



Rajasthan RERA

## Rajasthan Real Estate Regulatory Authority

2<sup>nd</sup> & 3<sup>rd</sup> Floor, RSIC Wing, Udyog Bhawan,

Tilak Marg, C-Scheme, Jaipur-302005

Phone No.: 0141-2851900

Website: <http://rera.rajasthan.gov.in>

No. F.1(152)RJ/RERA/LAND/2020/1202

Dated 30<sup>th</sup> June, 2020

Sub: **Categories of Promoters and the Role and Status of Landowner under RERA**

### BACKGROUND

As the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') has used the term 'promoter' in its section 3, the Rajasthan Real Estate Regulatory Authority (hereinafter called 'the Authority') has been working on the premise that a registered real estate project (project, for short) can have only one promoter, be it an individual or a firm or company. The Authority, therefore, visualised that if there are more promoters in a project than one, one of them will be called 'promoter' and the rest will be called 'co-promoter(s)'. Similarly, where the developer is different from the landowner, the developer will be called 'promoter' and the landowner will be called 'co-promoter'. Accordingly, in the online application form for registration of project, besides capturing full profile of the promoter (or the main promoter), a column was provided for entering the name(s) of one or more co-promoter(s).

Accordingly, projects have been getting registered with the Authority, taking the developer or one of the developers as the promoter and the rest of developers, 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-promoters are equally liable and whether the landowner is necessarily a promoter or co-promoter under the Act; and, if so, whether his liabilities under the Act are limited to his liabilities under the development agreement or the landowner would be equally responsible for all the functions and responsibilities of promoter provided under the Act; 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.

ANALYSIS OF THE LAW AND THE PRACTICE

Section 2(zk) of the Act defines the term 'promoter' as follows:

- (zk) "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 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; or
    - (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 person 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;

A careful reading of the aforesaid definition of promoter and other relevant provisions of the Act and the Authority's experience of implementing the Act have revealed that –

#### **Number and categories of promoters**

- (i) There is no bar in the Act that there can be only one promoter of a project. By virtue of section 13 of the General Clauses Act, 1897, the term 'promoter' would include 'promoters'. Therefore, within the meaning of section 3 of the Act, there can be more than one promoter for a project.
- (ii) Section 2(zk) of the Act mentions two broad categories of promoters – (1) the person(s) who construct or develop the project or cause it to be constructed or developed; and (2) the person(s) who market or sell apartments, plots or buildings in the project; and, for the sake of convenience, they can be called 'developer-promoter(s)' and 'seller-promoter(s)', respectively.

#### **The extent of liability of different promoters**

- (iii) By virtue of Explanation to section 2(zk) of the Act, promoters of both the categories, i.e., the developer-promoters and the seller-promoters in a project, are promoters jointly liable for the functions and responsibilities of promoter provided under the Act. Accordingly, we can also say that whenever there are two or more promoters in a project, all such promoters, irrespective of their category, are jointly liable for the functions and responsibilities of promoter provided under the Act.
- (iv) Since Explanation to section 2(zk) of the Act has used the term 'jointly liable' and not 'jointly and severally liable', 'the defendant for the original act will be held responsible for the whole damages', i.e., 'each party will be liable up to the full amount of the relevant obligation'. It implies that if there is an agreement amongst promoters which delineates their respective functions and responsibilities, the liability for failing to discharge a function or responsibility of promoter provided under the Act will be on the promoter who is

53

responsible for that function or responsibility under such agreement.

- (v) Should there be a dispute amongst different promoters as to the liability for a particular act, it is a matter they have to settle amongst themselves at an appropriate forum outside the Act, as the Authority does not have jurisdiction to adjudicate upon such inter se matters of the promoters. So far as the Authority is concerned, in the absence of an agreement or understanding among promoters or a decision of the competent forum as to their respective responsibilities, the Authority will hold that promoter liable for an act of commission or omission who, in its opinion, was responsible for that act.

