MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्रस्थावर संपदा नियामक प्राधिकरण

No.MahaRERA/Secy/File No.27/115/2017.

Circular No. 7/2017 Date : 4th July, 2017

Subject: Clarification on CA Certificates

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

Whereas the second proviso to Section 4(2)(l)(D) of RERA provides that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

Whereas, the third proviso to Section 4(2)(l)(D) of RERA further provides that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Whereas Rule 5 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017prescribes the withdrawal aspects of the amounts deposited in a separate account under Section 4(2)(l)(D) of RERA. The said Rules require that for the purpose of withdrawal of amounts deposited in the Designated Bank Account in respect of New Project and Ongoing Project, the promoter shall submit the following three certificates to the scheduled bank operating the Designated Bank Account:

(i) Certificate from the project Architect in Form 1 certifying the percentage of completion of construction work of each of the tasks/activity of the building / wing of the project;

(ii) Certificate from the Engineer in Form 2 for the actual cost incurred on the construction work of each of the building / wing of the project; and

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(iii) Certificate from a practicing Chartered Accountant other than the statutory auditor of the Promoter, in Form 3, for the cost incurred on construction cost and the land cost. The practicing Chartered Accountant is also required to certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the Separate Bank Account. The promoter shall be required to follow the aforesaid procedure for every withdrawal from the Separate Bank Account till the occupancy certificate in respect of the project is obtained. On receipt of completion certificate in respect of the project, the entire balance amount lying in the Separate Bank Account can be withdrawn by the promoter.

Whereas Regulation 3 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 prescribes the format of the certificates to be issued by the project Architect, project Engineer, Chartered Accountant for getting release of money from the Separate Bank Account:

(a) Certificate from the project Architect in Form 1.

(b) Certificate from the project Engineer in Form 2.

(c) Certificate from the Chartered Accountant in Form 3.

(d) Certificate from the project Architect on completion of each building / wing of the real estate project in Form 4.

Whereas Regulation 4(a) of the said General Regulations provides that the annual report on statement of accounts shall be in the prescribed Form 5 (issued in accordance with the third proviso to section 4(2)(l) of RERA) which shall be duly certified and signed by the chartered accountant who is the statutory auditor of the Promoter's enterprise.

Whereas there are various terms which are used in the certificates to be issued by Chartered Accountant whose meaning and interpretations need to be clarified in order to have uniformity in the basis on which the certificates can be issued by Chartered Accountants without any ambiguity for each of the projects being registered with MahaRERA

Therefore, for the purpose of RERA, the rules and regulations there under:

The expression "incurred" would mean amount of product or service received, creating a debt in favour of a seller or supplier and shall also include the amount of product or service received against the payment.

To determine the fair market value of the Acquisition Cost of Land or Development Rights or Lease Rights in the Real Estate Project, the Acquisition Cost shall be the "Indexed Cost of Acquisition". Indexed Cost of Acquisition shall mean an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the Land or Development Rights or Lease Rights in the Real Estate Project is registered or the year in which the first Commencement Certificate is issued in respect of such Land, whichever is earlier, bears to the Cost Inflation Index for the first year

in which such Land or Development Rights or Lease Rights in the Real Estate Project was owned or held by the Developer. Where the Land or Development Rights or Lease Rights became property of the Developer or became available to the Developer before 1st day of April, 2001, the cost of Acquisition would mean the ASR value of such Land or Development rights or Lease Rights as on 1st day of April, 2001 and First year in which such Land or Development Rights or Lease Rights in the Real Estate Project is owned or held by the Developer shall be taken as 1st April, 2001. "Cost Inflation Index", in relation to a year, means such Index as the Central Government may, by notification in the Official Gazette, specify, in this behalf under Section 48 of the Income Tax Act.

The Acquisition Cost shall also include the amount of interest incurred on the borrowing done specifically for purchase of Land, or Acquiring Development Rights or Lease Rights.

