



Maharashtra Real Estate Regulatory Authority

Circular No: 24/2019

Date: 04/06/2019

Subject: Procedure for transferring or assigning promoter's rights and liabilities to a third party

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

Whereas a procedure was prescribed for the purpose of transfer or assigning Promoters rights vide MahaRERA Circular No. 11/2017 dated 08.11.2017.

Whereas considering various types of litigations, it is necessary to prescribe revised procedure for the purpose of transfer of promoters rights and liabilities to third party in accordance with the provisions of Section 15 of Real Estate (Regulation & Development) Act, 2016.

Therefore, in supersession of Circular No. 11/2017 dated 08.11.2017 the revised procedure detailed herein shall be followed with immediate effect.

Explanation. -

(i) For the purpose of this section, changes in (internal) shareholding or constituents of a promoter's organization, that doesn't affect obligations and liabilities with respect to the Allottee(s) and the rights and liabilities of the promoter's organization, shall not require the aforementioned approvals.

(ii) Any Conversion of the promotor entity under any statute, of

(i) Partnership Firm into LLP / Private Limited Company or

(ii) conversion of Private Limited Company or unlisted Co to a LLP or otherwise

(iii) Proprietorship change by succession to legal heirs

shall not require the aforementioned approvals.

2. Cases where the transfer is initiated by the promoter: The promoter shall have to apply to MahaRERA with the consent of two-third allottees as on the date of application in the project under consideration, to seek permission to transfer its rights and liabilities to a third party. The promoter shall have to write to the Secretary, MahaRERA, on secy@maharera.mahaonline.gov.in with format prescribed in Annexure A. On receipt of such application, Secretary shall initiate action through the legal wing who would take necessary steps to obtain approval of MahaRERA, which may include scheduling a hearing. MahaRERA shall thereafter pass an order within one month of filing of such application, of either granting approval to such application for transfer (with or without such conditions as it may prescribe) or reject such application for transfer.

After receipt of the approval for the transfer from MahaRERA and thereafter within seven days of completion of the transfer, the new promoter shall then apply for necessary corrections 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 new promoter shall upload on the web site of RERA, a registered 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.

Amalgamation or merger of the Companies, in which amalgamating company has one or more of the project registered under RERA, and which is voluntarily initiated by the promoter, after 30th April 2017, shall be regarded as transfer initiated by the Promoter and the Promoter shall have to follow the procedure prescribed herein above for obtaining the approval of the allottee(s).

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.

3. Cases where the transfer is initiated by a third party like financial institutions / creditors etc by operation of law or by way of enforcing of the security : Where Secured Loan and/or the charge on the project is disclosed in the registration details of the project on the website of MahaRERA, then in such cases the promoter shall write to the Secretary, MahaRERA, on secy@maharera.mahaonline.gov.in with format prescribed in Annexure A, within seven days of being aware of the impending or potential transfer arising out of enforcement of security or mortgage. 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 effected by the Financial institution or

creditors, such Financial institution or creditor shall intimate to each of the Allottee(s) and Secretary MahaRERA on secy@maharera.mahaonline.gov.in of enforcement of the security which has resulted in the transfer of the ownership of the promoter organization or transfer of the project. The Financial Institution or creditors (acting as new promoter) or new promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details. 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 web site of MahaRERA, a 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:

- 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.
4. Procedure for updating details of new promoter: The following procedure should be adopted for updating details:

- After receiving the application, Secretary shall initiate action through the legal wing for order of the Authority.
- MahaRERA order shall be mailed to the applicant at their given email address
- As per the order, new promoter may apply in correction module for change in promoter details and attach the order of the authority as supporting document.
- The new promoter shall, in update module from time to time, also upload required supporting documents in its name like amended land title, amended building plan approval etc., upon obtaining the same.

By the approval of Chairperson, MahaRERA



Secretary, MahaRERA

Annexure - A

Application for Change in Promoter

(On the letter head of the Promoter)

To
The Maharashtra Real Estate Regulatory Authority

Sir,

I/ We apply herewith for your approval to transfer or assign my/our majority rights and liabilities in respect of real estate project to a third party with following details:

I.	MahaRERA Project Registration Number	
II.	Promoter Details:	
	Name:	
	Organization Type	
	Address	
	Contact Details (Mobile)	
	Email	
III.	Third Party details (Proposed Promoter):	
	Name:	
	Organization Type	
	Address	

	Contact Details (Mobile)	
	Email	
IV.	Reason for Transfer	
V.	Encl	

We enclose herewith the following documents:

- 1) Consent of two-third allottees to seek permission to transfer its rights and liabilities to a third party

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.

I/We declare that there is no pending case before any court / NCLT / or any authorized body regarding transfer of promoter/ my rights and liabilities with respect to this project.

I/We declare that there is no bar, in transfer of the rights and liabilities to a third party, from any of the financial institutions or financiers who have a charge on the project.

I/We further declare that there is no prohibitory 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: