

Ref. No. MCHI/PRES/19-20/313

April 21, 2020

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Mayur Shah

PRESIDENT-ELECT
Deepak Goradia

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Harish Patel
Nainesh Shah
Domnic Romell

ADDL. VICE PRESIDENT
Sukhraj Nahar

HON. SECRETARY
Bandish Ajmera

TREASURER
Mukesh Patel

SPECIAL PROJECTS
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Sandeep Raheja
Jayesh Shah
Sanjay Chhabria
Rasesh Kanakia

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Sandeep Runwal
Shailesh G. Puranik
Dhaval Ajmera
Pratik Patel

JT. TREASURERS
Nayan Bheda
Munish Doshi

CO-ORDINATORS
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Shailesh Sanghvi
Pritam Chivukula

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Jitendra Jain
Deepak Gundecha

INVITEE MEMBERS
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Raajesh Prajapati
Sachin Mirani
Nikunj Sanghavi
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Paras Gundecha
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Mohan Deshmukh
Mofatraj Munot
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Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

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Ajay Ashar

PRESIDENT, KALYAN DOMBIVLI
Deepak Mehta

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Kiran Bagad

PRESIDENT, NAVI MUMBAI UNIT
Vijay Lakhani

To,
Shri Gautam Chatterjee (I.A.S. Retd.)

The Hon'ble Chairperson
Maharashtra Real Estate Regulatory Authority
BKC, Housefin Bhavan, BKC,
Bandra East, Mumbai - 400 051

Ref: Request to issue Directions under the provisions of Section 32 and 34 (f) & (g) of the Real Estate (Regulation and Development) Act 2016 and Rules and Regulations made there under to facilitate the completion of a ongoing real estate projects and also for a healthy, transparent, efficient and competitive real estate sector during and post COVID 19 pandemic

Respected Sir,

We understand that the lock down is in place to slow the progression of the disease, NOT to eradicate it by 3rd May, 2020. We understand that till vaccine is found or protocol to cure infected person is established, the COVID-19 will not allow us to be back to normal. Social distancing etc. will be norm for atleast one year. This will lead to all industries to suffer, but main to sufferer are Aviation, Tourism, Hospitality and Real Estate. This means Real Estate Sector which was already in trouble, is going to suffer more for long period even post lock down.

Each of the Real Estate Projects is directly affected by the COVID-19 lockdown and resultant economic turmoil. The promoters of these projects are likely to face different challenges, for their projects, in the form of delays in construction completion, fund flows from lenders and the subdued demand resulting in increased financial stress to the promoters. Every Lender, of the country has already on public platforms stated that sanctioned letters of the project loan are no longer valid. Each project will have to be re-examined and loan amounts and their disbursements will be required to be reset.

The delay in case of each project cannot be calculated mathematically and in mechanical manner, as delay equal to number of days of shut down. The labour and material and other resources required to complete the project will only get normalized, by end of October 2020, at the earliest. This complete shutdown of entire country and considering the expected demand contraction due to Covid-19 situation, it is likely that the financial planning of many projects ending in FY 2021-22 to FY 2023-24 will require fresh consideration and may lead to revising the project execution plan.

Falling prices of Real Estate is now a forgone conclusion and is not just a prediction. Considering the salary cuts and without pay leaves being restored to by all commercial establishments, there are bound to be request for cancellation of bookings from apartment purchasers, or defaults in making the payments of installments.

As Real Estate Regulator, you would expect us to put our best foot forward under all the aforesaid circumstances to ensure completion of each and every registered project and delivery of the apartments to all the customers.

Sir, All the ongoing projects registered under RERA, without any exception, irrespective of its geographic location, will have to go back to drawing board, considering the revised fund flow, shortage of Labor, material and subdued contracted demand to redraw the entire construction and project completion schedules.

As, most of the projects has borrowed for construction and the sales cash inflow will not able to meet the demands. So tendency on the part of banks as noticed in last few years is to recover their interest first, from sales receipts, even at the cost of the progress of the project.

Further, if multiple customers seek refund, then the project will suffer immensely and such refund will happen out of same sales collections which should be utilized for completion of the project.