Cost under Rehabilitation scheme or construction cost of rehabilitation buildings shall include cost incurred for construction of construction area, which is to be handed over to

(i) Slum dwellers under slum rehabilitation scheme,
(ii) tenants under redevelopment of tenanted properties.
(iii) apartment owners of the building which is under redevelopment and who are to be provided with the alternative accommodation,
(iv) Government or concessionaire in Public Private Partnership project
(v) Appropriate Authority under various schemes under Development Regulations.

All amounts payable to slum dwellers, tenants, apartment owners or appropriate authority or government or concessionaire which are not refundable and are incurred as cost and expenses of such rehabilitation scheme, shall be allowed as part of Land Cost under clause 1(i)(f)(iii) or 1(i)(f)(iv) of the Form 3 under General Regulation 3 of MahaRERA. For example, maintenance deposits, corpus amount, concession premium or fees, shifting charges to name a few.

The amount of interest incurred on the borrowing done specifically for construction of rehabilitation component in rehabilitation scheme shall be included in the interest payable to financial institution etc. under the head of Land Cost. (under Clause 1(i)(a) of Form 3 of General Regulation 3 of MahaRERA).

The increase in construction cost due to execution of extra/additional items as certified by the Engineer in Annexure A, of the Form 2 of the General Regulation 3 of MahaRERA, shall be allowed to be included in the On site expenditure for development of entire site etc. under clause 1(ii)(a)(iii) of the Form 3 of the General Regulation 3 of MahaRERA.

While uploading the details of Project cost on the website at the time of registration, in the "Project Cost" Tab, List of values, wherein "Principal sum and interest payable" is sought, the Principal Sum of the Loan shall not be entered and only interest amount shall be uploaded. However, in the certificate to be issued by Chartered Accountant, as per Form 3 of the General Regulation of MahaRERA, the principal sum of Loan shall be reflected in the brackets and shall not be added in the Sub-total of Development Cost.

The expression "Amount withdrawn till the date of the certificate as per the Books of Accounts and Bank Statement" appearing at clause 7 of Form 3 of General Regulation

3 of MahaRERA means the amounts withdrawn from the Separate Bank Account as per the Books of Accounts and Bank Statement of that Separate Bank Account.

The Promoter to deposit the Pass Through Charges (amount collected for and on behalf of Legal Entity or Apex Body or any statutory authority or local body) should be deposited preferably in a designated bank account opened just for the purpose of depositing such Pass Through Charges or in any other bank account of the promoter and should not be deposited in the separate bank account. However, Promoter shall be required to give account of the monies collected as Pass Through Charges to the Legal Entity or Apex Body.

The indirect taxes collected by the Promoter from the Allottees in the nature of GST /Service Tax / VAT etc can also be deposited in a bank account, other than the Separate Bank Account and shall be dealt with as per the provisions of the statute governing such indirect taxes.

It may be noted that Income tax paid by the promoter of a Real Estate Project, shall not be allowed to be claimed as cost of the Real Estate Project.

The Separate Account opened in accordance with the provisions of section 4(2)(l)(D) of RERA, shall be a no lien account and withdrawal from such separate account shall always be in accordance with the provisions of RERA, Rules, Regulations and circulars issued by MahaRERA from time to time. The excess monies lying in the Separate Bank Account can be put in fixed deposits with the bank operating the Separate Bank Account and which has to be a no lien Fixed Deposit and no loan can be obtained against or on such Fixed Deposit nor any charge can be created on such Fixed Deposit.

The Chartered Accountant shall verify and certify that 70% of the amount collected from Allottees (other than Pass Through Charges and Indirect Taxes) are deposited in the separate account. In case of ongoing project, where estimated cost to complete the project is higher than estimated value of sales revenue, the chartered accountant shall verify and certify that 100% of the amount collected from the Allottees (other than Pass through Charges and Indirect Taxes) after the date of registration of the project are deposited in the separate account.

In case of fixed deposit being made from the monies lying in the separate account, then the chartered accountant shall verify that there is no lien or charge on such fixed deposit. The promoter and /or chartered accountant shall obtain the no lien /charge certificate in respect to such fixed deposit, from the bank once every three months.

The Authority recommends that the amount withdrawn from the separate account should preferably be utilised for the purpose of completion of the Real Estate Project. However, there is no end use restriction on the amount which is withdrawn from the separate account, in accordance with the provisions of the Act, Rules, Regulations and circulars.

