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PART III

Notifications by High Court, Advertisement, Notices and Change of Name etc.

HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM

Notification

The 2nd March, 2020

Directions regarding [Compliance of Section 4(2)(I)(D)] of the Real Estate (Regulation and Development) Act, 2016.

No. 2/RERA GGM Directions 2020.— In exercise of the power conferred by Section 37 of the Real Estate (Regulation and Development) Act, 2016 the Haryana Real Estate Regulatory Authority, Gurugram having considered it necessary for the legitimate utilisation of funds by the promoter as per the provisions contained in third proviso to section 4(2)(I)(D) of Real Estate (Regulation and Development) Act, 2016 which provides that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project, the Haryana Real Estate Regulatory Authority, Gurugram has decided to issue the directions herein specified

The Haryana Real Estate Regulatory Authority, Gurugram [Compliance of Section 4(2)(I)(D)] of the Real Estate (Regulation and Development) Act, 2016, Directions 2020

1. Necessity and Background

Neither the Act nor the rules prescribe the format of certificates or audit report. Accordingly, these directions are hereby issued by the authority. The directions have defined the scope of audit which cannot be less than the scope laid down by third proviso to sub-clause (D) of clause (I) of section 4 of the Act.

2. Introduction

The third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4, provides that the promoter will present statement of accounts duly audited and certified by a chartered accountant in practice, within six months after the end of every financial year.

3. Scope of Audit

Third Proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4 lays down the scope of examination to be carried out by the chartered accountant as per section 4(2)(I)(D) of the Real Estate (Regulation and Development) Act, 2016. The scope is limited to verifying the following:

- (i) That seventy percent of the amounts realized for the real estate project from the allottees, from time to time, have been deposited in a separate account maintained in a scheduled bank to cover the cost of construction and the proportionate land cost and has been used only for that purpose:
- (ii) That the withdrawal from separate RERA Account of the project to cover the cost of project, in proportion to the percentage of completion of the project:
- (iii) That the amounts from the separate account have been withdrawn by the promoter after it is certified by an engineer, an architect and a chartered Accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
- (iv) That the promoter has to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and has produced a statement of accounts duly certified and signed by such chartered accountant.
- (v) That it has been verified during the audit that the amounts collected for a particular project have been utilized for that project and the withdrawals have been in compliance with the proportion to the percentage of the project.

4. Declaration by the promoter

The promoter has to give declaration, supported by an affidavit, duly signed by the promoter or any person authorized by the promoter in consonance with section 5 and 6 of the Real Estate (Regulation and Development) Act, 2016 submitted at the time of registration of the above-mentioned project in compliance of section 4(2)(I)(D) of the Real Estate (Regulation and Development) Act, 2016. These directions are issued to the promoters regarding the above mentioned compliance.

5. Time limit for submission of statement of accounts and certificate

The statement of accounts audited, duly certified and signed by the chartered accountant in respect of the project for the year is to be submitted in the office of the authority till 30th September. In case of non-submission of statement of accounts audited duly certified and signed by the chartered accountant in respect of the project till 30th September is a violation of Section 4(2)(I)(D) of the Real Estate (Regulation and Development) Act, 2016.

6. Audit or certification

From the scope of examination laid down in third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4, it is seen that the reporting is about the findings of facts in respect of the aspects referred to in the preceding paragraphs. The verification is not about expressing any opinion on the accounts as a whole or part, or on any other aspect of accounts. **An audit exercise usually involves formation and expression of an opinion, whereas certification involves verification and reporting of facts as they are found.**

Therefore, the exercise contemplated in the third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4 is more akin to certification than it is to audit.

7. Role of Rules

- (i) The Government of Haryana has framed the Haryana Real Estate (Regulation and Development) Rules, 2017. The Act provides definition of "Estimated cost of project" in section 2(v) as under:

Estimated cost of real estate project: Estimated cost of real estate project means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;

- (ii) The rules have explained certain terms "land cost" and "cost of construction", etc. As per the explanation (1) and (2) of rule 4 of Haryana Real Estate (Regulation and Development) Rules, 2017 land cost and cost of construction has been explained as under:

Land Cost: Land Cost shall be the cost incurred by the promoter, whether as an outright purchase, lease, registration charges, stamp duty and brokerage cost etc.

Cost of construction: The construction cost shall be the cost incurred by the promoter, towards the on-site expenditure for the physical development of the project inclusive of all statutory charges as well as external development charges (EDC).