Any funds utilized from the sale proceeds for any purpose other than approval or construction of the project, is complete injustice to the apartment purchasers who continue to pay their contribution in such a difficult time.

The world has seen recessions but has never seen shut down and we look forward to MAHARERA, to find an out of box solution, whereby the project gets completed, the apartment purchasers gets their home, the bankers get their money and customers who has sought refund gets their money back.

We, would request Hon'ble Authority to issue following directions, effective for a period upto 31st March 2021, under the power given in the provisions of Section 32 and 34 (f) & (g) of the Real Estate (Regulation and Development) Act 2016 and Rules and Regulations made there under to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector during this COVID 19 pandemic:

- 1. Grant further extension of the time to complete the project : all projects which has date of completion post 15th March 2020, has been given extension of three months, to their date of completion. We request that this suo-moto extension by MAHARERA should be for period of nine months.**

If this is not done, then every project will have to apply for extension with the same reason, and MAHARERA on such application will have to conduct hearing and then decide. When we are all aware, that this lock down is going to push the completion of each of the project by minimum of nine months, we request that MAHARERA, should, in the interest of Real Estate Sector and also to avoid unnecessary proceedings, extend suo-moto, date of completion of all registered project by nine months.

Alternatively, if MAHARERA, wants every developer to apply for extension under force majeure, then extension granted due to COVID-19 should not be considered as onetime extension available to the developer under Force Majeure clause but should be considered as onetime alteration to project completion date allowed in view of COVID-19.

- 2. We request that interest payable to financial institutions, scheduled banks, non-banking financial corporations or money lenders on construction funding or money borrowed for construction ("Lenders") should not be added to total cost of construction in form 3, column 1 (ii) (c). That is interest payable to Lenders should not be allowed to be withdrawn from 70% Escrow Account.**

The interest payable to Lenders has been allowed as project cost and is allowed to be drawn from 70% Escrow Account maintained under RERA, by circular bearing No. 5/2017 dated 28th June, 2017, RERA has clarified that interest payable to financial institutions, scheduled banks,

none banking financial corporations or money lenders on construction funding or money borrowed for construction (“**Lenders**”) should be added to total cost of construction The principal amount should be added to the total cost of construction as this cost is already included in 1 (ii) (a). We propose to change this position, where by even interest is not allowed to be included in the project cost.

3. Any order to refund customers on cancellation of booking of apartment should be made payable

- (i) on or before end of six months from the date of completion of the project
- OR
- (ii) out of the sale proceeds of the resale of the cancelled Apartment whichever is earlier.

We request the aforesaid directions should be implemented only upto 31st March, 2021, that is with a sunset clause, ending on 31st March 2021. This period will be sufficient either to economy to recover, and even if the economy does not recover, for every developer to re align his projects to new economic order.

Thanking you,

Yours Sincerely,
For CREDAI-MCHI



Vyomesh Shah (Vimal)
Past President



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary

ANNEXURE A

RELEVANT PROVISIONS OF RERA AND RULES AND REGULATIONS

1. Relevant Provisions of RERA

Section 4(2)(l)(D) of the RERA requires a promoter to give a declaration to the RERA Authority along with an application for registration of a real estate project stating that 70% of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank ("**Designated Bank Account**") to cover the cost of construction and the land cost and shall be used only for that purpose.

The term "**scheduled bank**" has been defined to mean a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

The *first proviso* to Section 4(2)(l)(D) of RERA provides that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The *second proviso* to Section 4(2)(l)(D) of RERA provides that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

The *third proviso* to Section 4(2)(l)(D) of RERA further provides that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

2. Relevant provisions of General Rules and Regulations for Maharashtra

A. Provisions of General Rules

Rule 5 of the General Rules deals with the withdrawal aspects of the amounts deposited in a separate account under Section 4(2)(l)(D) of RERA, and the same are discussed hereinafter :

