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1.Name- REALTY PROTOCOL & MEDIATION

Realty - Property in the form of land or buildings.

Protocol- A system rules that explain the correct conduct and procedures to be followed in formal situations.

Mediation- Mediation is the term used to describe a relatively informal form of dispute resolution that occurs outside of the dysfunctional court system. In mediation, the parties are facilitated by a neutral third person or persons called a mediator. The mediator catalyses/promotes negotiation between the disputants with the aim of helping them in reaching a mutually acceptable settlement of their dispute.

System- An organized set of ideas or theories or a particular way of doing something in proper way for all concern._

2. INTRODUCTION:

DRAFT FOR REALTY PROTOCOL & MEDIATION – RULES & REGULATIONS OF REALTY FOR RECA MEMBERS

There are two category of property dealings viz.

- RERA / WBHIRA approved and registered under RERA and normally known as Channel Partners.

(B) Open & Secondary Market and Ready Property Deals / Rentals, other than registered with RERA which are mostly unregulated & unorganized realty deals due to the non-clarity of protocol and system. As such owner/buyer/agent are having their own interpretations about their obligations and rights as per their suitability and convenience which causes conflict of interest with other stakeholders and Agents

3. PROBLEM & BACKGROUND

Most clients are dealing in Real Estate for the first time are usually misinformed, misguided, manipulated and influenced from media and online marketing companies as well as misused by Vastu Consultants. They were facing a lot of problem and this is causing confusion, disruption and conflict of interest with the stakeholder and agent in the deal. We are treated at the mercy and charity of Clients at the time of claiming the due brokerage payment.

To address this problem we have proposed the following roadmap to define and clarify the role, rights and obligations of Realtors and all the stakeholders. In any profession the rules and regulations are defined to avoid any ambiguity, but in Real Estate Open Market Deal, we do not have such rules and systems.

Presently the Role of Realtors in Open Market Deal is termed as **VUCA** i.e.

Brokers are:-

Vague and Vulnerable Brokers are

Unclear and Unrecognized in open market Realty Systems & Protocol

Create Confusion and Complexity in property dealing and causes

Ambiguity and Dispute in brokerage/consultancy charges payments

4. OBJECTIVE:

The Role of Realtors is very noble and important. The Realtor has to locate the right property/ office space/ house etc., to the suitability of the clients and also get a right buyer / tenant at right price for the owner of the property. They are instrumental in getting proper economic development and to find a solution for reducing NPA (Non-Performing Assets) of banks and financial institutions.

To Redefine the Role, Rights and Obligations in all types of Realty deals for all the stakeholders in accordance with Rules and Regulations of RECA Realty Terms. We all know that the Legal System is very cumbersome and not really approachable and as such we have prepared a roadmap to make from **VUCA** to **RECA**

Rules & Regulations of Realty deals

Endorsing the System and Protocol with

Clarity & **C**ode of Conduct by Realtors in

Alliance and Accountability of all the Stakeholders for mutual benefits.

We have to bring RECA Protocol, Code of Conduct, Standardisation of Systems to be clarified and maintained by clients and Co-agents and record their offer and enquiry from start to finalization of the deal in mutual trust and confidence to avoid any confusion and conflict in between all concerned stakeholders.

5.SYSTEM & PROTOCOL – is a Ready Reckoner for referring any / all rules and regulations for open market and secondary market deals.

5(a), Definition & Terminology:

The **Terminology/Definition** used here are as follows:

Owner – Landlord, Lessor, Vendor, Developer, Nominated Person, Assigner, Transferor etc.

Buyer –Developer, Tenant, Lessee, Franchise, Transferee, Nominee, others.

Types of Deal – Sale, Rent, Lease, Sub lease, Franchise, Joint Venture/Development, Differed payment terms, Company Transfer, assignment, nomination, Transfer of Property & Title by Salami or Power of Attorney etc.

