

192

THE ODISHA REAL ESTATE REGULATORY AUTHORITY, BHUBANESWAR.

Notification

No. 506

The 15 th February, 2020.

Direction to the builders/promoters with regard to opening of bank accounts as per provisions of RERA

No.1/RERA Odisha Directions 2020 : In exercise of the power conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the Odisha Real Estate Regulatory Authority, Bhubaneswar having considered it necessary in the interest of scheduled delivery of any real estate unit and for the purpose of ensuring the non-diversion of project funds has decided to issue the directions herein specified in supersession of all earlier directions in this regard.

**The Odisha Real Estate Regulatory Authority, Bhubaneswar
Real Estate Bank Accounts for the Registered Projects Directions, 2020.**

1. Short Title:

These directions shall be called "The Odisha Real Estate Regulatory Authority, Bhubaneswar Bank Accounts for the Registered Projects Directions, 2020". These directions shall come into force with effect from the date of notification.

2. Definitions:

- (i) "Act" means the Real Estate (Regulation and Development) Act, 2016 and includes its subsequent amendments, if any.
- (ii) "Authority" means the Odisha Real Estate Regulatory Authority, Bhubaneswar established under sub-section(1) of section 20 of the Act.
- (iii) "No Lien Account" means bank account without any third-party rights or security interests.
- (iv) "No Lien Fixed Deposit" means fixed deposit without any third-party rights or security interests.
- (v) "RERA Separate Account" (herein after referred RERA Account) means the separate bank account to be maintained by the promoter in a scheduled bank wherein 70% of the amount realised from the allottees of the project is to be deposited as per section-4(2)(i)(D) of the Act to cover the cost of construction and the land cost of the project.
- (vi) "Promoter's Project Transaction Account" (herein after referred as 'Transaction Account') means an account wherein the residual amount after depositing 70% of the amount realised from the allottees in RERA account is deposited.
- (vii) "Project Master Account" (herein after referred as 'Master Account') means a separate bank account wherein the entire amounts realised for the real estate project from the allottees from time to time is deposited.
- (viii) "Regulations" means the Odisha Real Estate Authority Regulations 2017 and includes its subsequent amendments, if any.

- (ix) "Rules" means the Odisha Real Estate (Regulation and Development) Rules 2017 includes its subsequent amendments, if any.

3. General Guidelines:

- (i) The "RERA Account" opened in accordance with the provisions of section 4(2)(i)(D) of the Act, shall be a 'No Lien Account', and any withdrawal from such account shall be in accordance with the provisions of the Act, the Rules, the Regulations there under and directions issued by the Authority from time to time.

- (ii) The promoter has to comply with provisions of principle of section 11(4)(g) and (h) of RE (R&D) Act, 2016. Section 11(4)(g) and (h) of RE (R&D) Act, 2016 provides that the promoter shall:

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 therefore by such authority or person:

After he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

- (iii) The amount withdrawn from the 'RERA Account' shall be utilized for the purpose of completion of the same real estate project. However, there is no end use restriction on the amount which is withdrawn from the 'RERA Account', in accordance with the provisions of the Act, the Rules, the Regulations thereunder and directions.
- (iv) In case of projects availing bank finance, loan amount and interest shall be disbursed and repaid from the Transaction Account.
- (v) Promoter shall furnish an undertaking from the banker as per format (Annexure-A) wherein banker undertakes to comply with the provisions of RERA, 2016.

4. Opening of Accounts:

- (i) There shall be three bank accounts relating to every registered real estate project involving apartments or group housing scheme³ i.e. 1. Master Account, 2. RERA Account and 3. Transaction Account which shall be maintained in the same branch of the bank.

(a) "Project Master Account" (herein after referred as 'Master Account')

- This account shall be master collection account wherein 100% receivables from the allottees shall be deposited.
- This account shall be free from all encumbrances, lien, loan and control of any third party i.e. lender/bank/financial institution.
- The name and style of this account shall be "(Promoter's name)-(Project name) Master Account".
For example, if the promoter's company is ABC Ltd. and the project being developed is "X", then the name and style of the account shall be "ABC Ltd-X-Master Account".
- This account must be mentioned in the application form, builder-buyer agreement & other documents wherever required.
- At the end of each business day, funds collected in this account shall be transferred to the RERA Account and Transaction Account in the proportion of 70% and 30% respectively.

