

Gujarat RERA Form 2 Engineer Certificate & Form 3 CA Certificate Guidance – 2

Date : 18th July, 2019

Signatory to Annexure of Form 2 and Disclosure of Booking details in Form 3 along with allottee KYC

1. For Annexure of Form 2 Engineer Certificate:

The signatory to the Annexure of Form 2 “Engineer’s Certificate for Quality Assurance“ is any engineer as defined in RERA Act, 2016 and registered with Urban Local Body in Gujarat or is member of Gujarat Institute of Civil Engineers and Architects (GICEA) or is member of Institute of Engineers (India) or is registered with Professional Civil Engineer Council Gujarat who has been appointed by the promoter for supervision of RERA registered project.

Engineer signing Form 2 and the Engineer signing Annexure of Form 2 can be different professionals.

2. For Form 3 Chartered Accountant Certificate :

Relevant Provisions in The Real Estate (Regulation And Development) Act, 2016 and Rules thereunder and Regulatory Requirement Rationale in context thereof;

Section 2 of the Act, defines

“(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”

Customer-centric is the main vision of GujRERA Authority.

Rule 10 of Gujarat Real Estate (Regulation and Development) (Matters Relating to the Real Estate Regulatory Authority) Rules, 2016

“Details to be published on the website:-

(1) (b) (ii) Apartment and garage related details:

(A) details of the number, type and carpet area of apartments for sale in the project as provided under clause (h) of sub-section (2) of section 4;

(d) The promoter shall upload the following updates on the webpage for the project, within seven days from the expiry of each quarter:

- (i) List of number and types of apartments or plots, as the case may be booked;*
- (ii) List of number of garages booked;”*

Regulatory Requirement Rationale: Provisions of the Act and Rules mandates the authority to create a portal, containing promoter’s web-page where promoter can provide quarterly updates pertaining to the real estate project along with the Booking status/details. Promoter is required to provide up to date information pertaining to all units of the project. Authenticity of the booked units is ensured when KYC details of allottees are submitted.

Section 11: Functions and duties of promoter

(1) (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(f) such other information and documents as may be specified by the regulations made by the Authority.

Section 11 (4)

“The promoter shall—

(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 therefor by such authority or person;”

Regulatory Requirement Rationale: KYC details of the allottees of the project would enable complete and accurate information for Authority actions. Interest of the allottees of redevelopment units in the real estate project, who derive their rights under the Act as creditors of land cost included in the estimated cost of real estate project, is brought to records through submission of this information.

Section 13: No deposit or advance to be taken by promoter without first entering into agreement for sale

“(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

Regulatory Requirement Rationale: Promoters are enabled to submit their compliances with the requirement of the above section by providing the date of Agreement for Sale in Form 3.

Section 14: Adherence to sanctioned plans and project specifications by the promoter

“(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation:—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals,

etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

Regulatory Requirement Rationale: The Authority requires the accurate information pertaining to allottees who have booked units in the project and are eligible to accord the consent for project alteration. This enables the Authority to facilitate the promoter as well as allottees to ensure compliance of taking/granting written consent of 2/3rd number of allottees as envisaged in above section of the Act, before granting the sanction for major additions or alterations in the real estate project.

Section 15: Obligations of promoter in case of transfer of a real estate project to a third party

“(1) 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 the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.”

Regulatory Requirement Rationale: The Authority requires the accurate information pertaining to allottees who have booked units in the project and are eligible to accord the consent for project transfer to third party. This enables the Authority to facilitate the promoter as well as allottees to ensure compliance of taking/granting written consent of 2/3rd number of allottees as envisaged in above section of the Act, before granting the sanction for such transfer of the real estate project.

Revocation of Registration

Section 7 of the Act:

*“(4) The Authority, upon the revocation of the registration, —
(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.”*

Rule 8 of Gujarat Real Estate (Regulation and Development) (General) Rules, 2017:

“(2) The registration granted to the promoter under section 5 shall not be revoked unless the authority has given to the promoter not less than thirty days' notice, in writing, stating the ground on which it proposes to revoke the registration, and has considered any cause shown by the promoter within the said period:

*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:***

Provided further that, the Regulatory Authority shall also give adequate opportunity of being heard to any party which through defined instrument of debt or equity have created third party interest in the real estate projects.

Explanation. - *For the purposes of the second proviso, the party shall include Scheduled Banks, Housing Finance Companies, Insurance Companies, Non-Banking Finance Companies operating as Asset Finance Companies, Investment Companies, Loan Companies, Investment Finance Companies, Infrastructure Debt Funds, Micro-finance Institutions, Foreign Direct Investors, Private Equity Funds and the Real Estate Investment Trust”*

Regulatory Requirement Rationale: These provisions require the Authority to have information pertaining to rightful allottees and other stakeholders in the real estate project to communicate and to take necessary course of action for protection of interest of all such stakeholders, including the allottees.

Section 8: Obligation of Authority consequent upon lapse of or on revocation of registration

“Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.”

Regulatory Requirement Rationale: In the event of revocation of the real estate project, the Authority requires information pertaining to various allottees or association of allottees (if formed) to communicate and take their opinion in context of carrying out of the remaining development works. In case of such event, as a part of preventive mechanism and to take informed decision, complete and accurate information pertaining to rightful allottees is necessary. Reliance on the promoter of such project may jeopardise the project execution and resolution process.

43 What are the important functions and responsibilities of the promoter after registration of the project with the Authority?

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

44 What are the disclosures to be made on the website of the Regulatory Authority?

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, the detailed list is required to be specified in the Rules.

46 Can the promoter collect any amount of money towards booking of the apartment / plot?

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment / plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

48 Can the promoter modify / amend the sanctioned plans or project specifications. after having been approved by the competent authority and disclosed to the allottees?

As per section 14 of the Act the promoter can only modify / amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification / alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Section 5 (Definitions)

“(8) **“financial debt”** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes.....

(a).....

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;”

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (No 6 of 2018)

Amendment of section 5:

“In section 5 of the principal Act, -

(ii) in clause (8), in sub-clause (f), the following Explanation shall be inserted, namely;

Explanation- For the purpose of this sub-clause,-

- (i) Any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, “**allottee**” and “**real estate project**” shall have the meanings respectively assigned to them in clause (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.”

Regulatory Requirement Rationale: The amendment intends to protect the interest of the allottees of the real estate project, who have been considered as financial creditors. Such allottees have been specifically included in list of creditors having commercial effect of borrowing.

Gujarat RERA has enabled submission of allottee details along with KYC for real estate project by the promoters for contributing towards the holistic financial ecosystem being laid out by the Government of India.

Secretary
Gujarat RERA