Real Estate Agents–Real Estate Informer, Consultants, Broker, Realtors, Co-brokers, Facilitator, Arranger & Service Provider, Realty Agents, Deal Makers etc.

Brokerage: Compensation / Commission, Consultancy Charges, Service Charges, Professional Fees, Compensation etc., On JV the brokerage by both the clients to pay 2% on original value of party.

KYC & P: Know your Client and Property: The Agent should know the profile of Client & Property details and verify the same before dealing with the clients

- a) The requirement of Clients: Location, area, delivery, budget, Payment Terms and source of Funds of buyer
- b) To know the Property: Full details of area, location & Title of the property possessions and/or any encumbrances in the deal.

The draft KYC format to owner & buyer has to be given by the Realtor and all the information provided by client are taken on good faith and Realtor is not responsible and **Disclaimer** for any discrepancies and deviation for the information given by clients.

Appointment/Authorization of Realtors by the Client can be verbal or in writing and/or implied and to be determined as per the realty services and consultancy provided to the Client for mutual benefit in the deal. The mail, messages & information etc given to the client in this context by the realtor is subsisting role of the brokerage terms in the realty deal valid & approved if not objected or emended by the clients.

The Role of Realtors –The Real Estate Agents is to offer and give right property/client on suitable terms as per the requirement of the client till finalization of the term sheet/ MOU Agreement and close the deal in between the parties with mutual consent and coordinate in completion of the deal in between both the clients as per agreed terms and get due brokerage.

Decorum & Transparency – Mutual Trust & Respect: The Realtors have to monitor the transparency in between the co-agent and clients. The Decorum, sincerity and confidentiality of the deal and client is to be maintained with proper mutual understanding, trust and respects by all the stakeholders and to keep appraised of the deal and to keep all individual in loop.

The First Introducer Advantage – The norms of Realty dealing is that the first and foremost Realtor introducing the clients and/or properly in good faith to others side client and agent and he should be given the first priority in the said deal. The first agent offering the property/client and introduction with details is catalyst and cannot be bypassed by any excuses for either side. Only the property clients/agents can proceed directly or through other agent with the said deal /client, if the first agent is unable to respond and proceed with the deal and arrange the inspection/meeting as requested by the client. The clients / Agents have to inform with the valid reason to remove /discard the first agent from the said deal.

Client/Property Specific and Confidential: The first time introduction by the Realtor/Co-Agent of the client will be considered as a Client Specific Deal and any property transaction done by the Clients will be routed through the said Realtor/Co-agent. In case of known clients the deal by the Realtor/Co-Agent will be applicable only to the said Property specific and not to others. Both sides Realtors/Agents to keep each other informed about their clients profile in confidence and trust to save and avoid any overlapping.

Valuation & Negotiations – The Role of Realtor is to provide the right price, terms and valuation of the property as per his knowledge and experience. But it is the prerogative of both side clients to negotiate the price and payment terms and modalities to conclude the deal as suitable and convenient to them.

Advance payment / Bayana - As per realty norms a token advance is to be made by the buyer to vendor for the closure of the deal on agreed terms and/or on the signing of MOU/ agreement. The advance money along with rights and obligation to be clearly defined in between the clients and Realtor in mutual understanding, to safeguard the interest of all the stake holders

Disclosure & Records: Information of client as well as property to be shared along with offer/inspection between co-brokers and clients and the same should be properly documented to avoid confusion. The offer, plan, inspection details, minutes of the meetings, Terms Sheet/MOU should be properly recorded and mailed to all concerned parties in the deal.

Code of Conduct: The circuit to be complete for flow of information in between the both side clients & agents in one loop to avoid the misuse and/or misguidance by any concern in the deal and to bring clarity & accountability of all the stakeholders. The Realtor has to keep the other side client and agent in all type of communication and mails to safe guard both side agents involved in the deal and help in releasing the brokerage.