#### **Status and responsibility of co-promoters**

- (vi) There are no provisions in the Act made for co-promoter(s) and, thus, the term 'co-promoter' is alien to the Act. Since the Act does not recognize them, co-promoters can not be held liable for the functions and responsibilities of promoter provided under the Act. As the promoter is required to simply write the name of co-promoter in the application for registration of project and the co-promoter is neither made a co-applicant nor is his consent taken, at times the person named as a co-promoter is not even aware that he is a co-promoter of the project.
- (vii) Because the term 'promoter' is not defined to include 'co-promoter(s)', under section 37 of the Act, directions can be issued by the Authority to the promoter, but not to a co-promoter of the project. Thus, the co-promoters, if any, in a project are there just in name; and, as co-promoters, they can not be held liable for any of the functions and responsibilities of promoter provided under the Act. But, whether named as a co-promoter or not, if a person is covered by the definition of promoter given in the Act, the Authority can treat him as a promoter and hold him liable for the functions and responsibilities of promoter provided under the Act.

#### **Landowner – not a necessary promoter**

- (viii) In its order dated 17.10.2019 made in Complaint No. RAJ-RERA-C-2018-2403 "Shakuntala Narendrasingh Chouhan versus Modest Infra Limited", the Authority held as under:

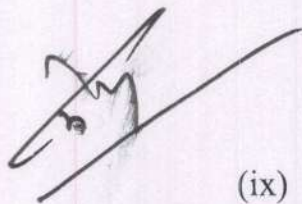
The learned counsel of the non-complainant has also mentioned that the complainant has not made the co-promoter/ landowner a party to the complaint. The

agreement for sale is executed between the buyer, the builder and the landowner. Landowner is also equally liable for refund as he shares the revenue received in the project and in the event of any refund the same is recoverable from the landowner as well....

The non-complainant's prayer that the landowner should also be made a party to the case since the agreement for sale is executed between the builder, the buyer and the landowner, is not tenable. The landowner appears to have put his signatures on the agreement for sale only as a confirming party [not as a necessary party]. Otherwise, the agreement is substantially between the promoter and the allottee and what part of the sale consideration is transferred to the landowner is the internal arrangement between the promoter and the landowner, governed by the development agreement executed between them, and not by the agreement for sale executed with the allottee.

We may observe here that the Act only knows the promoter and all the obligations to the allottees provided under the Act are of the promoter (or of real estate agent), not of the landowner or the so-called 'co-promoter'. In fact, there is no provision of and no place for co-promoter in the Act. Though a column on co-promoter has been provided in the Form of application for registration, it appears to have been provided only for the purposes of information, and not to lessen the obligations of the promoter as provided under the Act... simply by virtue of being a landowner one does not become a promoter.

Under the Act, it is the duty of promoter, and promoter alone, to deliver the flat to an allottee within the time and in accordance with the terms stipulated in the agreement for sale. The obligation of refunding the amount to an allottee is also of the promoter, and promoter alone. Under section 37 and section 38 of the Act, the Authority has powers of giving directions to the promoters, the allottees and the real estate agents, and to no others. Therefore, whatever directions are to be given in the present matter have to be directed at the promoter or the allottee, and not the landowner or anyone else.

- 
- (ix) In its another order dated 12.06.2019 made in Complaint No. RAJ-RERA-C-2017-2105 "Raghunath Prasad Jain versus Arihant Dream Infra Projects Ltd. (formerly called 'Arihant

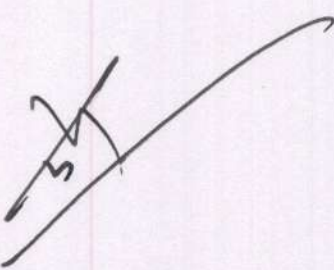
Shivank Infra Projects Ltd.}')", the Authority has held as under:

