No mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

**24 Communication between mediator and the Authority**

i In order to preserve the confidence of parties to the dispute and the neutrality of the mediator, there should be no communication between the mediator and the Authority, except as stated in clause (ii) and (iii) of this Regulation.

- ii. If any communication between the mediator and the Authority is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or their counsel.
- iii. Communication between the mediator and the Authority shall be limited to the communication by the mediator:
  - (a) with the Authority about the failure of the party to attend the mediation proceedings;
  - (b) with the Authority about the consent of the parties;
  - (c) regarding his assessment that the case is not suited for settlement through the mediation;
  - (d) that the parties have settled the dispute(s)

## **25 Settlement Agreement**

- i. Where an agreement is reached between the parties with regard to all the issues in the proceedings or some of the issues, the same shall be reduced into writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the mediator may obtain his signature also on the settlement agreement.
- ii. The agreement of the parties so signed shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Authority.
- iii. Where no agreement is arrived at between the parties, before the time limit stated in Regulation 20 or where, the mediator is of the view that no settlement is possible, he shall report the same to the Authority in writing.

## **26 Authority to fix a date for recording settlement and passing decree**

- i. On receipt of any settlement from the mediator, the authority shall fix a date of hearing normally within 15 days. On such date of hearing, if the authority is satisfied that the parties have settled their dispute(s), it shall pass an order in accordance with terms thereof.
- ii. If the settlement dispose of only certain issues arising in the proceedings, on the basis of which any order is passed as stated in Clause (i), the Authority shall proceed further to decide the remaining issues.

## **27 Fee of mediator and costs**

- i. At the time of referring the dispute(s) to the mediation, the Authority shall fix the fee for mediation to the tune of Rs. 5,000/- to be paid by the promoter within a week of the order. Such fee shall be subject to change from time to time at the discretion of the Authority.
- ii. If the promoter does not pay the amount referred to Clause (i), the Authority shall, on the application of the mediator, or any party, issue appropriate directions against the defaulting promoter.

## **28 Ethics to be followed by mediator**

The mediator shall:

- (a) follow and observe these regulations strictly and with due diligence;
- (b) not to carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- (c) uphold the integrity and fairness of the mediation process;
- (d) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (e) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (h) be faithful to the relationship of trust and confidentiality imposed on the office of mediator;
- (i) conduct all proceedings relating to the resolution of a dispute, in accordance with the applicable law;

- (j) recognize that the mediation is based on principles of self-determination by the parties and that the mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- (k) maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantee of results.

## 29 Pre-Litigation Mediation and Settlement

Only the disputes between the promoters and the allottees which are under purview of the Real Estate (Regulation and Development) Act 2016, Rules and Regulations made there under may be taken up at pre-formal institution of formal complaints in mediation.

- i. The party initiating the mediation process will file his/her application for mediation before the Authority with a copy by e-mail/registered post to the other side.
- ii. The other side have to convey its consent for mediation within 7 days of the receipt of the communication to the complainant by e-mail or through registered post.
- iii. On receipt of the consent from the other side, the first part shall deposit a sum of Rs. 1,000/- with the Authority.
- iv. Thereafter, the matter would be referred for mediation and the parties would be informed about the date, time and venue of the hearing.
- v. Both the parties are expected to be present in person or through their authorized representative.
- vi. The mediation would facilitate the resolution of dispute between the parties in an informal and amicable manner.
- vii. If the parties agree to any settlement, the consent agreement would be drawn, which would be signed by the parties and the mediator/panel of mediators and the same would be submitted to the Authority for passing formal order. Such formal order passed by the Authority would be binding on the parties.
- viii. In case the parties fail to reach an amicable settlement, the mediation process would stand terminated and the parties would be at liberty to pursue their dispute before HARERA, Gurugram or before any other forum.
- ix. The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute which is the subject-matter of the application for mediation except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

DR. K. K. KHANDELWAL,  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram.

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