The Code of Conduct should translate into Trust and Transparency in between the (a) Agent of Buyer and Seller (b) Agent of Seller (c) Agent and Buyer and (d) Realtor and Sub Agent. The Realtor has to maintain the standard code of conduct in property dealing with the clients as recognized and reputed Real Estate Agent and Member of RECA, Kolkata and NAR, India.

Legal Due Diligence – The responsibility of the client is to take proper legal advice to search the title of the property and update about other taxes and liabilities pertaining to the property before concluding the deal. The Realtor has to give a

check list and coordinate to help in getting all the due clearances in respect of the property for operative clients.

Consultancy and Brokerage norms- Charges are to be paid by both the parties (Seller/Buyer) in Open Market Deals as per RECA & NAR brokerage norms and guidelines for Realtors or as specific terms agreed between them as per the services provided by Realtors. The commission / service charges percentage are on the total deal value / consideration amount including Car Parking and other charges total Amount as on TDS 1% is charged but excluding the Government levies, taxes and deposits. The brokerage charges to be mentioned on the finalization of terms sheet / MOU etc along with advance taken payment. The signature of Realtors along with a copy of the Term Sheet / MOU is to be retained by the Realtor.

System of Brokerage charge – The realtor offering the property to the clients and vice versa deals on sharing the information of each other on good faith, the deal has to be routed through the same realtor and brokerage charges to be payable even the clients decide to deal directly bypassing the agent.

The brokerage terms should be mentioned on the finalization of Terms sheet/MOU etc along with advance taken payment. The signature of Realtors along with a copy of the Term Sheet / MOU is to be retained by the Realtor.

- a) The consultancy charges part payment has to be made on MOU and/or pro rata basis OR as on the agreed terms within a specific time on the completion of the deal is the obligation of both the clients.
- b) The brokerage charges – The due brokerage payment to be paid on brokerage charges as per terms.
- c) Senior and main Realtors who is giving more time & efforts is entitled for bigger share of brokerage in the deal vis-a-vis other in between 3rd agents; to be settled amicably between the main agent and co-agents as per respective contribution in the deal .

Extra Service Charges- Incentive / Consideration / Interest / Penalty / Premiums extra charges other than consideration amount paid by the buyer to vendor is also to be treated as a part of deal value and accordingly pro rata brokerage to be paid on extra realisation value to the Realtor on same or agreed terms by the Vendor / Seller to be Realtor.

Delay in brokerage Payment- On submission of Bills the client should pay the brokerage service charges as agreed and GST/ payment as applicable within the same month of billing and any delay of brokerage and / or GST payment the client should pay the same interest on due amount as charged by in delay of GST payment to Govt.

Time Period & Validity—The Time Period and validity of the property once offered and meeting done with the clients and if the client is undecided to take decision, the parties and co-agents are part of said transaction as per factual aspects of the deal. The deal is valid till said property and the client are available in the open market and the both clients are obliged to keep the first realtors / Introducer in the deal and pay the due brokerage charges as per brokerage norms ,when the deal is closed.

Terms & modalities - of the deal along with brokerage & Incentive as agreed by the clients as to be mentioned in the Trail Mail / messages / written letter copy are any documents to be done to avoid the misunderstanding or dispute in future. The messages or mail sent in trailing mail subsequent to properly offers are considered as a part of deal and brokerage terms, unless or otherwise any objection or amendment raised by the concern parties and amended accordingly.

Realty Partners: The open market deal is sometimes very complex and cumbersome due to many reasons, legal terms etc., and in such events experience and expertise of the Real Estate Agent is to be used to resolve the problems and finalize the deal in the mutual benefits and get a share in the realization value of the deal as per the value addition and contribution provided by the Realty Partner.

Default and Failure of Client : The service/consultancy charges is to be paid to the agent on finalization of term sheet/MOU of the deal and in case of any default or failure by any of the party/client who is unable to complete their part of obligation as committed during the finalization of MOU or Agreement is liable to pay the agreed consultancy charges to the Realtor. The Client has to give a valid

reason for change of the Realtor OR not paying the full brokerage dues as the case may be and get an **NOC** from the First and existing Realtor before proceeding with the deal directly or through other agents.