It is disputed whether the complainant is a promoter or co-promoter, but it is undisputed that he is the land owner; and no dispute between the promoter and the land owner can involve contravention or violation of the provisions of the Act or the rules and regulations made thereunder. We say this because under clause (f) of Section 34 of the Act, the Authority is empowered to enforce compliance of the obligations cast upon the promoters (as also the allottees and the real estate agents) under the Act and the rules and regulations made thereunder, but under the Act, the promoter has no obligation towards the land owner or his partners in business. All the obligations of the promoter enumerated under the Act are either towards the allottees or towards the Authority, but there is no obligation the promoter has towards the land owner or his partners in business. And, the Authority is competent only to deal with violations or contraventions of the Act. Thus, the Authority is not the appropriate forum for settlement of disputes between the land owner and the promoter or between partners in business; and this complaint of the land owner against the promoter is not maintainable under the Act.

- (x) The basic point made in these two decisions of the Authority is that a landowner isn't *ipso facto* a 'promoter' under the Act. Since landowner as such is not included in the definition of 'promoter' given in the Act, he need not necessarily be named or treated as a promoter if he has no role in the project either as a developer-promoter or as a seller-promoter.
- (xi) Many a time, landowner enters into development agreement simply because he is not willing to take the trouble or risk involved in he himself acting as a developer or forming joint venture with a developer; and declares therein that he will have nothing to do with the management of construction, development, marketing or sales of the project and that his role in the project will be confined to providing land for the project. He does not have a share in the area developed for sale in the project and even if he has it is meant for his own use or he does not intend to sell it at least until completion of the project. That is to say that he has no role reserved for him either as a developer-promoter or as a seller-promoter. Thus,

when in the development agreement the landowner is entirely disowning the functions and responsibilities of promoter provided under the Act, naming him as a promoter would serve no purpose and only create avoidable confusion.

- (xii) The mere fact that the landowner is entitled to receive a certain part of the sale proceeds (gross revenues) of the project does not make him a promoter. The developer-promoter uses the sale proceeds of the project also to pay to various suppliers under the respective agreements entered into with them. A part of the sale proceeds of the project may also be going to the Banks and other financiers towards interest and repayment of their loans as per the agreement entered into with them. When none of these recipients of a part of the sale proceeds of the project are named or treated as a promoter, the landowner also can not be termed as a promoter simply because a part of the sale proceeds or gross revenues of the project is being paid to him.
- (xiii) The fact that, under the development agreement, the landowner is entitled to a share in the area developed for sale in the project, would not make him a promoter either, if he is taking this share in the area developed for sale in the project, not with the intent of selling it but for his own use or which he may market or sell only after the project is completed. So long as a landowner is not marketing or selling his share of units in the project before completion of the project, he does not become a seller-promoter.
- (xiv) Sometimes land owner is taken as a promoter on the premise that by providing his land for the project, he causes the project to be constructed within the meaning of section 2(zk) of the Act. This is not correct because only a promoter who is responsible for constructing the project can cause it to be constructed. In the case of Vaidehi Akash Housing Pvt. Ltd. versus New D.N. Nagar Co-operative Housing Society Union Ltd. & Others, the Hon'ble Bombay High Court, vide its order dated 01.12.2014, has settled the issue as under:



The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or entitles the developers to

construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers' account and in their own right, and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of section 2(c) of MoFA [The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963].

Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA. The owners of lands entering into agreements for sale or development agreements with promoters/ developers would be held as being subject [to] all liabilities of a promoter, such as liability of disclosure of plans and specifications, outgoings etc. under section 3 of MOFA, entering into agreements in accordance with section 4, giving possession of flats and suffering the consequences of section 8, forming co-operative societies of flat purchasers under section 10, and so on. This would be plainly inconceivable.

Prima facie, thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the Society in relation to the purchasers.

