



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

Date : 23/07/2021

(Clarification to Circular no. 24)

Circular No.: 24A/2021

No.MahaRERA/Secy/File No.27/144/2021

Subject: Procedure for transferring or assigning promoter's rights and liabilities to a third party.

Whereas, the Chairperson, MahaRERA is vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under Section 25 of Real Estate (Regulation and Development) Act, 2016.

Whereas, in accordance with Section 15 of the Real Estate (Regulation and Development) Act, 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except promoter, and without the prior written approval of the Authority.

Whereas a procedure was prescribed for the purpose of transfer or assigning Promoter rights vide MahaRERA Circular No. 11/2017 dated 08.11.2017.

Whereas considering various types of litigations, it is necessary to prescribe revised procedure for the purpose of transfer of promoters rights and liabilities to third party in accordance with the provisions of Section 15 of Real Estate (Regulation and Development) Act, 2016.

Therefore, in supersession of Circular No. 11/2017 dated 08.11.2017 the revised procedure detailed herein shall be followed with immediate effect.

MAHARERA HEADQUARTERS

Housefin Bhavan, Plot No. C - 21, E - Block, Bandra Kurla Complex, Bandra (E), Mumbai 400051

Tel. No.: 022 68 111 600 • E mail : helpdesk@maharera.mahaonline.gov.in

महारेरा मुख्यालय

हाऊसफिन भवन प्लॉट नं. सी-२१ ई-ब्लॉक, वांद्रे- कुर्ला कॉम्प्लेक्स, वांद्रे (पूर्व), मुंबई - ४०० ०५१.

फोन नं.: ०२२ - ६८ १११ ६०० • ई मेल : helpdesk@maharera.mahaonline.gov.in

Explanation: -

- (i) For the purpose of this section, changes in (internal) shareholding or constituents of a promoter's organization, that doesn't affect obligations and liabilities with respect to the Allottee(s) and the rights and liabilities of the promoter's organisation, shall not require the aforementioned approvals.*
- (ii) Any Conversion of the promoter of the entity under any statute, of
 - (i) Partnership Firm into LLP/Private Limited Company or*
 - (ii) Conversion of Private Limited Company or unlisted Co. to a LLP or otherwise*
 - (iii) Proprietorship change by succession to legal heirs*Shall not require the aforementioned approvals.*

2. Cases where the transfer is initiated by the promoter: The promoter shall have to apply to MahaRERA with the consent of two-third allottees as on the date of application in the project under consideration, to seek permission to transfer its rights and liabilities to a third party. The third Party /the intending purchaser shall also submit the documents mentioned in Annexure-B and Declaration prescribed in Annexure 'C'. The promoter shall have to write to the Secretary, MahaRERA, on secy@maharera.mahaonline.gov.in with format prescribed in Annexure-A. On receipt of such application, Secretary shall initiate action through the legal wing who would take necessary steps to obtain approval of MahaRERA, which may include scheduling a hearing. MahaRERA shall thereafter pass an order within one month of filing of such application, of either granting approval to such application for transfer (with or without such conditions as it may prescribe) or reject such application for transfer.

After receipt of the approval for the transfer from MahaRERA and thereafter within seven day of completion of the transfer, the new promoter shall then apply for necessary corrections in the existing registration details. He shall also upload required supporting documents in its name like land title, building plan approval, etc., upon obtaining the same from time to time. While making such application for correction, the new promoter shall upload on the website of RERA, a registered undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with respect to the Allottee(s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

Amalgamation or merger of the Companies, in which amalgamating company has one or more of the project registered under RERA, and which is voluntarily initiated by the promoter, after 30th April, 2017, shall be regarded as transfer initiated by the Promoter and the Promoter shall have to follow the procedure prescribed herein above for obtaining the approval of the allottee (s).

However, if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under Section 47 of the Income Tax Act, 1961 or where 75% of the shareholders remain same in the resultant company, the same shall not require the aforesaid approvals of Allottees (s) under section 15 of the Act.

3. Cases where the transfer is initiated by a third party like financial institution/creditors, etc. by operation of law or by way of enforcing of the security. Where Secured Loan and/or the charge on the project is disclosed in the registration details of the project on the website of MahaRERA, then in such cases the promoter shall write to the Secretary, MahaRERA, on secy@maharera.mahaonline.gov.in with format prescribed in Annexure-A, within seven days of being aware of the impending or potential transfer

arising out of enforcement of security or mortgage. The promoter shall also simultaneously inform each and every allottee of the project of the impending or potential transfer. Within seven days of the transfer being effected by the Financial Institution or creditors, such Financial institution or creditor shall intimate to each of the Allottee (s) and Secretary MahaRERA on secy@maharera.mahaonline.gov.in of enforcement of the security which has resulted in the transfer of the ownership of the promoter organization or transfer of the project. The Financial Institution or creditors (acting as new promoter) or new promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details. New Promoter shall also upload required supporting documents in its name like land title, building plan approval, etc., upon obtaining the same from time to time. While making such application for correction, the new promoter shall upload on the website of MahaRERA, an undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with respect to Allottee (s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

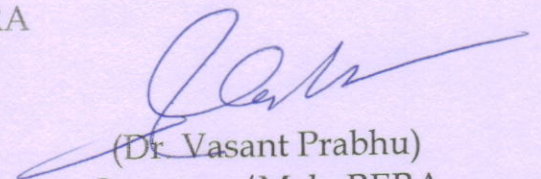
Example:

- I. Invocation of Pledge of shares of the promoter organization by Pledge.
- II. Takeover of the asset of the project or of the project by Bank/Financial Institution/Asset Reconstruction Company under SARFAESI.
- III. Transfer of the Project by the Bank/Financial Institution/Asset Reconstruction Company under SARFAESI (or under Insolvency and Banking Code, 2016).
- IV. Takeover of the management of the promoter in case of Insolvency and Banking Code 2016.