Important Check List: The obligations and doable by Seller and Buyer and Agent to be clarified as per check list to bring clarity in MOU / Term Sheet / Agreement during the finalisation of property deal to avoid confusions.(Check List of RECA)

Legal Panel of RECA comprising of 2 – 3 advocates/solicitors on board to advise the Realtors to keep all necessary record of property dealings, MOU Agreement from the initial stage till completion of the deal and claim of brokerage payment.

5(b)System & Protocol

In case of dispute, the Realtor has to give a written complaint to disclose to RECA Committee, with relevant mails / copy of records of Offer given, Inspection done, Meeting arranged etc., to prove his bona fide claim for service and/or brokerage charges. In case of dispute and grievances of non payment of brokerage/consultation charges raised by the Realtors for Mediation, the Committee along with the Legal Panel will deliberate and decide as per the merit of the case and as per records / evidence given by the Agent to decide the bona fide claimant and the amount of brokerage in the said deal.

Similarly the dispute and/or misunderstanding in between both side Realtors/ Agents in the deal can also be referred to the RECA protocol committee by any victim Realtor to find an appropriate solution in case of non co-operation default and / or done by others Realtor as per Realty Protocol.

RECA Committee will mail / call and send notice to all concerned parties for **Mediation and Settlement** with neutral people as Developer, Building Society and Sell or on behalf of the Complainant Agent.

The RECA Committee should give their decision in writing to the Complainant Agent mentioning the amount of claim and the Complainant Agent can take appropriate action against defaulted party on the basis of **Award of RECA** Protocol & Mediation Committee. From the amount received by the Agent after mediation of

RECA P&M Committee, the Agent will give 10% of the same to the RECA P&M FUND to meet the legal and other expenses.

The Rules & Regulations of Realty should be displayed in the RECA Website and the Website / Link is to be used by all RECA Members in their correspondence and other communications to make everybody updated on the same.

The Whitepaper on Realty Protocol and System to be vetted by NAR India and CREDAI ideally and put on the website of all the relevant associations to bring parity and clarity of Open Market Dealings at PAN India level and should be uploaded in our RECA/NAR India websites so that all the Realtors can give the reference of the website.

6 Legal Opinion:

We are keeping Mr. Vineet Kothari and other Advocates in loop to give advice from time to time on the above subject. Please forward your suggestion within seven days so that we can forward this to the RECA Members for their perusal and approval.

To make the Committee empowered to work there needs to be a proper framework for dispute resolution as suggested by the Advocate, Mr. Vineet Kothari.

1. Amendment in the bye Laws

The Bye Laws should be suitably amended to make the provision for formation of a dispute resolution/ protocol committee and also empower it to do conciliation/ mediation / arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended time to time)

2. There should be a proper dispute resolution panel formed which will take the mediation/ conciliation of the matters and a proper Arbitration panel in accordance with law so that any decision passed is completely valid and holds some value even in the eyes of law.

3. All the Inspection Note / Term Sheet /Contracts / Mails/ MOUs should mention that any dispute arising shall be subject to the Protocol of RECA and only in case that fails will the parties be entitled to approach judiciary for litigation. The name and brokerage terms are to be mentioned in the above documents.
4. As suggested by Mr. Vineet Kothari, Advocate, the Realty Protocol, Rules and Regulations of Realtors were finalized by RECA committee and Members passed in RECA EOGM and the bye-laws are being suitably amended to make provision for formation of dispute resolution by protocol committee and also empower it to do conciliation, mediation / arbitration as per the provisions of the Arbitration & Conciliation Act 1996 (as amended from time to time).