8. Scope of Examination

- (i) The scope of audit is explained earlier. The auditor is expected, to report on the following aspects, namely,
 - (a) That seventy percent of the amounts realized for the real estate project from the allottees, from time to time, has been deposited in a separate account maintained in a scheduled bank to cover the cost of construction and the proportionate land cost and has been used only for that purpose:
 - (b) That the withdrawal from separate RERA account of the project have been to cover the cost of project, in proportion to the percentage of completion of the project:
 - (c) That the amounts from the separate account have been withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:
 - (d) That the promoter has got his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant
 - (e) That it shall be verified during the audit that the amounts collected for a particular project have been utilized for that project and the withdrawals has been in compliance with the proportion to the percentage of completion of the project.
- (ii) While verifying that the amounts collected for a project have been utilized on the project, the auditor will confine examine that amount of collection from the allottees has been utilized on the project. The scheme of the Act is such that it requires a promoter to deposit seventy percent of the collection received from allottees into a separate bank account and utilize this amount for land cost and cost of construction, thereby leading to the inference that the promoter is not free to utilize the remaining thirty percent in any manner but only to be utilised for other items of expenditure relating to project. Therefore, the auditor will be concerned about the end-use of the thirty percent and also the amount deposited in to the separate bank account.

9. Issues relating to ongoing projects

For implementing the requirements of third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4 certain clarifications are given as hereunder.

- (i) The issue about the manner in which the certificate should be issued may arise in respect of ongoing project registered under the Act.
 - (a) The chartered accountant is required, as part of the aspects to be certified, to certify the amounts collected from allottees have been utilized on the project. In the first year, a question may arise about the period that the chartered accountant should cover for his examination of the transactions.

The period could be the period beginning with the commencement of the project or beginning with 1st April of the year or the period beginning with the commencement of the Act or the period beginning with the date of application for registration or with the date of the registration of the project and such period ending, in all the cases, on 31st March of the relevant financial year.

- (b) The period covered by the first accounts certified and signed by a chartered accountant should begin from the date of registration of the project. The reason is that the requirement of production of annual accounts duly certified and signed by a chartered accountant is referred to in third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4. This section provides that the promoter shall furnish along with the application for registration a declaration in which he commits that he shall produce a statement of accounts duly certified and signed by a chartered accountant.

The promoter makes this commitment pursuant to a requirement that he should make a declaration to this effect at the time of making application for registration. The commitment is effectively an acceptance of a condition that the promoter agrees to abide by provided his project is registered. Thus, all the obligations as a promoter as per the commitments made in the declaration begin with the registration.

- (c) Another ancillary question may also arise from the requirement that the chartered accountant will certify that the collection from the allottees has been utilized for the project. Whether the collection made since the inception of the project should be considered, and if not, whether the collection made for the period since the commencement of the Act or the registration of the project should be considered.

Based on the reasoning adopted in para above, it should be deemed as sufficient compliance if the collection made for the period since registration of the project should be considered. But the difference of 70% amount collected from the allottees for the project and amount spent on proportionate land cost and construction cost be brought back in the separate RERA account for whatever may be the sources

10. Manner of Examination

- (i) In order to verify that the amounts collected were utilized on the project, the auditor will communicate to the promoter his requirements.
- (ii) In order to ensure that the amounts collected from the allottees were utilized on the project, the auditor will first find out that seventy percent of such amounts was deposited in the separate bank account, the auditor may call for the particulars in the following format.

- (a) List of allottees in the following Table:

1	2	3	4	5	6	7	8	9	10
S. No	Name and Address of Allottee	Description of property sold	Gross consideration as per Agreement/ Letter of Allotment	Cumulative Amount collected up to the last day of the previous year	Aggregate amount collected during the year	Total amounts collected up to date (5)+(6)	Balance collectible as at...	Total amount collected for the project	Total cost involved in the project

Note: Particular in column No.6 will be supported by a subsidiary statement giving date-wise collection from each party. The aggregate figure of collection from a particular allottee will appear in column No.6.

- (b) Ledger accounts of the allottees.
- (c) Relevant Bank statements of the account with the separate bank.
- 10.2.1 Check, at random, receipts credited to the accounts of the allottees with corresponding amounts appearing in the bank account. The deposit in the bank account will be at least seventy percent of the concerned receipt credited to the relative allottee's account.
- (iii) The second aspect to be verified is that the withdrawals made from time to time from the separate bank account were in accordance with the percentage of completion of project criteria for deciding percentage completion of the project.
- (a) In order to report on the aspect of withdrawals, the auditor may call for copies of certificates issued by the chartered accountant, the engineer and the architect.
- (b) The auditor will verify the individual withdrawals from the separate bank account with the help of the relevant certificates issued by the chartered accountant on the basis of which the withdrawals were made. The auditor is advised to verify on a random basis the certificates issued by the chartered accountant to satisfy himself that the chartered accountant has correctly worked out and certified the percentage of completion of work.
- (c) In case the chartered accountant certifying the annual accounts finds that the amount deposited into the separate bank account is short of the seventy percent of the amount collected mandatorily required to be deposited, he will make a note of that and find out the end-use of the amount not deposited. If the chartered accountant finds that such amount was not utilized on the project, he will report the fact. It may be noted that it will not matter that the promoter has made good the shortfall in the next deposit and utilized the amount on project, for if there is a single case of non-utilization of amount collected from allottees on the project, it will be reported notwithstanding the fact that such lapse may have been cured later by the promoter.

