

DIRECTIONS ON CATEGORIES OF PROMOTERS, THE ROLE AND STATUS OF LANDOWNERS UNDER RERA

Rajasthan Real Estate Regulation Authority (“**Authority**”) had released General Directions (“**Directions**”) vide circular No. F.1(152)RJ/RERA/LAND/2020/1202 dated June 30, 2020 under powers conferred to it in Section 37 of Real Estate (Regulation And Development) Act, 2016 (“**RERA**”) regarding categories of ‘promoters’ and the role and status of ‘landowners’ under RERA.

❑ OBJECT AND PURPOSE OF THE DIRECTIONS:

- ≡ With the aim to achieve better uniformity and transparency in dealing with the matters of categories of ‘promoters’ and ‘landowners’ in registered projects, the Authority has issued general directions for compliances in case of the projects where there are 2 (two) or more promoters and the projects where developer is not the landowner.

❑ REASONING BEHIND THE DIRECTIONS:

- ≡ As the RERA has used the term ‘promoter’, the Authority has been working on the premise that a registered project can have 1 (one) promoter, be it an individual or firm or company. The Authority, therefore, visualized that if there are more than 1 (one) promoters in a real estate project, then 1 (one) of them will be termed as ‘promoter’ (*main promoter*) and the remaining as ‘co-promoter(s)’. Similarly, where the developer is different from the landowner, the developer will be called as ‘promoter’ and the landowner will be called as ‘co-promoter’.
- ≡ Accordingly, current online application form for registration of real estate project captures full profile of the promoter (*main promoter*) and details of 1 (one) or more co-promoter(s). The projects have been getting registered with the Authority taking the developer or 1 (one) of the developer as ‘promoter’ and the rest of the developer, if any, and the landowner if different from developer(s), as ‘co-promoters’.
- ≡ The Act has fastened huge liabilities on the promoter of a project. In this context, a question has arisen before the Authority whether the promoter and the co-promoter are equally liable and whether the landowner is necessarily a promoter or co-promoter under RERA; and, if so, whether his liabilities under RERA are limited to his liabilities, under all the functions and responsibilities of promoters provided under RERA; and therefore, also held liable for delay in completion of the project, and in the event of developer’s failure in developing the project, compelled to complete the project.
- ≡ For the purpose of clarity, the Authority had discussed and analyzed the following under RERA:
 - Definition of the term ‘promoter’;
 - Number and categories of promoters;
 - The extent of liability of different promoters;
 - Status and responsibilities of co-promoters;

- Landowner – not necessarily a promoter;
- Situations in which landowner is a promoter; and
- The extent of liability of landowner as a promoter.

❑ GUIDELINES UNDER THE DIRECTIONS:

The Authority has enforced the following guidelines under the Directions in order to provide better uniformity and transparency in dealing with matters related to ‘landowners’ in a registered real estate project:

- In project to be registered, there will be no entry in the online application form for any ‘co-promoter’. Though, usually a promoter is a single entity, be it an individual, a firm, a company or a joint venture partnership or company that comes up as a promoter, there can be more than 1 (one) promoter for a project, be it a group of individuals or a consortium of companies or firms.
- Column relating to ‘co-promoters’ in the online application form for registration of project shall be replaced with ‘Other Promoters’. In due course the application form will be further modified to (1) sub-divided the category of ‘*Other Promoters*’ into 2 (two) sub-categories namely ‘developer-promoters’ and ‘seller-promoters’; (2) capture full profile of ‘other promoters’; (3) show the name of ‘other promoters’ in the registration certificate; and (4) provide a new column to record the name of the landowner as landowner, in case where landowner is not a promoter.
- In case of 2 (two) or more promoters of a project, they shall be jointly liable for the functions and responsibilities of promoter provided under RERA, but for the convenience of registration process, the promoter who has the major share or the promoter nominated by all promoters will be named and recorded as ‘promoter’ while rest of the promoters will be named and recorded as ‘other promoters’ of the project.
- When there are 2 (two) or more promoters (‘*developer-promoters*’ and/or ‘*seller-promoters*’) in a project, there shall be an agreement or memorandum of understanding executed amongst them, setting out their respective functions and responsibilities and share in profit or loss of the project. All the promoters will be jointly liable for the functions and responsibilities provided under RERA. The liability will be limited to the extent of their respective functions and responsibilities as set out in the agreement between them. Further, the promoters are required to nominate a main promoter i.e., the ‘promoter’ authorized to submit the application form and all the undertakings required for registration of the project and to deal with Authority and comply with provisions of RERA for all subsequent requirements of RERA and the rules and regulations made thereunder, on behalf of all of them.

