

Circular No:	<b>01/RERA GGM Circular 2020</b>	Date:	<b>29.06.2020</b>
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**Subject: Procedure for transferring or assigning of promoter's rights and liabilities in a real estate project to a third party under/section 15 of the Real Estate (Regulation and Development) Act, 2016**

In exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate Regulatory Authority, Gurugram considers it necessary to prescribe procedure for the purpose of transfer of promoter's rights and liabilities in a real estate project to third party in accordance with the provisions of Section 15 of the Real Estate (Regulation & Development) Act, 2016.

Whereas, in accordance with Section 15 of the Real Estate (Regulation and Development) Act, 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.

Therefore, the procedure detailed herein below shall be followed and complied with immediate effect from the coming into force of this circular:

**I. Procedure for transfer of rights in a real estate project to a third party where the transfer is initiated by the promoter:**

- (a) The promoter shall have to apply to HARERA, Gurugram with the written consent of two-third allottees as on the date of application in the project under consideration, along with the BIP Permission, transfer of development rights or transfer of licence, to seek permission for transfer of its right and liabilities to a third party. The promoter shall have to write to the Secretary, HRERA, Gurugram along with format provided at **Annexure A**. The online application to be submitted will be made available in the promoter log-in of HRERA website.
- (b) On submission of such application along with CA Certificate, the transferor promoter shall freeze all financial transactions affecting Separate Bank Account of the project (RERA Account) as the same will have to be transferred to the transferee promoter being the balance 70% of amounts received from the allottees and the same is to be utilized for proportionate cost of land and development cost of the project incurred.
- (c) On receipt of such application as stated above, the Secretary shall initiate action through the planning wing which would take necessary steps to obtain approval of the Authority, which may include scheduling a hearing.
- (d) Thereafter, the Authority shall, pass an order, within one month and or within reasonable time of filing of such application for transfer (with or without such conditions) or reject such application for transfer after recording reasons for refection. However, before rejecting the application for transfer the Authority shall give an opportunity of hearing to the promoter.
- (e) Within seven days from the receipt of approval for transfer from HRERA, Gurugram, the transferee promoter(s) shall then apply for necessary correction in the existing registration details. He shall also upload required supporting documents in its name



like land title, building plan approval etc., upon obtaining the same from time to time. While making such application for correction, the transferee promoter shall upload on the website of HRERA, Gurugram a registered undertaking stating that it shall comply with all the obligations under the agreement of sale executed by the erstwhile promoter with respect to the allottee(s) of the project and has/have assumed all the obligations of the erstwhile promoter under the Act.

- (f) Amalgamation, merger or demerger etc. of the companies implemented under orders of NCLT/MCA/High Court or Other Statutory Authorities or Tribunals affecting the project registered under HRERA, Gurugram, shall be regarded as transfer initiated by the promoter and the promoter shall have to follow the procedure prescribed herein in this circular for obtaining the approval of the allottee(s) and prior approval of the Authority.

However, if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act, 1961 or where 75% of the shareholders remain same in the resultant company, the same shall not require the aforesaid approvals of allottee(s) under section 15 of the Act. Nevertheless, the promoter will have to report the promoter entity status change or management change to HARERA, Gurugram along with a certified copy of the order of the competent authority/resolution.

**II. Procedure for transfer of rights in a real estate project to a third party where the transfer is initiated by a third party like banks/financial institutions/ creditors etc. by operation of law or by way of enforcing of the security:**