However, before reporting such lapses, the chartered accountant, if satisfied about the fact that the lapse was unintentional and was the result of a pure human error, may decide to point out the lapse in his report without adversely commenting that the withdrawals were not in compliance with the provisions of the Act.

11. Auditor and chartered accountant issuing certificates for withdrawal

It may have been seen that the auditor is required to report on whether or not the amounts collected from the allottees were utilized on the project and that the withdrawals from the bank account were made in compliance with the provisions of the Act. In the course of verification of these aspects, the auditor will be required to satisfy himself that the figure of the project cost incurred which was used by the certifying chartered accountant as the basis for the purpose of working out the percentage of completion of work, was correct. If the project cost incurred at a point of time when the certificate is issued is inflated, it may result in certification of a higher percentage of completion of work, which in turn may have resulted in a higher withdrawal than would be permitted if the correct project cost as was incurred was reported. Therefore, the chartered accountant issuing certificates for withdrawals from the bank may be a chartered accountant other than the chartered accountant who will certify the annual accounts referred to in third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4 of the Act. Chartered Accountant shall ensure that repayment of any loan is not made directly from serrate RERA Account. There shall be only one separate RERA Account for a project.

12. Audit and certification in conformity with these directions

Certification by a chartered accountant for withdrawal from the separate bank account, and in behalf of audit referred to in third proviso to sub-clause (D) of clause (I) of sub-section (2) of section 4 in conformity with these directions have been maintained. The auditor will follow the rules in such cases and prepare his certificate/report in the format, specified for the purpose.

Audit report form by the chartered accountant who is the statutory auditor of the promoter/promoter's company/firm/business entity is annexed herewith these directions. Form attached as annexure A.

13. Disclosure

In all the cases of audit, the auditor is advised to append his notes explaining certain practices he has adopted in certification, which, he believes, require disclosure. The auditor may also state in such notes if he has departed from normal practice which he otherwise would have followed but for certain reasons or circumstances. In such cases, the auditor will explain the circumstances and why he took a particular position.

14. Deviations

These directions have been framed for laying down the manner in which the chartered accountant should issue the certificate for withdrawal and on the annual accounts. In case of deviation, it is advised that the chartered accountant append an explanatory note to his certificate why he has taken a particular view or stand.

(Sd.)...,
Secretary,
Haryana Real Estate Regulatory Authority, Gurugram.

FORM**[See Section 4(2)(I)(D)]**

ON THE LETTER HEAD OF CHARTERED ACCOUNTANT (WHO IS STATUTORY AUDITOR OF THE PROMOTER/PROMOTER'S COMPANY / FIRM/BUSINESS ENTITY)

ANNUAL REPORT ON STATEMENT OF ACCOUNTS

To,

Name of the Promoter	
Address of the promoter	

- I/We _____ the auditor have examined the books and all the relevant records of _____ (Promoters Name) having PAN No. _____ related to _____ (Project Name) Project RERA Registration No. _____ having site address as _____ for the year ending 31st March _____
- We have conducted our engagement and examination in accordance with the standards on auditing, Guidance Note on Reports or Certificates for Special Purpose and other applicable authoritative pronouncements issued by the Institute of Chartered Accountants of India. We confirm our compliance to all such applicable pronouncements and with the ethical requirements of the code of ethics issued by the Institute of Chartered Accountants of India.
- It is the primary responsibility of the management of _____ (Name of the entity/company) to prepare, produce and maintain all accounting and other relevant supporting records and documents required for the purpose of this certificate. This responsibility includes the design, implementation and maintenance of necessary and appropriate internal control commensurate with the nature and size of entity.
- Period under Certificate: From _____ to 31st March _____

1.	Whether separate RERA Bank Account has been opened as envisaged in Haryana RERA Bank Account Direction, 2019?		YES	NO
1.1	Whether the existing operational Bank account was made known at the time of application for registration as RERA Bank account?		YES	NO
2.	Details of RERA Bank Account as registered with Haryana RERA (Mention details of three bank accounts i.e master a/c, RERA compliant account and free account)			
2.1	Bank Name			
2.2	Branch Name			
2.3	Account Name			
3.	In case of change in RERA Bank Account as indicated above, whether due approval following prescribed documentation was taken from Haryana RERA under the Haryana RERA Bank Account Directions, 2019 ?		YES	NO
4.	Whether any of the Annexure C issued during the certificate period mandated deposit of 100% of the money collected from the booking of the project units (refer Annexure D of additional information for ongoing projects of Annexure C)		YES	NO