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- Any person can choose to be and act as a 'promoter' of the project however, those covered by definition of 'promoter' under Section 2(zk) of RERA will necessarily be named and treated as promoters. Since landowner, as such is not included in the definition of promoter, he need not necessarily be named or treated as a promoter under RERA.
- The determination of whether 'landowner' will be treated as a 'promoter' will depend on the conditions set out in development agreement executed between the builder and the landowner. The landowner will be treated as 'promoter' ('seller-promoter'/'developer-promoter' as applicable) when the development agreement by its intent discloses any of the following conditions:
 - The landowner himself has some role a builder, colonizer, contractor, developer or estate developer in construction or development of the project. Provided that if the landowner's power of attorney holder acts as a builder, colonizer, contractor, developer or estate developer of the project in that case such power of attorney holder will be named and treated as a promoter; or
 - ♦ the landowner has a share in the area developed for sale in the project, with the intent of marketing or selling it or any part of it before completion of the project; or
 - ♦ the landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement, does not give to the developer-promoter all the powers of sale and conveyance of all the units to be sold along with proportionate undivided interest in the land in the name and on behalf of the landowner, such that the landowner is required to sign all or any agreements for sale or sale deeds, etc. in respect of all or units of his share so as to bind him to the term, conditions or covenants thereof; or
 - ♦ the landowner proposes to share profits or loss of the project; or
 - ♦ it is specifically agreed in the development agreement that the landowner shall be named or treated as a promoter under RERA.
- When a landowner is named or treated as a promoter, he will be jointly liable for the functions and responsibilities of a promoter provided under RERA, but his liabilities under the Act, will be limited to the extent of his functions and responsibilities under the development agreement.
- In case of a dispute between the landowner vis-à-vis the other promoter(s), it shall be settled at an appropriate forum and the Authority does not have any jurisdiction towards such matters.
- When the landowner is not named or treated as a promoter, he may still be liable to the allottees if there are any such contractual clauses in the development agreement which establish privity of contract as between the landowner and the allottees claiming through the promoter; otherwise, the landowner will not be impleaded as a non-complainant in complainants of allottees against the promoter.

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- Regardless of 'landowner' being a promoter or not, 70% (seventy percent) of the sale proceeds of the entire saleable area (including the portion of landowner) will be routed through a single separate bank account to be maintained for the whole project under Section 4(2)(I)(D) of RERA. The withdrawals from this separate account will be made by the person(s) authorized by the promoter. In case of the separate account is in joint name of 2 (two) or more promoters, by the person(s) authorized jointly by all such promoters.
- For already registered project, where 'landowners' are recorded as 'co-promoter' will accordingly be treated as a promoter or no promoter in accordance with the development agreement as to their role in the Project and in case the 'landowner' who is treated as a 'promoter' under the terms of the development agreement, he will be jointly liable with the rest of the promoters in accordance with RERA to the extent of his functions and responsibilities set out in the development agreement.
- Whenever there are 2 (two) or more promoters of a project, the agreement or memorandum of understanding envisaged above will necessarily be required to be filed with the Authority at the time of application for registration of the project along with power of attorney, if any, executed by them.