(b) "RERA Separate Account" (herein after referred RERA Account).

- This account shall also be free from all encumbrances, lien, loan and control of any third party i.e. lender/bank/financial institution.
- The name and style of this account shall be "(Promoter's name)-(Project name) RERA Account".
- This account shall be exclusively used for the construction and development of the project and land cost.
- The 70% amount from the master collection account shall be transferred to this account automatically at the end of each business day.
- The funds shall be released from this account upon submission of relevant certificate as per the provisions of RERA, 2016 and transferred to the Transaction Account.
- No amount from this account shall be utilised towards repayment/pre-payment of project loan/facility, if any.
- Withdrawal from this account shall be towards reimbursement of expenditure incurred on the land cost and construction cost and 100% of applicable taxes paid.
- This account shall not have internet banking facility or any withdrawal facility accorded to the promoter. Bank only is authorized to release and transfer funds from this account to the "Transaction Account" subject to compliance to the provisions in the Act.

(c) "Promoter's Project Transaction Account" (herein after referred as 'Transaction Account').

- The name and style of this account shall be "(Promoter's name)-(Project name) Transaction Account".
- This will be a free account and funds can be withdrawn and utilised in any manner.

- The 30% amount from the project's master account shall be transferred to this account automatically at the end of each business day.
- (ii) Every real estate project involving apartments or group housing scheme shall have only one set of above three Accounts.
- (iii) Every Real Estate Project involving plotted scheme shall, however, have only one account namely "RERA Account"

5. Deposits in Account:

- (i) The promoter shall be responsible for transfer/deposit the entire amount collected from allottees in the Master Account.
- (ii) The money lying in the 'RERA Account' can be put in fixed deposits with the bank operating the 'RERA Account' provided it is 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.

6. Withdrawals from Account:

The promoter shall be required to follow the following procedure for every withdrawal from the RERA Account till the project is completed:

- (i) As per the second proviso to section 4(2)(i)(D) of the Act provides that the amounts from the 'RERA Account' shall be withdrawn by the promoter after it is jointly certified by an architect, an engineer and a chartered accountant in practice, that the withdrawal is in proportion to the percentage of completion of the project.
- (ii) For the purpose of withdrawal of amounts deposited in the 'RERA Account' in respect of a registered project, the promoter shall have to furnish a certificate in the format at Annexure-B Jointly signed by the Architect, Chartered Accountant, Construction Engineer and Promoter.
Provided that the Chartered Accountant signing the certificate shall be other than the statutory auditor of the promoter.
Provided further that this certificate shall be considered valid only if the Chartered Accountant quotes the DNID number as prescribed.
- (iii) On completion of internal infrastructure and grant of occupancy certificate, including submission of last quarterly report of the project and compliance of section 11(4)(g) and (h) regarding payment of all outgoings, payment of all statutory dues, clearing of all encumbrances on the project, the entire balance amount lying in the RERA Account can be withdrawn by the promoter with the prior written approval of the authority. The authority may at its discretion order sufficient bank guarantee for 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 allottees from the date of handing over possession.
- (iv) The banker shall ensure that no withdrawal whatsoever is permitted from the MASTER account that is maintained in addition to RERA account except for the transfer of money to RERA account and Transaction account.

- (v) Further, in case allottees withdraws from the project, the requisite refund along with the payable interest thereof to be paid to the allottee, shall be allowed to be paid from RERA/Transaction account in the same proportion in which collections were apportioned.

7. Reporting to Authority

- (i) Promoter shall submit the certificate in the format as at Annexure-B to the authority for withdrawal of funds and for quarterly return filing compliance. Promoters may be allowed to withdraw funds from RERA account, on interim basis during the quarter only after filing fresh certificate as on the said date qualifying for additional withdrawal.

Alternatively, the Promoter, at the time of registration of the project with the Authority, may opt for filing of certificates at annexure-A, B and C for withdrawal of funds at such recurring period not exceeding a quarter which shall be in interest of the overall development and the allottees therein.

Provided that the Certificate (Annexure-B) shall be signed by the Architect and Construction Engineer for plotted scheme.

