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 Karnataka State  
Chartered Accountants Association

*July 2021*

**RERA Agreement for Sale – Standardized / Uniform  
Contract Document – Across Real Estate Industry /  
Business – Minimal Scope for Modification**

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# RERA AGREEMENT FOR SALE – STANDARDIZED / UNIFORM CONTRACT DOCUMENT – ACROSS REAL ESTATE INDUSTRY / BUSINESS – MINIMAL SCOPE FOR MODIFICATION

▪ CA. Vinay Thyagaraj

Many of you have experienced the purchase of immovable property from the builder for yourself or to your relatives or to your clients. The immovable property may be a plot or an apartment or a villa or a commercial shop etc. While doing so you must have gone through the process of transaction of purchase of immovable property, which may be as follows –



In this article, the author explains the changes in practices post RERA in terms of Agreement for Sale.

The rights and obligation of the parties to the contract of immovable property are captured in detail in a document called Agreement for sale. An agreement for sale, is a document to sell/convey/transfer an immovable property at a later point of time. This agreement specifies the terms and conditions, rights and obligations under which the immovable property in transaction will be transferred/conveyed.

A contract for sale of immovable property shall take place in agreed terms between the parties, in accordance with Section 54 of Transfer of Property Act. An agreement for sale contains a promise to transfer an immovable property in future, on satisfaction of certain terms and conditions. To conclude the contract to satisfy such terms and conditions are important and critical.

In case of failure of either of the parties to the contract i.e., seller to sell or hand over possession of the property to the buyer, the buyer gets a right of specific performance, under the provisions of the Specific

Relief Act, 1963, a similar right is also available to the seller under the agreement, for seeking specific performance from the buyer.

Entering into Agreement for Sale is a normal / standard practice in real estate transaction and exists since many years. However, such Agreement for Sale was in different formats, different conditions, different sizes etc., as those Agreements for Sale drafted based on ability, wisdom, risk appetite of the builder, buyer, professional etc.

To bring the standardisation, transparency, accountability, equality between promoter and allottees in real estate business, RERA has made inbuilt provision by way of Agreement for Sale. i.e., RERA Act mandates the promoter and allottees to adopt the agreement for sale as prescribed by the respective States. Let us understand the provisions under RERA in relation to Agreement for Sale.

Section 13(1) of the RERA Act 2016 provision is as follows –

*A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

Section 13(2) of the RERA Act 2016 refers to respective RERA State to prescribe the format of Agreement for Sale. Accordingly, Karnataka RERA has inserted rule 8A (format of Agreement for sale) WEF 12th June 2020. The Extract of Rule 8A is –

“8A. Agreement for Sale - (1) For the purpose of sub-section (2) of section 13 of the Real Estate (Regulation & Development) Act 2016, the agreement for sale shall be in the Format as per Annexure-A.

(2) Any application, letter of allotment, letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or under the Act.”

With the notification of Agreement for Sale format, it is mandatory for the promoter to follow the same format of agreement for sale / contents of the agreement for sale without dilution of any provisions of RERA Act 2016, Karnataka RERA Rules 2017.

Section 13(2) of the RERA Act 2016 mentions that the contents of such Agreement for sale shall includes –

- particulars of development of the project including the construction of building and apartments
- specifications of such development
- internal development works
- external development works
- the dates and the manner of payments by the allottees,
- the date on which the possession to be handed over by the promoter.
- the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default
- such other particulars, as may be prescribed.

To conclude –

- Agreement for Sale shall be in the format as notified by Karnataka RERA
- The promoter shall enter into Agreement for Sale with the allottee well before acceptance of consideration more than 10 % of the cost of the unit.
- Such Agreement for Sale shall be registered with the sub registrar

Now let us understand various important clauses in the Agreement for Sale as notified by Karnataka RERA -

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
1	RERA Registration number is mandatory	Not Applicable
2	The Promoter agrees and undertakes that it shall not make any changes to these approved plans except in strict compliance with section 14 of the Act and other laws as applicable;	Promoters use to retain the right to modification of plan or changes to specification with or without consent of the allottees
3	Mandatory to mention the Car Parking details – Car parking number, measurement, its location	Promoters use to allocate the car parking at later point of time. Eg., on handing over the apartment etc
4	The Total Price shall be mentioned - which includes Taxes (consisting of tax paid or payable by the Promoter by way of Goods and Service Tax (GST), or any other similar taxes which may be levied, in connection with the construction of the Project payable by the Promoter, by whatever name called)	Usually mention as applicable Taxes, without quantifying the absolute tax amount.

