

GujaratRERA Form-3 CA Certificate

Guidance -1

Date : 9th July, 2019

Disclosure of Project Loan and Lender details & Unit Encumbrance Reporting

1. If interest certified as paid as part of cost incurred & paid, existence of loan for project is required to be disclosed in Form 3 “Project Loan & Lender” details section.
2. All secured/unsecured loans taken specifically for project by the promoter are to be reported.
3. Even if there is no encumbrance on units directly in case of money borrowed specifically for project, such borrowing and repayment must be reported.
4. While certifying cost incurred & paid for the project, **interest on partner’s capital must not be considered as it is own capital and not borrowed fund.** This is in accordance with Technical Guidance for Certifications and Audit under Real Estate (Regulation and Development) Act, 2016 issued by ICAI.

Reporting Matrix

Sr No.	Mortgage Created On	Reporting in Form 3	Documents to be uploaded in Form 3	Disclosure of Release of Mortgage
1	Only Project Units (All or partial)	Yes	1) Loan Agreement & Sanction letter 2) Mortgage deed of the loan	At the time of AFS of the unit booked
2	Project Land & Units	Yes	1) Loan Agreement & Sanction letter 2) Mortgage deed of the loan	1) For Units : At the time of AFS of the unit booked 2) For Land : By the time of completion of project or else an affidavit by the promoter that he will continue to be liable for project liabilities.
3	Only Project Land	Yes for Lender and Loan details (Number of Units encumbered : “0” digit)	1) Loan Agreement & Sanction letter 2) Mortgage deed of the loan	1) For Land : By the time of completion of project or else an affidavit by the promoter that he will continue to be liable for project liabilities.
4	None UNSECURED Loans (When interest is charged to project cost incurred and paid)	Yes for Lender and Loan details (Number of Units encumbered : “0” digit)	List containing details of All UNSECURED lenders and loan amount to be uploaded as “Loan Agreement” (PDF Document)	Not Applicable

Secretary
GujaratRERA

Relevant Provisions in The Real Estate (Regulation And Development) Act, 2016 and Rules thereunder ;

Promoter has to declare by affidavit, among other matters, Section 4 (2)(1)

- (A) That he 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;
- (B) *That the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;*

Apart from that, as per section 11(4), the promoter shall, among other things,

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations 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;

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, ***the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges***, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken there for by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, ***not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created*** then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

Further, section 18(2), specified that, 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 subsection shall not be barred by limitation provided under any law for the time being in force.

Important provision with respect to encumbrance and mortgage provided for in Gujarat Real Estate (Regulation and Development) (General) Rules, 2017

Further, as per Rule 3(1)(e), among other things, promoter has to furnish information and documents, ***the details of encumbrances on the land on which development is proposed including any rights, title, interest or name of any party in or over such land along with details;***

As per first proviso to Rule 8 (2),

Provided that, prior to the revocation of registration of real estate project, the Authority shall also give notice to the concerned competent authority which has granted approval to the real estate project and association of allottees (if any). In case the association of allottees is not formed, the Authority may in its discretion, also give notice to the allottees, to submit their say in that behalf. The Authority while facilitating the remaining development works to be carried out in accordance with the provisions of section 8 shall also take such measures as may be required to protect the interest of other parties who through mortgage or other investments are interested in the real estate project, which are disclosed by the promoter on the Website of the Regulatory Authority.

As per Clause 13(iii) of Model Form of Agreement *there are no encumbrances upon the project land or the Project except those disclosed in the title report;*

As per Clause 17 of Model Form of Agreement, *after the Promoter executes this Agreement he shall not mortgage or create a charge on the *[Apartment/] and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, such mortgage or charge shall not affect the right and interest of the Allottee who has taken or agreed to take such [Apartment/plot].*

Provisions w.r.t. to encumbrance and mortgage, as contained in Gujarat Real Estate (Regulation and Development) (Matters Relating to the Real Estate Regulatory Authority) Rules, 2016.

Rule 10 (1) (e) (ii), among other documents there should be downloadable,

(C) Land Title Search Report from an advocate having experience of at least ten years in land related matters;

(D) Details of encumbrances on the land on which development is proposed including any rights, title, interest or name of any party in or over such land along with details or no encumbrance certificate from an advocate having experience of at-least ten years in land related matters;

(F) Sanction letters:

- *From banks for construction finance;*
- *From banks for home loan tie-ups.*

Relevant provision specified in SOP of submitting amended Form-3

As per amended Form-3 (Chartered Accountant Certificate), as a part of *construction cost Interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction is to be certified by Chartered Accountant.*

Among other things, new Form-3 aims to cover additional aspects compared to the earlier version of Form 3 such as

- *Encumbrance and loans & lenders details.*
- *Unit wise Encumbrance Reporting is also need to be reported.*