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## JOINT DEVELOPMENT AGREEMENT



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**Land Owner – Promoter**  
**Under RERA Act 2016**  
**(Part – 19 of RERA Series)**

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# LAND OWNER - PROMOTER UNDER RERA ACT 2016

(PART - XIX OF RERA SERIES)



CA. Vinay Thyagaraj

## Introduction

The real estate sector plays an important role in fulfilling the need and demand for housing and infrastructure in the country. Real estate Industry contributes the 2nd highest GDP to the country next to agriculture. One of the highest tax contributors to the nation. It employs a large number of skilled, unskilled resources. While this sector has grown significantly in recent decades, it has been largely unregulated, with absence of professionalism, accountability, standardisation and lack of adequate, speedy consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In this Article, I would like to deliberate on the role, responsibilities of landowner under RERA Act 2016.

In common parlance the person carrying on the business of real estate be called as builder, developer etc. RERA Act has brought in / defined/ included the various stakeholders as promoters and their responsibility under RERA Act 2016.

Definition under RERA – Section 2(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 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;

Definition of promoter is wide and covers all types of Promoters viz., developer, builders, GPA Holder, coloniser, contractor, **Land owner** in the Real Estate Project. Hence, any person who develops and sells is included within the definition of a Promoter.

Objective of the Act is to include any such person who has right or gets right in the real estate project to enter into a contract of sale with allottees and collect money thereon is responsible for delivery and meet the obligations.

The common question encountered are:

### 1. Is Landowner a promoter?

Ans - Yes, the words "causes to be constructed" in the definition of a Promoter brings the Landowner within the ambit of definition of a



Promoter. Landowner is the person causing construction of the project, who may give the rights to a developer by way of granting development rights, GPA etc.,

Hence Land Owner's along with the builders are jointly responsible to the Allottees in the project.

## 2. Does RERA collect the information of Landowner in the application for grant of RERA Registration?

Yes, In the Application for Grant of Registration, applicants shall provide details of all Landowner's in the real estate project and their respective shares in the project.

Also, Land owners shall submit an Affidavit (Called Joint affidavit) in case of Joint Development.

Karnataka RERA has *clarified by way of circulars and notifications* to confirm and include the landowner as part of the application for grant of registration.

Karnataka RERA – Circular No /K RERA / 3/2019 dated 31.10.2019

Practical Cases and judicial pronouncements –

### Important aspects under RERA between the landowner and developer under joint development agreement -

- 1) The RERA Act does not differentiate the landowner or developer. Both are having the same responsibility and obligations towards the allottees in the project.
- 2) The agreement between the landowner or developer (JDA) defines their roles and responsibility. Hence all possible clauses shall be incorporated while drafting JDA, to name few -
  - a) Who is responsible for RERA Registration, Quarterly updates, Annual Audit Compliances, Advertisement Compliances.
  - b) How to open the RERA Designated project Bank Account – who are the signatory to the Bank Account / operation.
  - c) How to collect money from allottees, mandatory depositing of 70 % into a RERA designated bank account including sale proceeds of Landowner units in the project.
  - d) How to operate the RERA designated bank account to protect the interest of both (landowner and developer)

- e) Withdrawal of money from the RERA designated bank account, distribution of money so withdrawn between landowner and developer based on the proportion completion of the project.
- f) Utilisation of money withdrawn for the Project purpose only
- g) Delay in delivery of the possession of the units to the allottees. Compensation payable to the allottees due to such delay in completion of the project.
- h) In Case of non compliance, if a penalty is levied, who will be responsible and comply with it.
- i) All other compliances under RERA -

### 3) Caselaw on landowner is a developer - Tupe Developers & Ors. v. Bhansali Infotech LLP & Ors

Further Section 11 of the RERA Act 2016 mandates the functions to be performed and duties to be carried with respect to the project.