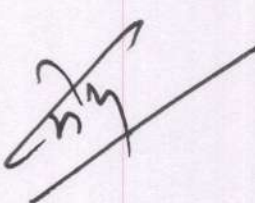
- (xv) The aforesaid decision was rendered by the Hon'ble Bombay High Court in the context of MOFA, before the Act (RERA) came into force. In a subsequent case (Goregaon Pearl CHSL versus Dr. Seema Mahadev Paryekar & Ors), the said High Court had an occasion to examine whether the aforesaid decision holds good even under the provisions of RERA. In the said Goregaon Pearl case, having examined provisions of RERA, the Hon'ble Bombay High Court confirmed the aforesaid law laid down in Vaidehi Akash case and made the following observations in its order dated 14.10.2019:

This court, in its judgment delivered in the case of Vaidehi Akash Housing Pvt.Ltd. vs. New D.N. Nagar Co-op. Housing Society Union Ltd., has considered a more or less similarly worded definition of "promoter" in Maharashtra Ownership Flats (Regulation of the



Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") in the context of a similar development agreement, where the landowner society had terminated the agreement on account of breaches of the developer and third party purchasers claiming under the developer had claimed that the society should be treated as a promoter and be asked to complete the project. This court held that there was no privity of contract in such a case as between the society and third party purchasers claiming through the developer. If, for any justifiable reason, the development agreement is terminated by the society and the developer is unable to obtain specific performance of the development agreement as against the society, no third party purchaser claiming under the developer can likewise seek specific performance against the society....

The provisions of RERA do not make any difference either. RERA has been introduced to establish a regulatory authority for regulation and promotion of the real estate sector and to ensure sales in the sector in an efficient and transparent manner and to protect consumers of the sector. The definition of 'promoter' in RERA, for our purposes, is on similar lines as MOFA. Section 18 of RERA, on which strong reliance is placed by learned Counsel for Respondent No.1, requires promoters to discharge their obligations and provides remedies for the purchasers, without prejudice to the purchasers' other rights, in the event of the promoters' failure to discharge the obligations. Section 19, which follows, entitles the allottee to obtain possession of the flat or apartment. Any grievance of the purchaser under RERA is redressed by the regulatory authority appointed under it. None of these provisions either make the owner of the freehold or leasehold interest in the land, who enters into a development agreement with a developer (who, in turn, enters into flat purchase agreements with third parties on the basis of such development agreement), liable for complying with the obligations of the developer under RERA....

- 
- (xvi) In short, it is not a mere share in sale proceeds of the project or area developed for sale in the project, but some kind of a role in the management of construction, development, marketing or sales of the project that would make the landowner a

promoter. A landowner will not be named or treated as a promoter if his role in the project is confined to providing land for the project for a fixed sum of money or a share in the sale proceeds (gross revenues) of the project or even a share in the area developed for sale in the project if he does not propose to sell such area share or any part of it at least until the completion of the project.

**Situations in which landowner is a promoter**

- (xvii) While anyone can choose to be and act as a promoter of the project, those covered by the definition of promoter given in section 2(zk) of the Act have to be necessarily named and treated as promoters. Therefore, if landowner is not always a promoter, the question arises as to what are the situations in which a landowner would stand covered by the definition of promoter given in the Act.
- (xviii) The two judgments of the Authority and two judgments of the Hon'ble Bombay High Court quoted hereinabove, in which landowner was not taken as a promoter, were based on the premise that, in the facts of the case, the landowner had no role in the construction, development, marketing or sales of the project.

However, when, under the development agreement, the landowner himself has some role as a builder, coloniser, contractor, developer or estate developer in construction or development of the project, by virtue of sub-clause (v) of clause (zk) of section 2 of the Act, he acts as one of the developer-promoters of the project and has, therefore, to be named and treated as a promoter. And, if the landowner's power of attorney holder acts as a builder, coloniser, contractor, developer or estate developer, in that case such power of attorney holder becomes one of the developer-promoters of the project and has, therefore, to be named and treated as a promoter.