- (a) Cases wherein the details of the secured loan and/or the charge on the project is disclosed in the registration of the project on the website of HRERA, Gurugram; then in such cases the promoter shall write to the Secretary, HRERA, Gurugram in the format provided at **Annexure A**, within seven days of being aware of the such impending or potential transfer arising out of enforcement of security or mortgage, seeking permission for transfer of its right and liabilities to a third party.
- (b) The promoter shall also simultaneously inform each and every allottee of the project of the impending or potential transfer. Within seven days of the transfer being affected by the financial institution or creditors, such banks, financial institution or creditor shall also simultaneously intimate to each of the allottee(s) and Secretary HRERA, Gurugram about the enforcement of the security which has resulted in the transfer of the ownership of the promoter's organization or transfer of the project.
- (c) The banks, financial institution or creditors (acting as "transferee promoter") or transferee promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details.
- (d) New promoter shall also upload required supporting documents in its name like land title, building plan approval etc., upon obtaining the same from time to time. While making such application for correction, the new promoter shall upload on the website of HRERA, Gurugram an undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with



respect to the allottee(s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

Example or list of some of the relevant documents to be uploaded on the website of the Authority and to be submitted alongwith the application for transfer of rights from the existing promoter to the new promoter:

- (i) Invocation of pledge of shares of the promoter organization by pledgee;
- (ii) Takeover of the asset of the project or of the project by bank/ Financial Institution/ asset reconstruction company under SARFAESI;
- (iii) Transfer of the project by the bank/financial institution/asset reconstruction company under SARFAESI or under Insolvency and Banking Code, 2016;
- (iv) Takeover of the management of the promoter in case of Insolvency and Banking Code 2016;
- (v) And/or any other relevant document and details applicable in this regard or applicable as per prevalent laws in India.

### III. Procedure for updating details of “Transferee Promoter”:

The following procedure should be adopted for updating details:

- (i) Post receipt of the application, the Secretary, HRERA Gurugram shall initiate action through the planning wing for order of the Authority;
- (ii) HRERA, Gurugram order shall be e-mailed to the applicant on their given email address(es);
- (iii) As per the order, the Transferee Promoter may apply in correction module for change in promoter details and attach the order of the Authority as supporting document;
- (iv) The Transferee promoter shall, from time to time, also upload supporting documents in its name like amended land title, amended building plan approval etc., upon obtaining the same.

For the sake of clarification, it is stated that the transfer or assignment when being permitted by the allottees and the Authority under Section 15 sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees and any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of any default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

#### **Explanation:-**

- (i) For the purpose of section 15 of The Real Estate (Regulation and Development) Act, 2016, changes in (internal) shareholding or constituents of a promoters organization, that does not affect obligation and liabilities with respect to the allottee(s) and the right and liabilities of the promoters organization, shall not require the aforementioned approvals. However,






changes in the legal status of the promoter entity, which though does not affect its obligations and liabilities and rights with respect to the allottee(s), shall be reported to HRERA, Gurugram through change in detail segment that will be made available on promoter log-in of the HRERA, Gurugram website for affecting necessary changes in the database of the registered project for public information. Following are the illustrative cases of above reporting requirements.

Any Conversion of the promoter's entity under any statute, of

- (a) Partnership Firm into a Limited Liability Partnership(LLP)/ Private Limited Company; or
- (b) Conversion of Private Limited Company or unlisted Company to a Limited Liability Partnership (LLP); or otherwise
- (c) Proprietorship change by succession to legal heirs.

**Notwithstanding anything contained above, based on case specifics and complexities involves, HRERA, Gurugram shall provide addition direction to the promoters, if deemed appropriate.**

**This has been issued under the seal and by the approval of the Authority.**

  
**Secretary**  
**HARERA, Gurugram**



**Annexure- A**

**Application for Change in Promoter  
(On the letter head of the Promoter)**

To

The Haryana Real Estate Regulatory Authority  
Gurugram, Haryana

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Sir,

I / We apply herewith seeking your approval for transferring or assigning of my/ our majority rights and liabilities in respect of the .....(real estate project name) to a third party, the details of which are provided herein below

I	HARERA, Gurugram Project Registration Number	
II	Promoter Details	
	(i)	Name
	(ii)	Organization Type
	(iii)	Address
	(iv)	Contact Details (Mobile)
(v)	Email	
III	Third Party details (Proposed Promoter/Promoters)	
	(i)	Contact details (Mobile)
(ii)	Email	
IV	Reason for Transfer	
V	Enclosures	