- (ii) As per the third proviso of section 4(2)(i)(D) of the Act the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice i.e. the statutory auditor of the promoter's enterprise 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 utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
- (iii) In case of a fixed deposit being made from the monies lying in the 'RERA Account', the chartered accountant empanelled with the authority or intimated by the promoter and concurred by the authority as per detailed project information submitted at the time of registration 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 after every three months and submit the same as part of quarterly compliance report.

Note 1: If the Audit Report reveals that any certificate issued by the architect, engineer or the chartered accountant contains false or incorrect information and the amounts collected for a particular project, have not been utilized for the project and the withdrawal has not been in compliance with the proportion to the percentage of completion of the project, the authority, in addition to taking penal action as contemplated in the Act and the rules, may also take up the matter with the concerned regulatory body of the said professionals of the architect, engineer or chartered accountant, for necessary penal action against them, including blacklisting/cancellation/suspension of registration of membership for practice as such.

8. Change in RERA Account:

- (i) The change of "RERA Account" from one bank to another bank is not ordinarily permissible.


9. Powers of the Authority on RERA Account:

- (i) Upon revocation of the registration, the authority may direct the bank holding the RERA Account to freeze or de-freeze the said account, to facilitate the remaining development works in accordance with the provisions of sections 7(4)(c) and 8 of the Act.
- (ii) The authority may in the interest of the allottees, enquire into the payment of amounts out of RERA Account as per the provisions contained in the Real Estate (Regulation and Development) Act, 2016 and the Odisha Real Estate (Regulation and Development) Rules,2017.

10. Miscellaneous:

In the event, the promoter faces any difficulty in giving effect to the provisions of these directions, the Authority, on a case to case basis, may provide resolution of the issue to such promoter in the overall interest of the development of the project and the allottees, within the provisions contained in the Real Estate (Regulation and Development) Act, 2016 and the Odisha Real Estate (Regulation and Development) Rules, 2017.

By order of the Authority


15.2.2020
Secretary, ORERA

Annexure-A

Undertaking

1. Whereas, we are the promoter of the project as per details given below:

Sl. No.	Information sought/Items	Details
I	Name of the project	-
ii	Location of the project	-

2. Whereas the provisions of section 4(2)(i)(D) of the Real Estate (Regulation and Development) Act, 2016 requires that a separate account is to be maintained in a scheduled bank wherein 70% of the amounts realized from the allottees of the real estate project from time to time to time is to be deposited.

3. Accordingly, to comply with the above provisions of law, we are opening the following three accounts in the (Name of the Bank) (Name of the branch);

Sl. No.	Type of bank account	Account Number
1.	Master Account of the project	
2.	RERA account of the project	
3.	Transaction Account of the project	

4. We understand that the amount realized from the allottees from time shall be deposited in the Master Account and this account shall have no lien and the bank is authorized to transfer at the end of each business day the entire deposits to RERA Account and Transaction Account in the proportion of 70% and 30% respectively.
5. We further understand funds transferred to RERA Account shall be utilized to meet the cost of construction and last cost and withdrawal from this account shall be subject to the submission of certificate prescribed in this direction and this account shall have no lien or cheque book or internet banking facility. The bank is authorized to transfer the amount of permissible withdrawal to the Transaction Account.
6. We further understand that we can freely operate the Transaction Account with internet banking facility or cheque book facility and hold a lien on this account.
7. We further undertake that for the purpose of issuing certificate prescribed in this direction we shall appoint Architect/ Construction Engineer/ Chartered Accountant from ORERA empanelled list, if any.
8. We further undertake that we shall get the accounts audited within six months after the end of every financial year by a chartered account in practice. We further undertake that statement of accounts duly certified and signed by the chartered accountant shall be submitted to the authority with a verification that the amounts collected for a particular project have been utilized for that project only and withdrawals have been in proportion to the percentage of the completion of the project, within one month from the date of certificate issued by the Chartered Accountant.
9. We further undertake to abide by the direction that RERA may in special circumstances, issue to the bank to transfer more than 70% amount in the RERA Account which may go upto 100% in certain eventualities and there may be a situation where some additional amount has to be deposited by the promoter.
10. We undertake that in case of on-going projects we shall deposit the balance of the amount realized from the allottees available with us on the date of issue of registration certificate and all the amounts realized from allottees after the date of issue of registration certificate in to the Master Account.

