

Gujarat Real Estate Regulatory Authority

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Website:- https://gujrera.gujarat.gov.in

No. GujRERA/Circular/ 23 /2020

Subject: - Procedure for transferring or assigning promoters rights and liabilities to a third party u/s 15 of RERA Act, 2016

According to Section 37 of the Real Estate (Regulation and Development) Act, 2016 (RERA), "The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

Section 15 of the Real Estate (Regulation and Development) Act,2016, reads as under "the promoter shall not transfer or assign his majority rights and liabilities in respect of the 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".

The issue of standardisation of the procedure for application to be made to GujaratRERA under section 15 was under consideration of the Authority. After due consideration of the GujaratRERA PORTAL operations along with the regulatory regime laid out for project registration, progress monitoring, financial overseeing through monitoring of separate bank account of the project etc., the Authority is hereby prescribing the process of implementation of section 15 as under;

1. Reporting of Change in Promoter Entity Status /Management changes: GujaratRERA, as part of Project Registration process, requires promoter details (KYC). KYC details of Individuals, Partners, Directors and other Management officials of promoter entity are necessary to be provided for project registration. Any change in this reported information, within promoter entity, is required to be submitted to GujaratRERA for every registered project.

Reporting of changes in shareholding of promoter entity, in case of private or public limited company is not required, however changes in the legal status of the promoter entity, which though does not affect its obligations and liabilities and rights with respect to the Allottee(s) of the registered project, shall be reported to GujaratRERA through change in promoter details segment available in the promoters log-in on GujRERA Portal for effecting necessary changes in the database of the registered project for public information. Following are the illustrative cases of above reporting requirements.

- i. Any Conversion of the promoter entity under any statute, of Partnership Firm into LLP/ Private Limited Company or conversion of Private Limited Company or unlisted Co to a LLP or otherwise;
- ii. Proprietorship change by succession to legal heirs; etc.
- 2. Transfer or assignment of majority rights and liabilities in respect of the real estate project to a third party: For every registered project the transfer or assignment to third party shall be effected only after prior written permission of GujaratRERA is granted to the promoter. Any default on part of promoter in adherence of this requirement shall result in penal action under the act. The process of evaluation and approval by GujaratRERA u/s 15 will be effected in 2 (Two) stages as under;

STAGE - 1:

For the purpose of securing approval of GujaratRERA, the promoter of the registered project shall have to apply to GujaratRERA 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 (Annexure-1). The online application to be submitted has been made available in Promoters log-in of GujRERA Portal. The Transferor Promoter (P1) and the Transferee Promoter (P2) shall refer the website guide for section-15 application for process understanding and documentation requirements, which shall include consent affidavit of individual allottee having P1 and P2 or their authorised representative as witness and submission of draft of agreement/deed of transfer of obligation of registered project which shall have a specific clause stating that Transferee Promoter (P2) shall comply with all the obligations under agreement of sale executed by the Transferor promoter with respect to the Allottee(s) of the project and has assumed all the obligations of the Transferor promoter under the Act including completion of project by project end date as registered (As per Annexure-2).

On submission of secton-15 application along with Form-3 CA Certificate, the Transferor Promoter (P1) shall freeze all financial transactions affecting Separate Bank Account of the Registered Project (RERA Account) as the same will have to be transferred to Transferee Promoter (P2) being balance of 70% of amounts received from allottees and same is to be applied for land and development cost of the project.

On receipt of section-15 Stage-1 application, the process of evaluation of application will be carried out which may include scheduling a hearing with P1 or P2 or both P1&P2 as required. GujaratRERA shall thereafter pass an order, preferably within Thirty Days of filing of such application, of either granting inprinciple approval to such application for transfer (with or without such conditions as it may prescribe) or reject such application for transfer.

STAGE - 2:

After receipt of the in-principle approval for the transfer from GujaratRERA both the promoters shall carry out execution of the transfer process and within Ten days the Transferor Promoter (P1) shall submit compliance report of effecting the fund transfer from his RERA Account to Transferee Promoter's RERA Account, and the Transferee Promoter (P2) shall make an online application for necessary alterations in the existing registration details of the project on GujRERA Portal as Project Alteration application. Transferee Promoter (P2) shall also upload required supporting documents as indicated in website guide, it shall include the land title report and revenue record documents indicating transfer, Form-B along with Form-B1 & B2 where applicable.

