



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

महाराष्ट्र स्थावर संपदा नियामक प्राधिकरण

No. MahaRERA/Secy./File No.27/538/2017

Date: ०५-१२-२०१७

MahaRERA Circular No: **12 / 2017**

Subject: Land Owners/Investors having Area/Revenue Share in Real Estate
Project to be treated as Promoter (landowner/investor)

- Re: 1. Office Order No. MahaRERA/LA/32/2017 dated 11th May 2017 issued by the MahaRERA Authority
2. Order dated 14th November 2017 passed by the Hon'ble Bombay High Court in Writ Petition (L) No. 2023 of 2017

Whereas, under section 37 of the Real Estate (Regulation and Development) Act, 2016 (“**said Act**”) the MahaRERA is vested with the power to issue directions from time to time to the promoters, allottees or real estate agents, as it considers necessary from time to time.

Whereas, the Chairperson, MahaRERA is also vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under section 25 of the said Act.

Whereas, under powers granted to the MahaRERA and its Chairman under the aforesaid provisions of the said Act and since the MahaRERA considers it necessary in the interest of the promoters and the allottees, the present Circular is issued exercising powers under the aforesaid provisions of the said Act.

Whereas the Section 2(zk) of the said Act defines the term ‘a Promoter’ as follows:

“promoter” means, — (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing

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वांद्रे (पूर्व), मुंबई ४०० ०५१

building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

*(iii) any development authority or any other public body in respect of allottees of—
(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; — (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation. —For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;”

Whereas, keeping in view the overall purpose, object and the intention behind enacting the said Act, more particularly various duties, responsibilities and obligations imposed thereby upon the MahaRERA so as to *inter-alia* bring in (i) maximum transparency in the real estate sector and resultantly to promote it (ii) awareness about the provisions of the said Act and educate general public about nuances of it, it is found requisite by the MahaRERA to issue appropriate clarification and/or explanation, for the better understanding, working and implementation of the said Act and the Rules framed

thereunder, as also for the removal of doubts, if any and if at all, in regard to the aforesaid definition of the term 'Promotor' contained in the said Act.

Whereas, during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/organizations like land owners or investors, by which the said individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and / or sold by such individuals / organizations.

Whereas, a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/organizations are also covered and clearly fall within the aforesaid definition of the term 'Promoter' and as such are Promoters within the meaning of the said terms for the purpose and for the implementation of the said Act and all the rules framed thereunder. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the Promoter who actually obtains building permissions and carries out construction.

Whereas, for the ease of filing online registration application and for the benefit of the consumers it is necessary to distinguish and / or identify whether such Promoter is the land owner, investor or is actually obtaining the building permissions for carrying out the construction and is in fact carrying out construction.

Therefore, it is directed that

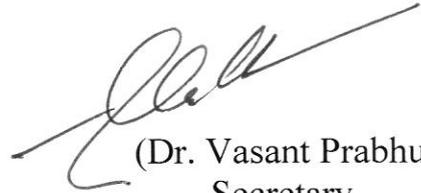
- (1) Such individuals/ organizations who fall within the aforesaid definition of the term 'Promoter' on account of being landowners or investors, shall be specified as such, at the time of online registration with MahaRERA.
- (2) Though liabilities of such land owner Promoter or investor Promoter shall be as co-terminus with the written agreement / arrangement governing their rights in the real estate project, for the purpose of withdrawal from the designated bank account of a real estate project, the obligations and liabilities of all such Promoters shall be at par with each other.
- (3) A copy of the written agreement or arrangement between Promoters (whether landowner or investor) which clearly specifies and details the rights and shares of each Promoter, should be uploaded on the MahaRERA website, along with other details for public viewing.

(4) Such landowner Promoter and investor Promoter should also submit declaration in Form B of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, rates of Interest and Disclosures on website) Rules, 2017.

(5) Further each such landowner Promoter or investor Promoter, who is entitled to a share of the total area developed, should also open separate bank account for deposit of 70% of the sale proceeds realized from the allottees of their share.

This circular shall replace the MahaRERA Order No MahaRERA/LA/32/2017 dated 11th May, 2017 and shall be effective from 11th May 2017.

By the approval of Chairperson, MahaRERA



(Dr. Vasant Prabhu)
Secretary,
MahaRERA