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
5	Any increase in the taxes after the expiry of the schedule dated of completion of the project as per registration with the authority, the same shall not be charged from the allottee;	Promoters use to collect applicable taxes irrespective of promised date of delivery or delay.
6	The Total Price is escalation-free, save and except due to increase on account of development charges payable to the competent authority and/or any other increase in charges which may be levied or imposed by the competent authority from time to time.	No standards / no common practices were followed.
7	Conditional discount/rebate for prepayment or early payment of installation etc shall not be discontinued once agreed.	No standards / no common practices were followed.
8	Promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described – Sec 14 is applicable in case of such changes	Promotes use to retain the right to alter or modify the plan, construction or specifications etc

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
9	Mandatory mention of Carpet Area. Such Carpet Area shall be in accordance with RERA Definition	No standards / no common practices were followed. Use to mention Super built up Area, built up area, saleable area, Carpet Area etc
10	The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within sixty days with annual interest at the rate prescribed in the Rules	Promoters use to mention the minimum allowable variance – e.g., upto 5 % is allowed as permissible variation.
11	Promoter can ask for the increased carpet Area - If there is any increase in the carpet area, more than three percent of the carpet area of the apartment.	No standards / no common practices were followed.
12	The Allottee has the right to visit the project site to assess the extent of development of the project and his apartment/plot, as the case may be	No standards / no common practices were followed. But generally avoided due to safety and security reasons

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
13	It is clarified that Project's facilities and amenities shall be available only for use and enjoyment of the Allottees of the Project.	No standards / no common practices were followed. Promoter may retain the amenities (club house) or other facilities in the project
14	Payment towards consideration shall be through A/c Payee cheque/ demand draft/banker's cheque or online payment	No standards / no common practices were followed. Use to collect cash also
15	The Allottee, if resident outside India, shall be solely responsible for complying with the necessary formalities as laid down in Foreign Exchange Management Act, 1999	No Such clauses were followed
16	The Promoter assures to hand over possession of the along with ready and complete common areas with all specifications, amenities, and facilities of the project.	Generally, promoters use to mention the delivery of apartment within due date. There was no mention of delivery of common area and facilities etc
17	Delay for the reason of Force Majeure is only allowed- is strictly Act of God.	Force Majeure, other reasons for delay includes nonavailability of supply of raw materials, availability of labour, government restrictions, court orders etc

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
18	The conveyance deed in favour of the allottee shall be carried out by the Promoter within 3 months from the date of issue of occupancy certificate	No Such clauses were followed and in many instances the conveyance deed were carried out prior to receipt of occupancy certificate
19	It shall be the responsibility of the Promoter to hand over the necessary documents and plans including common areas, to the association of Allottees or competent authority, as the case may be, as per the local laws. [Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate	No Such clauses were followed
20	Allottee proposes to cancel/ withdraw from the project without any fault of the promoter, the promoter herein is entitled to <u>forfeit the booking amount paid for the allotment.</u>  The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within 60 days of such cancellation.	No standards / no common practices were followed.  Differ from promoter to promoter and agreement to agreement.