Secondly, someone's act of marketing or selling units in a project before the project is completed, makes him a seller-promoter. In other words, first sale of units in an under construction project can be made only by a promoter. Therefore, in case the development agreement provides for certain portion of the area developed for sale in the project to be given to the landowner and allows him to market or sell it or any part of it, before completion of the project, by virtue of

Explanation to section 2(zk) of the Act, he becomes a seller-promoter of the project; and has, therefore, to be named and treated as a promoter.

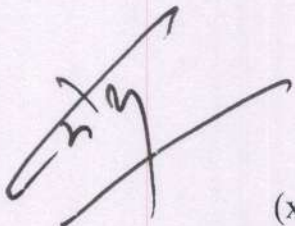
Thirdly, under the Rajasthan Stamp Act, 1998, there are two types of development agreement:

- (i) Where under the agreement or power of attorney, the developer or promoter is not given powers to sell any part of developed property; and
- (ii) where under the agreement or power of attorney, the developer or promoter is given powers to sell the entire or any part of the developed property.

And, the execution of agreement for sale or sale deed, etc. in favour of buyers/allottees is an act of marketing and selling the area developed for sale in the project. Therefore, when 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 the agreements for sale or sale deeds, etc. in respect of all or units of his share so as to bind him to the terms, conditions and covenants thereof, the landowner gets covered within the definition of promoter given in the Act; and has, therefore, to be named and treated as a promoter.

Fourthly, sharing profit or loss of the project necessarily means participation in management of construction, development, marketing and sales in the project. Therefore, if, under the development agreement, the landowner proposes to share profit or loss of the project, he has to be named and treated as a promoter.

And, fifthly, whatever be his role in the project, there is no bar on landowner volunteering to be a promoter of the project. Therefore, irrespective of his role in the project, when it is specifically agreed between the developer and the landowner and recorded in the development agreement that the landowner shall be named or treated as a promoter under the Act, he must be named and treated as a promoter.

- 
- (xix) Thus, for the landowner to be a promoter, the development agreement must show his participation, in some manner or to

some extent, in the management of construction, development, marketing or sales of the project or that he has in any case agreed to be a promoter. Simply by virtue of being a landowner, one can not be named or treated as a promoter, if he is otherwise not a developer-promoter or seller-promoter. It would be best if, while executing development agreement, the developer and the landowner decide between them whether, in the light of his role in the project and the provisions of the Act, the landowner will be named and treated as a promoter and indicate it in the development agreement. The Authority may have no objection in naming and treating the landowner as a promoter if the terms of the development agreement, manifestly or impliedly, indicate so. Conversely, the Authority may have no objection in not naming the landowner as a promoter, unless the terms of the development agreement or the applicable provisions of the Act dictate otherwise.

#### **The extent of liability of landowner as a promoter**

- (xx) Generally, the landowners do not seek and the developer-promoters do not allow them any say in day-to-day management of the project. As such, the promoters do not consult the landowner in appointing contractors, architects, engineers or other consultants. When the landowner is not expected to finance any part of development cost of the project or share profit or loss of the project, the developer-promoters do not even allow him access to expenditure accounts of the project. That being so, it would not be fair to hold the landowner accountable for all the obligations of promoter, like timely completion of the project, provided under the Act.
- (xxi) Usually, the interests of a landowner are more in common with the interests of the buyers than with the interests of the promoter. That is why, in the development agreement there is invariably a condition that the developer-promoter will complete the project within a certain period, failing which he will pay a certain amount of penalty to the landowner. If, due to management failures of the developer-promoter, the project gets delayed or stalled, it would be as much against the interest of landowner as against the interest of buyers. Therefore, except when, or to the extent, delay in completion of the project is caused by title defects or title disputes in the project land, it may not be fair to treat the landowner as a party to the promoter's failure in delivering timely possession of units to the buyers.