We enclose herewith the following documents:

- (i) Written Consent of two-third allottees for seeking permission to transfer our rights and liabilities as a promoter to a third party
- (ii) I/We hereby declare that the details furnished above are true and correct to the best of my/ our knowledge and belief and I/ we undertake to inform you of any changes therein, Immediately.
- (iii) I/We declare that there is no pending case before any court or National Company Law Tribunal / or any authorized body regarding transfer of promoter/ my rights and liabilities with respect to this project.
- (iv) I/We declare that there is no bar as on date, on transfer of the rights and liabilities to a third party, from any of the financial institutions or financiers \any other institution or body who have a charge on the project.



I/We further declare that there is no prohibitory and/or constraint order passed by any court of law against transfer of the present project to a third party.

Thanking you

Yours faithfully,

Signature of the authorized representative with Stamp

Place:

Date:



## Checklist of key documents to be submitted for section 15 procedure

<b>Documents of Transferor Promoter</b>	
1.	Notarized consent of 2/3 <sup>rd</sup> allottees
2.	Affidavit cum consent of both the promoters (Transferor & Transferee)
3.	Draft agreement of transfer and draft conveyance deed
4.	Non-Encumbrance certificate
5.	Project head/all partner photographs (in colour) (if company/ partnership firm/LLP)
6.	Draft brochure of current project without change in specifications
7.	Document related to fund transfer i.e. banker certificate as per RERA Act
8.	Document related to fund transfer i.e. banker certificate and passbook
9.	Non-Executed agreement and transfer deed for project transfer
10.	Land title documents as per revenue record duly attested by revenue authority
11.	Sale deed/ lease deed
12.	Title clearance certificate (Title clearance certificate by qualified & 10 years experienced lawyers, clearly indicating transferability of land)
13.	Title report (title search report by 10 years experienced lawyers )
14.	Registered development agreement (if applicable)
15.	Performa for allotment letter
16.	Performa for agreement for sale
17.	Performa for sale deed
<b>Documents of Transferee Promoter</b>	
1.	Previous 5 years projects (if Applicable)
2.	Experience certificate on letter head of transferee promoter
3.	Reports on means of finance
4.	Balance sheet (for last 3 yrs)
5.	Profit loss statements (for last 3 yrs)
6.	Directors report (for last 3 yrs)
7.	Cash flow statement (for last 3 yrs)



8.	Auditor's report
9.	Income tax return acknowledgement

**Note:** The Authority, if deem appropriate, may seek any other document required as per law from both the transferor and transferee promoter.

1	1. Form 1123
2	2. Affidavit consent of both the promoters (Transferor & Transferee)
3	3. Joint agreement of transferor and transferee promoters
4	4. Non-competition agreement
5	5. Joint bank/banking partnership in favour of company/partnership
6	6. Joint purchase of current project without change in specifications
7	7. Joint agreement to form transferor & transferee promoters as per RERA Act
8	8. Documents related to bank transfer i.e. banker certificate and passbook
9	9. Jointly executed agreement and transfer deed for project transfer
10	10. Joint bank account as per revenue record duly stated by revenue authority
11	11. Joint bank/lease deed
12	12. The clearance certificate
13	13. The clearance certificate by qualified & 10 years experienced lawyers clearly indicating transferability of land
14	14. The report (the report by 10 years experienced lawyers)
15	15. Registered development agreement (if applicable)
16	16. Transferor's affidavit
17	17. Transferee's affidavit
18	18. Documents of Transferee Promoter
19	19. Joint 5 years project (if applicable)
20	20. Experience certificate for both head of transferee promoter
21	21. Transferee's affidavit
22	22. Joint bank account (for last 3 years)
23	23. Joint bank account (for last 3 years)
24	24. Joint bank account (for last 3 years)
25	25. Joint bank account (for last 3 years)
26	26. Joint bank account (for last 3 years)
27	27. Joint bank account (for last 3 years)