



Gujarat Real Estate Regulatory Authority
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Order No :- 23

Date:- 23/05/2019

Subject:- Clarification with reference to responsibility of land owner in case of owner of the land is different than the promoter .

As per the section 37 of the Real Estate (Regulation and Development) Act, 2016 ("said Act"), for the purpose of discharging its functions, the GujRERA is vested with the power to issue directions to the promoters, allottees or real estate agents as it considers necessary from time to time. The Chairperson, GujRERA is also vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under section 25 of the said Act.

The present Circular is issued exercising powers under the aforesaid provisions of the said Act, since the GujRERA considers it necessary, in the interest of the promoters and the allottees.

Section 2(zk) i to vi of the said Act defines the term 'Promoter'.

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of - a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary cooperative housing society, which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation. - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder; "

Keeping in view the overall purpose, object and the intention behind enacting the said Act, more particularly various duties, responsibilities and obligations imposed thereby upon the GujRERA so as to inter-alia bring in (i) maximum transparency in the real estate sector and resultantly to promote (ii) awareness about the provisions of the said Act and educate general public about nuances of it, it has been found necessary by the GujRERA to issue appropriate clarification and/or explanation, for the better understanding, working and implementation of the said Act and the Rules framed thereunder, as also for the removal of doubts, if any and if at all, in regard to the aforesaid definition of the term 'Promotor' contained in the said Act.

During the Project registration process, it was observed that several developers (who actually obtain building permissions and construct) of the real estate projects, have entered into an arrangement with individuals/organizations like land owners/lender, by which the said individuals/organizations are entitled to receive a share of the total revenue generated from sale of apartments or share of the total area developed for sale, which are also marketed and / or sold by such individuals / organizations. Thus, in such cases the developer receives consideration, on behalf of land owner/lender and in turn passes on the same to the concerned landowner/lender in the form of money or rights to selling some of the completed units/apartments.

For such project registration applications, it is ensured that these development agreements are duly executed on Stamp Duty Paid documents and they are properly registered with the Registrar of Documents by paying appropriate registration fees. Generally, the promoter of the project is required to collect monies from the Allottees of the project and make payment to Land Owners towards transfer of development rights. The land owners are obliged under the development agreement to co-operate in Title-Transfer of project land along with the Promoter while Promoter executes the Conveyance Deed for the Apartments to the Allottees of the Project.

An inherent risk has been assessed as to, if the Land Owner of the Registered project does not cooperate with the Promoter for reasons like nonpayment of land dues by the promoter to land owner.

The various provisions of the Act, as mentioned below, are reviewed to assess the need for administrative intervention by the RERA Authority to eliminate this risk;

1. **Section 4 (2) I (A):** *“that he (promoter) has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person”*
2. **Annexure - A u/s Section 13 & Rule 9:** Promoter can bring in the project land in either of the ways indicated there namely; i) Land owned by the Promoter, ii) Lease hold land and iii) Development rights through an Agreement with Original Owner of the land.
3. **Section 11 (4) (c):** *“promoter shall, be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land have been paid, and to make the lease certificate available to the association of allottees”.*
4. **Section 17 (1):** *“The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees...”*

5. **Section 18 (2):** *“The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which, the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub- section shall not be barred by limitation provided under any law for the time being in force.”*

6. **Section 11 (4) (g) :** *“promoter shall, pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the association of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project)”*

The participation of land owner in execution of Sale Deed for conveyance of title of the land to allottee is an inevitable procedural requirement to ensure legal transfer of the land title. In those cases, where the landowner takes share of the completed unit/flats for the purpose of sale, Promoter - Developer and Landowner have joint responsibilities towards allottees for project under development. Promoter/Developer and Landowner are fully liable to convey the project-unit to allottees with all amenities, within agreed time. In the event of a failure they are fully liable to compensate the allottees appropriately.

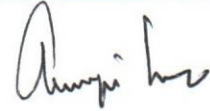
Hence, for better administration of the projects registered on the basis of Development Agreements, **following actions are mandatory:**

1. Online application for project registration shall capture the fact that the project is proposed on land made available for the project through Development Agreement. The digital capture of this data will enable monitoring of the project, specifically with respect to " Land Cost Incurred and Paid " in CA Certificate.

2. In addition to Form-B – Promoters Affidavit, an additional affidavit (In the Form-B1) shall be provided by the promoter for making it explicitly clear that promoter is required to adhere to the terms and conditions, including timely payments, in accordance with the terms of the Development Agreement.

A joint affidavit of promoter/developer and land owner (In the Form-B2) shall be obtained, as a part of project registration application, ensuring commitment of developer and the land owner to fulfil obligations under development agreement. More specifically, Land owner shall have to participate, in particular, in title transfer through sale deed, as and when the handing over of physical possession and conveyance is due as per the Act.