On receipt of section-15 Stage-2 applications, the process of evaluation of applications will be carried out which may include scheduling a hearing with P1 or P2 or Both P1&P2 as required. GujaratRERA shall thereafter pass an order, preferably within ten working days of filing of such applications, approving such transfer (with or without such conditions as it may prescribe) and will issue digitally signed project alteration registration certificate to Transferee Promoter (P2).

Amalgamation, Merger, Demerger etc. of the Companies implemented under Orders of NCLT/MCA/High Court or Other Statutory Authorities or Tribunals affecting the project registered under RERA, 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) and prior approval of the Authority.

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 Allottee(s) under section 15 of the Act. But the **promoter will have to report the Promoter Entity Status change or Management changes to GujaratRERA along with a certified copy of the order of the competent authority/resolution.**

Necessary application fees has to be paid by Transferor Promoter (P1) and Transferee Promoter (P2) while submitting online applications.

Notwithstanding the above, based on case specifics and complexity involved, GujaratRERA shall provide additional directions to the promoters.

Secretary GujaratRERA રીયલ એસ્ટેટ પ્રોજેક્ટ માં ઇન્વેન્ટરી(યુનીટ)નું બુકીગ/વેચાણ કર્યુ હોય તે કિસ્સામાં રેરા એક્ટ -૨૦૧૬ની કલમ- ૧૫ અનુસંધાને પ્રોજેક્ટના હક્ક અને જવાબદારી અન્ય પ્રમોટરને તબદીલ કરવા માટેનું રેરા રજીસ્ટ્રેશન કરવા બાબતે સભ્યનું સંમતીપત્ર

(રૂા. ૩૦૦/- પર નોટરાઇઝ સંમતીપત્ર)

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જલ્લા:, તાલુકો:, ના રેવન્યુ નંબર નંબર: માં ટી.પી.સ્કીમ નંબર:	(
હાલના પ્રમોટરની સહી તથા સીક્કો (Transferor Promoter)	તબદીલ થનાર પ્રમોટરની સહી તથા સીક્કો (Transferee Promoter)
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Checklist of Key Documents for Section 15 Procedure Stage 1

C: No	Stage 1				
Sr No	Particulars	Туре			
(i)	Documents of Transferor Promoter				
1	Notarized Consent 2/3rd Allottees (As per Annexure-1)	PDF			
2	Affidavit cum consent of both the promoters (Transferor & Transferee) (As per	DDE			
	Annexure - 2)	PDF			
3	Latest Form 1, 2 & 3	Systemic Input &			
		PDF			
4	Draft Agreement of Transfer and Draft Conveyance deed	PDF			
5	Encumbrance Certificate	PDF			
(ii)	Documents of Transferee Promoter				
1	Previous 5 years Projects (If Applicable)	PDF			
2	Experience certificate on letter head of transferee Promoter	PDF			
3	Departs on Moons of Finance	Systemic Input &			
	Reports on Means of Finance	PDF			
4	Balance Sheet (for last 3 yrs)	PDF			
5	Profit loss statements (For last 3 yrs)	PDF			
6	Directors report (For Last 3 yrs)	PDF			
7	Cash flow statement (For last 3 yrs)	PDF			
8	Auditors Report	PDF			
9	Income Tax Return acknowledgement	PDF			

Stage 2

Sr No.	Particulars	Туре
(i)	Documents of Transferor Promtoer	
1	Project Head/All Partner Photographs (In Colour) (If company/partnership Firm/LLP)	PDF
2	Draft Brochure of Current project without change in specification	PDF
3	Notarized Affidavit with photograph in Form-B (Without change in project end date) and Affidavit in Form B-1 & Form B-2 if applicable as per RERA Act	PDF
4	Document related to Fund Transfer i.e Banker Certificate and Passbook)	PDF
5	Executed Agreement and transfer deed for project transfer	PDF
6	Encumbrance certificate	PDF
7	Land Document	PDF
	Sale Deed/ Lease deed	PDF
	Index Copy	PDF
8	7/12 Documents or Gam Namuna-2	PDF
	City Survey/Property card	PDF
	Paki Nondh (In absense of the same Kaachi Nondh along with with prescribed affidavit)	PDF
9	Title Clearance Certificate (Title Clearance Certificate by qualified & 10 years experienced lawyers, Clearly Indicating Transferability of Land)	PDF
10	Title Report (Title Search Report by 10 years experienced lawyers)	PDF
11	Registered Development Agreement (if applicable)	PDF
12	Performa for Allotment Letter	PDF
13	Performa for Agreement for Sale	PDF
14	Performa for Sale Deed	PDF