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
21	The Promoter shall compensate the Allottee in case of any loss caused to him due to defective <i>title of the land</i> , in the manner as provided under the Act and the claim for interest and compensation under this provision shall not be barred by limitation provided under any law for the time being in force.	No Such clauses were followed
22	The promoter shall continue to pay all levies, taxes including property taxes payable to competent authorities till he obtains completion certificate and handover of common areas, facilities, amenities to the association of allottees	No Such clauses were followed
24	Defect Liability period of 5 years from the date of handing over of possession	Generally 1 to 2 years
25	After the Promoter executes this Agreement he shall not mortgage or create a charge on the [Apartment/Plot/Building] 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, such mortgage or charge shall not affect the right and interest of the Allottee who has taken or agreed to take such [Apartment/Plot/Building].	No Such clauses were followed

Sl No	Post RERA Clauses in the Agreement for Sale	Pre RERA
26	METHOD OF CALCULATION OF PROPORTIONATE SHARE WHEREVER - shall be the proportion which the carpet area of the [Apartment/Plot]	No standards / no common practices were followed. Differ from promoter to promoter and agreement to agreement. E.g, based on Super built up Area
27	Mandatory Schedules in Agreement for Sale - Schedule 'A'- description of the [apartment/plot] and the garage/ covered parking (if applicable) along with boundaries in all four directions. Schedule 'B' - floor plan of the apartment Schedule 'C' - payment plan by the allottee Schedule 'D' - specifications, amenities, facilities (which are part of the apartment/ plot) Schedule 'E' - specifications, amenities, facilities (which are part of the project) Schedule 'F' - description of the entire property covered as per sanctioned plan, with details of boundaries (east, west, north and south). The area shall be mentioned in square meters. Schedule 'G'-details of the common area.	No standards / no common practices were followed. Differ from promoter to promoter and agreement to agreement.

**Few important points while advancing promoters of the Real Estate Project –**

1. Modification or alteration to notified Agreement for Sale is permitted subject to compliance of all applicable provisions of RERA Act, Rules, and notifications. Such modification shall not result in depriving the rights of the Allottee.
2. The agreement does not assume any situations where multiple sub-projects can be registered under RERA, within a single larger layout / plan. In such situations the common areas would be handed over in multiple phases, whereas the agreement states that all common areas would be handed over at the time of handing over of the apartments.
3. The agreement provides that any increase in taxes after the expiry of the scheduled End date /completion of the project as per RERA registration with the authority the same shall not be collected from the customer.
4. Agreement for Sale provides for cancellations by the customer without any defaults by the developer and requires the developer to refund the amount by deducting only booking amount.
5. In cases of defaults / delays which are not attributable to the Developer (e.g., force majeure), the agreement provides for a cancellation process that requires the Developer to refund the entire amount. However, the Developer would have made many payments, such as taxes, to the authorities and he would not be able to refund such taxes etc.
6. Non-Compliance of Agreement for Sale may attract penal provisions in accordance with the section 61 of the RERA Act 2016, the penalty may be extended upto 5 % of the estimated cost of the real estate project.
7. Promoter shall now have to compulsorily declare that the project is now in accordance with the provisions of Karnataka Apartment Ownership Act, 1972 and Karnataka Ownership Flats (Regulation of the Promotion of the Construction, Sale Management and Transfer) Act, 1972 which means that the allottees shall also have to follow and comply with all the provisions of the aforementioned Acts.

8. The Agreement for Sale shall be uploaded while filing the application for Grant of RERA Registration.
9. All the promoters in the project (Builder, Land Owner) shall use the same format as notified by RERA

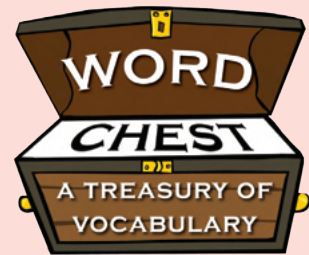
**Conclusion –**

Professionals (Legal/ Chartered Accountants) shall understand the various provisions under RERA and its relevance while preparing agreement for Sale. This helps the professionals while advising / providing service to any individual / home buyers on property purchase / investments.

Value added services can be given to the promoters of the real estate project while advising on Joint development agreement, investment agreements, MOU's, application for grant of RERA Registration, document preparation for financial assistance with financial institutions etc.

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**Word of the Month:**

Truculent

**What is this?**

Quick to fight or argue

**Use instead of:**

Argumentative, Bad-tempered and aggressive.

**How can I use it?**

- ✓ He was **truculent** and difficult to deal with.
- ✓ Her tone in doing so was **truculent**, self-satisfied and arrogant.



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