Financial Management under RERA and Flow of funds – provision of Law -



1. **When to Collect money** - Only After Registration of Project - Sec 3(1)
2. **How to Collect the money** from the allottees - (K RERA Rule 8A) Agreement for Sale
3. Having collected the money, **where to deposit** - project designate bank account - Sec 4(2)(l)(D)
4. **How much** money to be deposited into the project designated bank account - Sec 4(2)(l)(D) - 70 % of realisation
5. **When to withdraw money** from the project designated bank account - Sec 4(2)(l)(D)- after having completed the development work
6. **How to withdraw money** - Sec 4(2)(l)(D) - based on percentage of completion of work and after being certified through Professional Certificates
7. **How much** money to be withdrawn from the project designated bank account - Based on percentage of Completion of development works in the project
8. Utilization of withdrawn money for the specific project - Sec 4(2)(l)(D)



The financial discipline under RERA Act 2016-Sec 4(2)(I)(D) -

1. Sec 4(2)(I)(D) of the RERA Act 2016 mandates that the promoter shall open a separate bank account in a scheduled bank. Such bank account details shall be provided at the time of registration of the project.
2. The bank account shall open, deposit, withdraw in accordance with "RERA Bank Account Directions, 2020" issued by Karnataka RERA
3. Generally, the designated project bank account is opened by the developer / builder. Landowners may not be involved while opening the account. Bankers also collect the KYC details and documents related to the builder only.
4. It is important to note that each Project shall have only one project designated bank account. Section 4(2)(I)(D) of the Act mandates 70 % of the money realised from the allottees of the project shall be deposited irrespective of whether the sold unit belongs to the land owner or builder in case of joint development agreements etc. Hence it is important for the landowners and developers to understand the requirements under the Act and necessary clauses to be included in the joint development agreement.
5. The question may arise, how the allottees buying from the landowner deposit the amount in the designated project bank account of the builder. There is no exception except to deposit into the designated project bank account, hence, there shall be a mechanism and understanding between the landowners and the builders / developers to deposit the money realised / collected from the sale of landowner units and also allow the landowner to withdraw the amount – Refer clause 6 of page no 2 to the Karnataka RERA – Circular No /K RERA / 3/2019 dated 31.10.2019
  - a. Under the Revenue sharing scheme in a case of joint development, there may not be any challenge / difficulties between the landowner and the developer as they would have agreed upon how to share the revenue from time to time.
  - b. In the case of Area Sharing scheme of joint development, both landowners and the developer agree to comply with section 4(2)(I)(D) of the Act and also protect their interests while depositing the money into the designated bank account.

#### **Efforts of few builder promoters to maintain separate account for Land owners -**

Few renowned builder developers made applications to K RERA to allow the separate bank account for landowners, however they got a reply stating RERA Act mandates Only one project bank account for each Real Estate Project, hence not permitted to maintain separate bank account for landowners

#### **What is the approach for landowners to withdraw their money -**

1. Payment to landowner on sale of their share of units in the project –
  - a. Allottees make payment to the land owner name only (will not make payment to RERA Designated bank account as the account is in the name of the Developer / Builder) - Yes, it is a practical challenge and industry is yet to accept this practice.
  - b. Bankers do not release the payment to the RERA Designated bank account as the bank account is in the name of builder/developer.
  - c. Professionals/advisors/legal consultants are not in favour of making payment to builders/ developers.
2. Alternatively, builders or developers may not agree to make Land Owners as joint signatories to the RERA Designated bank account.
3. In view of the deadlock situation, practical approach is –
  - a. Land Owner to realise or collect 100 % of sale proceeds in their respective bank accounts
  - b. Transfer 70 % of the amount so realised to RERA Designated bank account of the Project – so that Sec 4(2)(I)(D) of the RERA Act 2016 provision is complied.
  - c. Having deposited, the builder promoter calculates the withdrawal eligibility based on the % completion of the project.
  - d. On withdrawal from the designated bank account, the builder distributes the funds for the purpose of the project based on the cost incurred, including landowners' payment.
  - e. Generally, land owners insist on payment irrespective of % of completion. If such situation arises, the builders shall make necessary arrangements for making such payments out of his sources

#### **Post receipt of Completion Certificate –**

Post receipt of Completion Certificate and on discharge of all project related liabilities, Land owner/builders are free to deposit the money either in RERA Designated bank account or any other account of their choice

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