4. Procedure for updating details of new promoter: The following procedure should be adopted for updating details:

- After receiving the application, Secretary shall initiate action through the legal wing for order of the Authority.
- MahaRERA order shall be mailed to the applicant at their given email address.
- As per the order, new promoter may apply in correction module for change in promoter details and attach the order of the Authority as supporting document.
- The new promoter shall, in update module from time to time, also upload required supporting documents in its name like amended land title, amended building plan approval, etc., upon obtaining the same.

By the approval of the Chairperson, MahaRERA


(Dr. Vasant Prabhu)
Secretary/MahaRERA

Annexure -A

Application for Change in Promoter
(On the letter head of the Promoter)

To

The Maharashtra Real Estate Regulatory Authority

Sir,

I / We apply herewith for your approval to transfer or assign my / our majority rights and liabilities in respect of real estate project to a third party with following details:

| | | |
|------|---|--|
| I. | MahaRERA Project Registration Number | |
| II. | Promoter Details: | |
| | Name: | |
| | Organization Type | |
| | Address | |
| | Contact Details (Mobile) | |
| | Email | |
| III. | Third Party details (Proposed Promoter): | |
| | Name: | |
| | Organization Type | |
| | Address | |
| | Contact Details (Mobile) | |
| | Email | |

| | | |
|-----|---------------------|--|
| IV. | Reason for Transfer | |
| V. | Encl | |

We enclose herewith the following documents:

- 1) Consent of Two-third allottees to seek permission to transfer its rights and liabilities to a third party

I / We hereby declare that the details furnished above are true and correct to the best of my/ our knowledge and belief and I / we undertake to inform you of any changes therein, immediately.

I / We declare that there is no pending case before any court/NCLT/ or any authorized body regarding transfer of promoter/my rights and liabilities with respect to this project.

I/ We declare that there is no bar, in transfer of the rights and liabilities to a third party, from any of the financial institutions or financiers who have a charge on the project.

I / we further declare that there is no prohibitory order passed by any court of law against transfer of the present project to a third party.

Thanking you

Yours faithfully,

Signature of the authorized representative with Stamp

Place: -

Date: -

Annexure B

Application under Section (15)

(See Circular no. 24 dated 04/06/2019)

Documents required in case of change of developer

| Sr. no. | Particulars | Details |
|----------------|---|----------------|
| 1. | From Old Promoter | |
| 1 | Annual CA Certificate No.5, for each year since registration of the project. | Please enclose |
| 2. | Brief write up on present status of the project including physical and Financial progress, details of Encumbrance if any, cumulative receipts/withdrawals in RERA designated account, Likely amount of finance required to Complete Balance project. (enclose photograph of work done so far) | |
| 3. | Whether all fields like sold and unsold, inventory, Various Activities in works executed and Form-3, Form 2A etc has been updated. | |
| | From New Promoter | |
| 1. | Pan card of individual/Firm/Partners | |
| 2. | Address / Contact details Email Id etc. / Authorised signatory / Partners | |
| 3. | Details of any MOU/Development agreement with Land owner, if Land owner is other than the promoter. | |
| 4. | New Declaration Form B | |
| 4. | New Architect's Form - I | |
| 5. | New Engineer's Certificate -II | |

| | | |
|----|--|--|
| 6. | New CA certificate Form -III | |
| 7. | List of New Project professionals with contact details | |
| 8. | Revised Estimated cost and Time Schedules for balance activities of works (list and time schedules for each activity) | |

Name of Promoter
Sign
Stamp

Name of Intending
Purchaser
Sign
Stamp

Annexure - C

Application under Section (15)
(See Circular no. 24 dated 04/06/2019)

JOINT DECLARATION

We _____ hereinafter referred to as "the Promoter" and _____

hereinafter referred to as "the Intending Promoter" do hereby jointly declare as under: -

The promoter has taken up a project which is duly registered with MahaRERA bearing Registration No. _____

In accordance with the provisions of Section 4(2)(i) D of the RERA Act, the promoter has opened designated bank account in the _____ Bank bearing account no. _____.

We hereby declare year wise details of the amounts deposited in the designated account, amounts withdrawn towards the cost of the construction and the land cost and balance supported by bank statement is as under:

| YEAR | AMOUNT DEPOSITED Rs. | WITHDRAWALS Rs. | BALANCE Rs. |
|--------------|-------------------------|--------------------|----------------|
| 2017-18 | | | |
| 2018-19 | | | |
| 2019-20 | | | |
| 2020-21 | | | |
| TOTAL | | | |

CA Form-5 of above years and bank statement of the designated Account is attached herewith.

This declaration dated _____

Name
(Existing Promoter)

Name
(Intending Promoter)