Cancellation amount(s), if any, to be paid by the Promoter to the Allottees on cancellation of booking / allotment of the Apartment, should be treated as cost incurred for the project and the same can be withdrawn from the Separate Bank Account, to the extent of 70% of the amounts to be paid to the Allottee on cancellation of the booking/allotment, since only 70% of the amounts realized from the Allottee would have

been deposited in the Separate Bank Account. However, the Compensation / interest paid by the Promoter to the Allottees should be treated as cost incurred for the project and hence the entire sum required to be paid by way of compensation / interest to the Allottee can be withdrawn from the Separate Bank Account.

Clause 4 of Form 3 of the General Regulations of MahaRERA, refers to percentage completion of Construction Work as per Project Architect's Certificate. This clause shall be required to be filled only in the final certificate when 100% of the construction work has been completed. In all the prior certificates, this field is not mandatory to be filled and certified by Chartered Accountant, as this information is been detailed in Form 1 provided by Architect.

With respect to an Ongoing Project, at the time of registration of the Real Estate Project, the Estimated Land Cost and Development Cost/ Cost of Construction to be certified as per Form 3 of the General Regulations of MahaRERA, shall be for the cost of the real estate project, since its inception and not the balance Estimated Land Cost and Development Cost/Cost of Construction to complete the project. That is, the total Incurred Cost of the Real Estate Project shall be the aggregate of the Incurred Land Cost and Development Cost / Cost of Construction of the project, since its inception till the date of the issuance of the certificate and the estimated Land Cost and Development Cost/Cost of Construction shall be for the entire project from the inception till completion. Also in respect of an Ongoing Project, in the first certificate to be issued by a Chartered Accountant at the time of registration and for the first withdrawal post registration, at clause 7 of the Form 3, the "Amount withdrawn till date of this certificate as per Books of Accounts and Bank Statement" shall be either "100% of the amount received towards consideration of the sale of apartment of the Real Estate Project till date of Registration" or "amount of project cost incurred as reflected at clause number 3 of the certificate of chartered accountant issued (Form no. 3) at the time of registration", whichever is lower.

The third proviso to Section 4(2)(l)(d) of RERA read with Regulation 4(a) of the Regulations requires the promoter to get his accounts audited within six months after the end of every financial year by the statutory auditor of the Promoter's enterprise, and produce report on statement of accounts on project fund utilization and withdrawal by Promoter in Form – 5 in accordance with General Regulation 4 of MahaRERA. Since the report is to be prepared under third proviso to section 4(2)(l)(d) of RERA, the said certificate is only in respect of the amount to be deposited and withdrawn from the Separate Bank Account. Thus Chartered Accountant is required to certify that Promoter has utilized 70% of the amount collected for the project only and not for the entire amount collected for the project. However, it may be 100% of the balance receivables from the Allottees in case of an Ongoing Project, where the *proviso* to Rule 5(1)(ii) applies. The Chartered Accountant shall further certify that the withdrawal from the Separate Bank Account of the said project has been in accordance with the proportion to the percentage of completion of the project.

In case of Development of Real Estate Project being implemented by Promoter and co-promoters, the agreement between the promoter and each of the co promoters shall clearly lay down the entity which is principally or primarily responsible for completion of the real estate project. In case of shared responsibility between the promoter and co-

promoter for achieving completion of the project, the agreement shall clearly lay down the responsibility assumed by promoter and each of the co-promoter. The copy of such agreement or arrangement is required to be uploaded at the time of registration of the Real Estate Project.

Projects already registered or applied for registration with MahaRERA before issuance of this circular, may not have factored in the clarification points. For such projects, MahaRERA does not expect the estimated costs to be reworked or certificates to be reissued. However, in subsequent certificates and while reporting incurred amount in the quarterly updates, the abovementioned considerations should be taken into account.

This Circular will be effective from the date RERA has come into effect.

By the approval of Chairperson/MahaRERA

(Dr. Vasant Prabhu)
Secretary/MahaRERA