[Handwritten signature]

11. We further undertake that RERA shall have right and the authority to call for information not only of Master Account, RERA Account but also from the Transaction Account as and when affairs of the promoters are under investigation of the Authority.

Authorized signatory

Bank's Undertaking

As per the understanding/agreement between.....(the company) and.....(the bank), I, the Bank Manager/authorized signatory undertakes to ensure that the bank shall transfer 70% amount in the RERA Account and 30% in the Transaction Account as and when the amount is received in the Master Account. I shall also ensure the compliance of statutory provisions of the Real Estate (Regulation and Development) Act, 2016 in operation of these bank accounts. I also undertake that I shall furnish all the information related to these accounts as and when required by the Authority.

Signed by Bank Manager/Authorized signatory

[Handwritten signature]

(Format of Certificate for withdrawal of Funds
(Reference Section-4(2)(i)(D) of the Act)

1. Project Name:		
2. Promoter's Name:		
3. Type of Project:	(Residential/Commercial/Mixed/Plotted Scheme)	
4. Construction status Item of Work	Completed/Under progress)	Percentage of progress
a. Site Development		
b. Roof Casting		
c. Brick work & plastering		
d. Electrical work		
e. P.H.Works		
5. Development status(Plotted Scheme:		
a. Site development		
b. Internal road development		
c. Power supply/water supply		
6. Financial progress:		
a. Expenditure incurred till date		
b. Funds collected from allottees till date		
c. Funds invested from own source till date		
d. Funds invested from financial institution if any, till date		
e. Funds available in the account as on date		
f. Funds now proposed to be withdrawn		

Date:

(Signature of the Promoter)

We certify that the physical progress as well as financial progress of the project as furnished above are correct to the best of our knowledge & assessment and _____percentage of project work has been completed till date.

(Construction Engineer)

Name:

Retd.No.

(Chartered Accountant)

Name:

Regd. No.

(Architect)

Name:

Regd.No.

		Member authorised by the Chairperson in that regard in cases relating to imposition of penalty for violation of the direction/orders of the Authority.			Promoters/Allottees/Agents for furnishing required information so also for compliance of statutory obligation under Real Estate (Regulation & Development) Act,2016/ Rules and Regulation made there under including show cause notice.
3	Execution Officer	Execution Officer be authorised to implement the orders of the Authority or Adjudicating Officer as the case may be, following due procedure of law.	3.	Executing Officer	Authority decided that as Govt. will be moved for creation of post of Executing Officer, delegation of power of Authority to Executing Officer is deferred.
		The matter is placed before the Authority for kind consideration.			
06	<p>Agenda No.6: Directions to the builders/promoters regarding opening of bank account under provisions of RERA.</p> <p>As required under section-4(2)(i)(D) of the Act, a separate bank account shall be maintained for each project by the promoter and withdrawal from this account shall be on basis of certificate issued by the construction engineer/architect/chartered accountant and the promoter himself. In order to operationalize this principle of opening of account and transaction thereon, it is felt necessary to issue a comprehensive guideline on the subject for the guidance of the promoters. The draft direction is attached at Annexure-5 for consideration of the Authority.</p>		<p>Authority discussed on the draft Notification on "Direction to the builder/promoter with regard to opening of bank accounts as per provision of RERA". After detailed deliberation, Authority decided to approve the Notification on "The Odisha Real Estate Regulatory Authority, Bhubaneswar, Bank Account for Registered Projects Directions,2020"</p>		
07	<p>Agenda No.7: Revision of Format for Registration Certificate:</p> <p>Presently we are issuing certificates of registration to Real Estate projects in the format prescribed in the regulation. It is noticed that there are some omissions. It is not mentioned in the registration certificate that whether the project is residential, commercial or mixed whether the project is plotted scheme, duplex project or multi-storied buildings. There is no mention whether the project is S+1/S+2/</p>		<p>Authority discussed regarding revision of "Registration Certificate". It is decided that Registration Branch will prepare "Revised Format" stating therein whether the project is residential, commercial or mixed project, whether the project is plotted scheme, duplex project or multi-storied building with referenced to form -B of the Rule.</p>		