- 3 However, the land owner's liability shall be limited to transfer of title of land; while promoter/developer shall be liable for fulfilling his obligations for the entire project.



**Chairman
GujaratRERA**

FORM B-1

[GujaratRERA Order - 23 dt. 23/05/2019]

DECLARATION, SUPPORTED BY AN AFFIDAVIT, WHICH SHALL BE SIGNED BY THE PROMOTER OR ANY PERSON AUTHORIZED BY THE PROMOTER WHERE THE PROJECT LAND IS NOT OWNED BY THE PROMOTER

Affidavit cum Declaration

Affidavit cum Declaration of Mr./Ms. _____ promoter of the proposed project/ duly authorized by the promoter of the proposed project, vide its/his/their authorization dated _____;

I, _____ promoter of the proposed project / duly authorized by the promoter of the proposed project do hereby solemnly declare, undertake and state as under:

1. I/We have entered into an agreement with _____ [Name of the project land owner(s)/lessor(s)] by way of registered Development agreement/ _____ agreement, Registered on date _____ at sub Registrar office _____ to develop the land bearing Survey No/FP No _____ of _____ Village/City(said land);
2. That _____ [Name of the project land owner(s)/lessor(s)] have/has a legal title to the land on which the development of the proposed project is to be carried out.
AND
a legally valid authentication of title of such land along with an authenticated copy of the agreement between such owner and me/us (the promoter) for development of the real estate project is enclosed herewith, and the said land is free from all encumbrances.
OR
That details of encumbrances _____ (specify the nature) including details of any rights, title, interest or name of any party in or over such land, is attached herewith.
3. That I/we will abide by all the conditions of the Development/ _____ agreement and fulfil all my obligations under the said agreement, specifically the obligation of making the full payments towards consideration for the land/development rights. I will keep the Authority apprised of the scheduled payments having been made from time to time towards the cost of land. This will be incorporated in Form-3 submitted by us on a quarterly basis.
4. That, I/We will be liable for fulfillment of my/our obligations under the Act towards the allottees of the units/apartments.

Deponent

Verification

The contents of my above Affidavit cum Declaration are true and correct and nothing material has been concealed by me therefrom.

Verify by me at _____ on this _____ day of _____.

Deponent

FORM B-2
[GujaratRERA Order - 23 dt. 23/05/2019]

JOINT DECLARATION, SUPPORTED BY AN AFFIDAVIT, WHICH SHALL BE SIGNED BY 1) THE PROMOTER OR ANY PERSON AUTHORIZED BY THE PROMOTER AND 2) THE OWNER OF THE LAND, WHERE THE PROJECT LAND IS NOT OWNED BY THE PROMOTER

Affidavit cum Declaration

Joint Affidavit cum Declaration of,

1) Mr./Ms. _____ promoter of the proposed project/ duly authorized by the promoter of the proposed project, vide its/his/their authorization dated _____;

AND

2) Mr./Ms. _____ owner/lessor of the project land/ duly authorized by the owner/lessor of the project land, vide its/his/their authorization dated _____;

We, 1) _____ promoter of the proposed project / duly authorized by the promoter of the proposed project, AND 2) _____ owner/lessor of the project land do hereby solemnly declare, undertake and state as under:

A. We have entered into registered Development agreement/ _____ agreement, Registered on date _____ at sub Registrar office _____ to develop the land bearing Survey No/FP No _____ of _____ Village/City(said land);

B. That _____ [Name of the project land owner(s)/lessor(s)] have/has a legal title to the land on which the development of the proposed project is to be carried out.

AND

a legally valid authentication of title of such land along with an authenticated copy of the agreement between such owner and me/us (the promoter) for development of the real estate project is enclosed herewith, and the said land is free from all encumbrances.

OR

That details of encumbrances _____ (specify the nature) including details of any rights, title, interest or name of any party in or over such land, is attached herewith.

C. That, we will abide by all the conditions of the Development/ _____ agreement and fulfil all our obligations under the said agreement, specifically the obligation of Transfer of title to the allottees of the apartment and/or association of allottees of the project in accordance with the provisions of Section 17 of the RERA Act.

D. That, We undertake to sign and execute all the documents necessary for Conveyance/Transfer of the apartment to the allottee(s), as and when the handing over of the physical possession and conveyance is due as per the Act.

E. That, arrangement by way of registered development agreement between the undersigned are considered to be supportive in nature and not restrictive, with reference to the interest of allottees of project.

Deponent 1) _____
2) _____

Verification

The contents of our above Joint Affidavit cum Declaration are true and correct and nothing material has been concealed by us therefrom.

Verify by us at _____ on this _____ day of _____.

Deponent 1) _____
2) _____