- (a) Rule 5(1)(i) of the General Rules provides for withdrawal mechanism in respect of new projects which will be registered after commencement of RERA i.e. 1st May, 2017 ("**New Project**").
- (b) Rule 5(1)(ii) of the General Rules provides for withdrawal mechanism in respect of ongoing projects within the meaning of the first proviso to Section 3(1) of RERA ("**Ongoing Project**").
- (c) Rule 5(1) of the General Rules requires that for the purpose of withdrawal of amounts deposited in the Designated Bank Account in respect of New Project and Ongoing Project, the promoter shall submit the following three certificates to the scheduled bank operating the Designated Bank Account :
 - (i) Certificate from the project Architect certifying the percentage of completion of construction work of each of the building / wing of the project;

- (ii) Certificate from the Engineer for the actual cost incurred on the construction work of each of the building / wing of the project; and
- (iii) Certificate from a practicing Chartered Accountant other than the statutory auditor of the Promoter, for the cost incurred on construction cost and the land cost. The practicing Chartered Accountant is also required to certify the proportion of the cost **incurred** on construction and land cost to the total estimated cost of the project.

The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the Designated Bank Account. The promoter shall be required to follow the aforesaid procedure for every withdrawal from the Designated Bank Account till the occupancy certificate in respect of the project is obtained. On receipt of completion certificate in respect of the project, the entire balance amount lying in the Designated Bank Account can be withdrawn by the promoter.

(d) Self Declaration by the Promoter

By its Circular No. 3/2017 bearing No. MahaRERA/Secy/File No. 27/79/ 2017 dated 7th June, 2017 issued by the RERA Authority, the RERA Authority has stated that since the Promoter is required to get his Designated Bank Account audited within six months after the end of every financial year, it will not be proper for the Promoter to submit the three certificates to the designated bank operating the Designated Bank Account at the time of every withdrawal. These three certificates would be necessary to be retained with the Promoter for the purposes of auditing by the statutory auditor of the Promoter's enterprise. However, the Promoter should submit a self-declaration to the designated bank operating the Designated Bank Account once every quarter declaring the following :

- (i) 70% of the amount received from the Allottees of the project is deposited by the Promoter in the Designated Bank Account and that the Promoter is entitled to withdraw the said amount proportionate to the progress of the real estate project.
- (ii) The Promoter's withdrawals from the Designated Bank Account in the quarter (April - June, July - September, October - December, January - March) of the year are proportionate to the progress of the Real estate project and for withdrawal of amount the Promoter has obtained requisite certificates from the project Architect, Engineer and practicing Chartered Accountant.
- (iii) The Promoter undertakes to produce these certificates for inspection if required by the Bank / RERA Authority.

Since there is no direct control of the RERA Authority or the designated bank over the Designated Bank Account or the withdrawals that may be made by the Promoter from time to time, from the Designated Bank Account, the RERA Authority has prescribed self-certification by the Promoter to be submitted to the designated bank operating the Designated Bank Account in the format discussed hereinabove.

3. Meaning of the term "Incurred" used in Rule 5 of the General Rules

The expression "incurred" used in Rule 5 of the General Rules for determining the Land Cost and Cost of Construction has not been defined anywhere in the General Rules. The term "incurred" would mean to become liable to pay or creating a debt in favour of a creditor.

In other words, the term “incurred” would mean the actual sum paid or payable by the Promoter to the creditor of the real estate project.

4. By its Circular bearing No. 5/2017 dated 28th June, 2017, the Chairman, RERA Authority has clarified that all the estimated and incurred Development Cost/ Cost of Construction items as discussed hereinafter should be mutually exclusive and there should not be any double counting of costs. IT is also clarified that in form 3, filed 1 (ii) (c), only interest payable to financial institutions, scheduled banks, non-banking financial corporations or money lenders on construction funding or money borrowed for construction (“**Lenders**”) should be added to total cost of construction. The principal sum should not be added to the total cost of construction as this cost is already included in 1 (ii) (a). Furthermore, it has been clarified therein that the Development Cost / Cost of Construction of the project **should not include marketing and brokerage expenses towards the sale of apartments and that such expenses, though forming part of the project cost cannot be withdrawn from the Designated Bank Account**