(xxii) If the Authority enters the name of the landowner as a promoter even when he has no role as a builder-promoter or a seller-promoter and then arrays him as a non-complainant in the complaints filed by the allottees, it discourages the landowners, in general, from providing their lands for real estate projects by way of development agreement. And, the liquidity position of the real estate sector being what it is, such an approach on the part of the Authority may prove a big bottleneck in sustaining development of the sector in the State.

(xxiii) Therefore, like all other promoters, when a landowner is named or treated as a promoter, he will be jointly liable only for such functions and responsibilities of promoter provided under the Act as are on his part under the development agreement.

### DIRECTIONS

In view of the above analysis and for better uniformity and transparency in dealing with matters of landowner in registered projects, the Authority, in exercise of powers conferred on it under section 37 of the Act, hereby issues the following general directions for compliance in case of the projects where there are two or more than two promoters and the projects where developer is not the landowner:

1. In the projects to be registered, there shall be no place for any 'co-promoter'. Though, usually it 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 one promoter for a project, be it a group of individuals or a consortium of companies or firms.
2. The column relating to 'co-promoters' in the online application form for registration of project, has, therefore, recently been deleted and a new column 'other promoters' created therein. Accordingly, when there are two or more promoters of a project, one of them will be shown as 'promoter' and the rest as 'other promoters'. In due course, the online system of the Authority shall be further modified to (1) divide this column relating to 'other promoters' in the online application form for registration into two sub-columns, called (i) developer-promoter(s) and (ii) seller-promoter(s); (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 cases where landowner is not a promoter.

3. When there are two or more promoters of a project, all of them will be jointly liable for the functions and responsibilities of promoter provided under the Act, but for the convenience of registration process, the promoter who has the major share or the promoter nominated by all the promoters will be named and recorded as 'promoter', while rest of the promoters will be named and recorded as 'other promoters' of the project.
4. When there are 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, delineating their respective functions and responsibilities and share in profit or loss of the project. All of them will be jointly liable for the functions and responsibilities of promoter provided under the Act; and the liability of each of them will be limited to the extent of their respective functions and responsibilities specified in the agreement executed amongst them. In this, they will also nominate one of them as 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 the Authority for all subsequent requirements of the Act and the rules and regulations made thereunder, on behalf of all of them.
5. While anyone can choose to be and act as a promoter of the project, those covered by the definition of promoter given in section 2(zk) of the Act 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 the Act.
6. Whether a landowner will be named and treated as a promoter will depend on the terms of development agreement executed between the builder and the landowner. The landowner will be named and treated as a promoter (as seller-promoter or developer-promoter or as both, as the case may be) when the development agreement, by its intent or expression, discloses any of the following conditions:-
  - (a) The landowner himself has some role as a builder, coloniser, contractor, developer or estate developer in construction or development of the project (with the exception that if the landowner's power of attorney holder acts as a builder, coloniser, 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

- (b) 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
  - (c) 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 any agreements for sale or sale deeds, etc. in respect of all or units of his share so as to bind him to the terms, conditions and covenants thereof; or
  - (d) The landowner proposes to share profit or loss of the project; or
  - (e) It is specifically agreed in the development agreement that the landowner shall be named or treated as a promoter under the Act.
7. Accordingly, a landowner shall not be named or treated as a promoter of the project if, as per the development agreement, all the following conditions are fulfilled –
- (a) The landowner has no role as a developer-promoter; and
  - (b) The landowner does not have a share in the area developed for sale in the project or has such share but not with the intent of marketing or selling it or any part of it before completion of the project; and
  - (c) The landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement), has given 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 not required to sign any agreement for sale or sale deed, etc. in respect of any units in the project; and
  - (d) The landowner does not have a share in profit or loss of the project.