	4.1	If Yes, please mention the certificate date and name of certifying chartered accountant			
		(i)	Certifying Professional		
		(ii)	Date of Certificate		
5.	Whether the required proportion of money collected from the allottees of the project units (as indicated in Annexure C) deposited in the RERA Bank Account?			YES	NO
5.1	If no, please mention the amount not deposited under the above non-compliance				
		Sr. No.	Period (From ____ to ____)	Amount not deposited	
		1.			
		2.			
6.	Whether the project registration is as New or Ongoing Project?			YES	NO
6.1	In case of New project registration, whether there was any booking taken prior to project registration?			YES	NO
6.2	If Yes, Please provide details below :				
		(i)	Number of such units booked		
		(ii)	Amount Collected from such bookings		
		(iii)	Total Consideration of such bookings		
7.	Whether all amounts withdrawn from RERA bank account were within the withdrawal limit as certified under the relevant "Annexure C" issued during the period?			YES	NO
7.1	If no, please provide the below details				
		Sr. No.	Period (From ____ to ____)	Amount of Excess withdrawals	
		1.			
		2.			
8.	Whether any fixed deposit was created out of funds deposited in RERA Bank account?			YES	NO
8.1	If Yes, whether the fixed deposit is credited with the same RERA account bank branch in compliance with para 8 (iii) of Haryana RERA Bank Account Directions, 2019			YES	NO
8.2	If Yes to 8 above, whether any lien is created on such fixed deposit in violation of para 8(iii) of Haryana RERA Bank Account Directions, 2019?			YES	NO

9.	Whether there has been any instance of receipt of consideration in excess of 10% of apartment value without entering into a registered agreement for sale?			YES	NO		
	9.1 If Yes, please provide the information as below						
	Sr. No.	Unit Number	Total Consideration	Amount received in excess of 10% till registered agreement for sale			
	1.						
	2.						
10.	Whether the project is executed by availing any loan/borrowings?			YES	NO		
	10.1 If Yes, please provide details as below						
	Sr. No.	Name & Type of lender	Amount of Loan Sanctioned (Rs.)	Sanction Date	Loan Outstanding as on 31st March _____ Rs.)	Collateral Mortgage Details	Amount of Default in Repayment if any
	1.						
	2.						
	10.2	Whether the financial encumbrance is reported to Haryana RERA?			YES	NO	
	10.3	If Yes to 10.2 above, whether promoter has mortgaged or created a charge on any booked unit?					
10.4	Whether any repayment of loan has been made from RERA account			YES	NO		
11.	Whether any discrepancy noticed in Annexure A,B,C with reference to their issuance in accordance with the RERA Act, Rules and regulations?			YES	NO		
	11.1 If Yes, please provide the details below						
	Sr. No.	Annexure	Tick Applicable as	Certifying professional	Date of Issuance	Details of Discrepancy	
	1.	A					
	2.	B					
3.	C						
12.	Whether any amount of collected for the project/phase has been transferred to any related party (related party as mentioned in company act 2013)			YES	NO		

	12.1	If Yes, please provide the details below			
		S. No.	Date of loan/advance	Name of the Related Party	Amount of Loan/advance
13.	Please specify any other things which are not covered above				

5. I/We have obtained all necessary information and explanation from promoter, during the course of our audit, which in my/our opinion are necessary for the purpose of this certificate. Also I/we have attached herewith the copies of financial statements and audit report of the _____ (project/phase as registered) for the financial year ending on 31st march _____.
6. I/We hereby confirm that I/We have examined the prescribed register, books, documents and relevant records of _____ (project) for the period ended and this certificate is being issued based on the records and document produced before me and explanations provided to me by the management of the promoter based on the verification of books of accounts till (date) 31st March _____.

For Name of the Firm

Date:
Place:

(Signature and Stamp/Seal of the Signatory CA)

Name of the Signatory:

Proprietor/Partner

Membership No.:

UDIN:

Full Address of firm:

Enclosed:

- Copy of all CA Certificates submitted at the time of withdrawal from RERA account maintained as per Haryana Real Estate Bank Account Directions 2019.
- Copy of Annexures A, B, and C for all four quarter & required to submit with Report.
- Copy of balance sheet & profit and loss account and cash flow statement for the project/phase as registered.

[71-1]