Dispute Resolution Mechanism

1. In case of a dispute the 1st step shall be to refer the matter to the committee with a copy to the opposite side so that both are aware of such a reference.
2. The committee shall forward the same to the panel of mediators for issuing notice for mediation and calling parties to come forward with all their evidences to mediate. In case the mediation is successful the same shall be drawn in form of an MOU and signed by all relevant parties including panel of mediators.

The Panel of mediators shall comprise of 5 prominent members of RECA protocol committee (excluding any person interested in the matter directly), legal person/ Advocate, Vastu expert (if any dispute regarding Vastu), architect (if any dispute regarding construction quality) and any neutral person opposite party may want to nominate and majority shall decide the course of mediation.

3. In case mediation fails the next stage shall be Arbitration and proper procedure to be followed for the same by appointment of a Sole Arbitrator whose name shall be decided by the RECA member broker and the Arbitration shall be done in Kolkata as per Indian Laws and in English Language.

4. The Award passed by such Arbitrator shall be final and binding on the parties and any appeal shall be subject to the Arbitration and Conciliation Act, 1996.

To start with the committee should be given a proper full time standing and meet once every few days to take stock of the situation and issue notices for any pending matters and also hear the disputes as and when they arise.

A model Agreement/ Email is to be drafted and shared with all members which shall form the basic tenet of the Committee thereby empowering it to deal with the issues forwarded to it.

The entire compendium of brokerage, bye-laws, procedure of dispute resolution shall form the constitution of the protocol committee and give legal basis to all Awards of the Committee and subsequently to be recognised by NAR India and CREDAI.

Damages & Penalty: One buyer and seller any valid reason after signing agreement and taking the advance our fresh to fulfil to commitment as per agreed terms is liable to pay, damages and penalty to other client and service charges to that concern realty.

7.CONCLUSION & RECOMMENDATION

1. All Realtors and Agents to empower themselves by referring the RECA website in all correspondence – Mandatory.
2. All disputes to be put forward to RECA Protocol and Mediation Committee to pass award.
3. Parties failing to comply for mediation / non performance of award to be dealt firmly.
4. The Client who fails to cooperate and default in making brokerage payment after the award against them given by the RECA Protocol & Mediation Committee, the requisite action can be taken by the grieved as per the law of Legal system.

5. The Whitepaper on Realty Protocol and system to be vetted by NAR India and CREDAI of Ideally put on the website of all the relevant association to bring parity and clarity of Open Market Dealing at Pan India and should be uploaded in our RECA/NAR India websites so that all the Realtors can give the reference of the website.
6. The name of such defaults parties to be circulated in RECA/ NAR online site, Business chamber, Federation, Concerned, Building association & parties, clubs, credit relating agencies & Institution and other places.
7. The Reca & other associations and members to become members of MSME, Business chambers & Credit rating agencies & others.

8.MISSION & VISION: Justice delayed & Justice denied.

Alternate Dispute Resolution and Mediation Rules 2017. Mediation is the resolution of dispute by appointing a Mediator who suggest a roadmap for setting aside the differences. Mediation is a perfect alternative for Court Litigation and India lacks proper Law framework governing mediation. As per the World Bank the ease of doing business rank is based on parameters of enforcing contracts and bring mediation law into force to improve the pace of justice and enhance the country's overall rankings. These are many statutory provisions that advocates compulsory mediation before going to the Court of Law. The Business Associations and Chambers are the best place to find amicable solution for the resolution of Business / Professional Disputes for resolution in a fast and fair manner as per respective business/service norms and systems to minimise the litigation and deliver Justice at the earliest.

By Pradeep Sadani

Chairman – Realty Protocol & Mediation System

ANNEXURES

1. Draft of offer / Inspection / Mou / Agreement Copy.
2. Check List
3. Exclusive Mandate
4. RECA Brokerage / Service Charges
5. NAR India Code of Conduct
6. For Submission of Plan to KMC
7. KYC Drafts.

Note: Annexure not attached