8. When a landowner is named or treated as a promoter, he will be jointly liable for the functions and responsibilities of promoter provided under the Act, but his liabilities under the Act will be limited to the extent of his functions and responsibilities under the

development agreement. That is to say that when landowner is named or treated as a promoter, he will be fully liable for the functions and responsibilities he is liable to discharge under the development agreement, but not for any other functions and responsibilities of promoter provided under the Act. For example, if, under the development agreement, the landowner is responsible for providing and maintaining a clear and marketable title over the project land and to keep it free from any defects and disputes at all times, he would be wholly liable for any title defect or dispute and consequent claim for compensation under section 18(2) of the Act. On the other hand, if, under the development agreement, the landowner is not responsible for construction of the project, he would not be liable for any construction defect and consequent claim for rectification of such defect or compensation under section 14(3) of the Act. And, when the landowner is not responsible, under the development agreement, for construction of the project, he would also not be liable for a delay in construction of the project and consequent claim for refund, interest or compensation under section 18(1) of the Act or for completing the project in the event of project getting stalled or its registration getting lapsed or revoked under section 7 and section 8 of the Act.

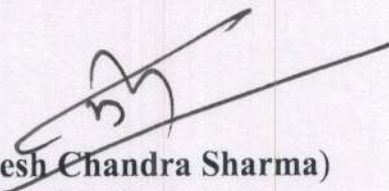
9. Should there arise any dispute as to the limit of the liability of the landowner vis-à-vis the other promoter(s), it is a matter they have to settle amongst themselves at appropriate forum outside the Act as the Authority does not have jurisdiction to adjudicate upon such matters.
10. When the landowner 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.
11. Whether the landowner is a promoter or not, seventy per cent of the sale proceeds of the entire saleable area (including the portion of landowner) will be routed through a single separate account in bank to be maintained for the whole project under section 4(2) (l) (D) of the Act. The withdrawals from this separate account will be made by the person(s) authorized by the promoter, and in case the separate account is in the joint name of two or more promoters, by the person(s) authorized jointly by all such promoters.



12. The landowners recorded as co-promoter in the already registered projects will accordingly be treated as a promoter or no promoter, depending on the terms of the development agreement as to their role in the project; and the landowner who will be so treated as a promoter, will, jointly with other promoters of the project, be liable as promoter under the Act to the extent of his functions and responsibilities under the development agreement.
13. Whenever there are two or more promoters of a project, the agreement or memorandum of understating envisaged in direction No.4 above will necessarily be filed with the Authority at the time of application for registration of project, along with power of attorney, if any, executed by any of them. And, if the landowner has executed any power of attorney in respect of the project land or sale of the area developed for sale in the project, which will also be necessarily filed with the Authority, along with the development agreement.


It is hoped that in the wake of directions contained herein, there will be a better understanding between the landowners and the developers and both parties to a development agreement will better co-operate with each other in the overall interest of the project. It is also hoped that development agreements executed in future will be more specific as to the respective functions and responsibilities of the developer and the landowner and speak more loudly whether the landowner is to be named and treated as a promoter under the Act, leaving little scope for disputes on that account.

This issues with the approval of Hon'ble Chairman of the Authority and shall have immediate effect.

  
(Ramesh Chandra Sharma)  
Registrar

Copy to the following for information and necessary action:

1. PS to Chairman, Rajasthan RERA, Jaipur
2. President, CREDAI Rajasthan, Jaipur
3. President, TODAR, Jaipur
4. President, RAHDA, Jaipur
5. President, CREDAI NCR Bhiwadi Neemrana, Bhiwadi
6. Vice Chairman, RAJREDCO, Jaipur
7. President, RERA India Educational & Resources Federation, Jaipur
8. Chairman, RERA Awareness Committee, ICAI, Jaipur Branch ,  
Jaipur
9. Chairman, RERA Committee, Tax Consultants Association, Jaipur
10. Chief Editor, RERA Times, Jaipur
11. All officers of Rajasthan RERA
12. RERA website
13. Guard file/FAQs

  
Registrar